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## CRIME AND PUBLIC ORDER IN UKRAINE

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### INTRODUCTION

1. Ukraine is one of a number of transitional societies with a range of problems that are unavoidable in the process of introducing democracy to authoritarian systems. Ukraine gained its independence in 1991 and has since been constructing a democratic state ruled by law. The path of transition is chock full of obstacles and impediments, including increasing crime rates, persistent disparities between poor and rich, economic hardships, a collapse of the state social security system and increasing corruption. The transition has been especially difficult for Ukraine since it could not go back to and employ pre-Soviet democratic traditions. Such traditions are not developed overnight, and consequently they have not yet become firmly embedded into the Ukrainian legal system. In its transition to democracy, Ukraine has in effect been groping in the darkness created by unawareness and lack of experience in the principles of democracy, the rule of law, and respect for human rights.
2. Analyses of public opinion and the mass media, human rights reports of international organisations and institutions, and the Ukrainian Ombudsman show that a far more serious problem is that of unrestricted governmental power, and its manifestations (symptoms), such as the impunity with which that power is wielded, as well as police abuses and corruption. According to human rights reports by Amnesty International, the United States Department of State, the United Nations Committee against Torture and annual reports of the Ukrainian Ombudsman, the torture and ill-treatment of detainees by police — sometimes leading to deaths — as well as the widespread practice of beating suspects during custodial interrogations or during arrests, constitute the most critical human rights violations in Ukraine. Police often compensate for a lack of training and adequate police techniques and bypass the scarce resources available with frequent cover-ups of their own wrongdoings (including their complicity with criminals of all sorts), police harassment, abuse and even murders of suspects of potential criminals. Until recently, police enjoyed almost complete immunity for these acts, since there was no direct liability for torture and inhuman or degrading treatment of suspected perpetrators and other detainees in the Criminal Code of Ukraine.

3. Under these circumstances, human rights organisations- in dealing with issues of crime- have focused their activity on fighting violations of human rights by police and other law enforcement institutions. Human rights organisations are concerned about allegations of ill-treatment and torture of detainees by police officers- which appear to be relatively widespread. They are making an effort to stop torture and ill-treatment by police, and to hold Ukrainian authorities accountable for police abuse and brutality.
4. The purpose of this paper is to present the correlation between crime, public order, and human rights in a transitional society such as Ukraine, and to describe the activity of Ukrainian human rights NGOs in this environment. In this regard we will review statistics, public opinion polls, and media coverage of crime in Ukraine. Further, we will examine Ukrainian human right NGOs — in particular the history of their development and the environment in which human rights NGOs work in Ukraine — their main features, and activities aimed at curbing crime and social violence within a human rights framework. The final part will analyse the role of human rights in reforming police and other law enforcement institutions, generalising existing practices, and providing recommendations for human rights organisations. The primary sources of information used in this research were personal interviews conducted with leaders of human rights organisations, and human rights experts; secondary sources include human rights reports by international organisations, the Ombudsman's reports, statistics of the Ministry of Internal Affairs and the National Institute for Strategic Studies, as well as a review of the mass media.

## THE CONTEXT

5. It is crucial to scrutinise the crime level in Ukraine and the public's perception of crime to understand the specifics of the work of human rights organisations in curbing crime and violence in Ukraine, as well as their priorities and strategies. It is important to identify crime issues and problems that evoke the most concern among human rights workers. A brief analysis of crime and its perception by the public follows in an attempt at determining realms of interference for human rights organisations in promoting democracy and the rule of law, and eliminating human rights abuses.
6. In circumstances of social and economical instability in Ukraine, crime rates and the general crime level were indeed high until the middle of 1990s — largely due to the collapse of the social security system, severe economic problems, and insignificant attention to the civic education of young people. From 1992 until 1995, there was a constant increase of crime and in 1995, in comparison with 1994, crime had increased by 12.2%. In 1996, crime decreased by 3.8%. This decline continued over the next several years: in 1997, by 4.5%; in 1998, by 2.2% and in 1999, by 3.0%. According to Ministry of Internal Affairs data, there were 5,037,000 registered crimes in 2001, which corresponds to an annual decrease of 9.0% as compared to 2000.<sup>1</sup>
7. The structure of crime in Ukraine has undergone significant change since the country gained independence. The beginning of the 1990s was remarkable in terms of growth of street violence, while the end of the decade showed a different picture: decrease in street violence and growth of corruption crimes. The general crime level in Ukraine presently constitutes 101.8 crimes for every 10,000 persons. Successful investigation of registered cases is approximately 75% as reported by the Ministry of Internal Affairs on January 8, 2002. Further, the report ascertains a decrease in street violence (13.5%), among other kinds of crime<sup>2</sup>.

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<sup>1</sup> Annual report of the Ministry of Internal Affairs 2001, [http://cgz.centrmia.gov.ua.official/criminog2001\\_01.html](http://cgz.centrmia.gov.ua.official/criminog2001_01.html) , (2002 May 30)

<sup>2</sup> It should be mentioned herein that there is a high level of latency of statistical data on crime in Ukraine. Divergence of officially registered criminal cases and the number of complaints submitted to police during 1996-

8. The public opinion of crime (as sociological polls conducted by the Democratic Initiatives Foundation show<sup>3</sup>) — as a social phenomenon — has not been associated with a danger to personal integrity.<sup>4</sup> Crime<sup>5</sup> and social violence have not reached the level of disrupting the social and political order. If, at the beginning of the 1990s, criminal chronicles [including the American film *Pulp Fiction* of Quentin Tarantino] were popular and widely read (since there were no “crime chronicles” in the Soviet era), there is, today, a limited interest in criminal chronicles, as sociological polls show.<sup>6</sup> At the same time, the Ukrainian Centre for Economic and Political Studies (also known as The Razumkov Centre) in its recently conducted survey showed that 65% of Ukrainians polled believe that the police are incompetent and involved in political “activities”.<sup>7</sup> Monitoring of the level of trust in the police in Ukraine — conducted by IFES — supports this statement, and provides evidence of miserly public support for police actions.<sup>8</sup> This phenomenon could be explained by the widespread practice of police torturing suspects and treating them inhumanly and degradingly.
9. Torturing suspects by police constitutes a gross and systematic violation of human rights. According to the *International Helsinki Federation Annual Report 2001*: “[t]here were no statistics on the use of torture, but NGOs estimated that there were several thousands of cases each year. Parliamentary Ombudsman Nina Karpachova once said that 30 per cent of prisoners were victims of torture.”<sup>9</sup>

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2001as reported by human rights NGOs gives grounds to believe that police in Ukraine are overloaded by complaints, and, therefore, are forced to arbitrarily limit the number of cases they can investigate and register officially. Thus, the number of registered criminal cases does not necessarily reflect the level of crime committed in Ukraine.

<sup>3</sup> Dr. E. Golovakha, Political Portrait of Ukraine: General Overview of Public Opinion, Democratic Initiatives Foundation, May 1993-January 1998 <http://qsilver.qqueensu.ca/csd/ukarchie>, June 15, 2002.

<sup>4</sup> see *ibid.*

<sup>5</sup> The notion “crime” herein excludes “corruption”.

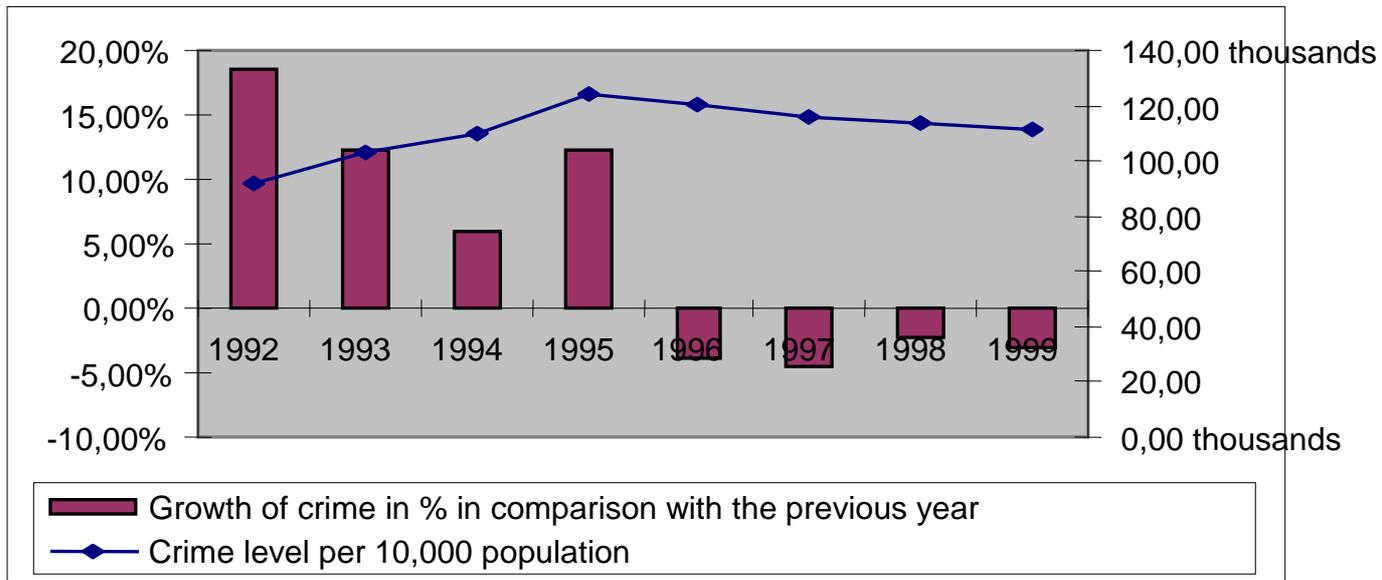
<sup>6</sup> Dr. E. Golovakha, Political Portrait of Ukraine: General Overview of Public Opinion, Democratic Initiatives Foundation, May 1993-January 1998.

<sup>7</sup> “Komsomolskaia Pravda Ukrainy”, newspaper, #116/117, July 3, 2001

<sup>8</sup> Thomas Carson, Approach to Changes, the Current Situation and Civic Actions in Ukraine; IFES internal research paper, December 5, 2000.

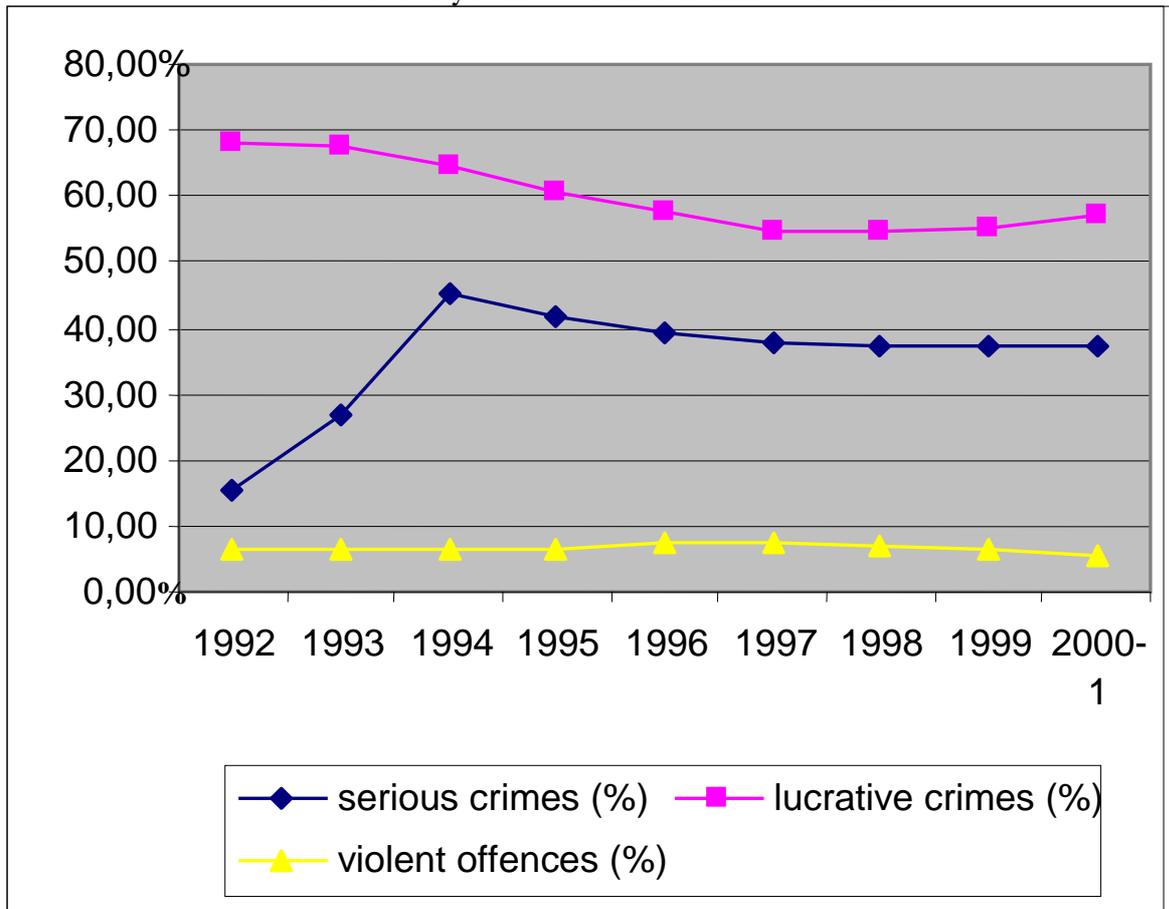
<sup>9</sup> International Helsinki Federation, *Annual Report 2001*, p. 324.

Table 1: Dynamics of the Growth of Crime



Source: Internal paper prepared by the National Institute for Strategic Studies for the Security Council of Ukraine.

Table 2: Dynamic of Different Kinds of Crime



Source: National Institute for Strategic Studies for the Security Council of Ukraine.

10. According to the report of the Ombudsman, there were, in 1998-1999, 194 criminal cases filed against 285 police officers who exceeded their power, and treated suspects and detainees inhumanly and degradingly.<sup>10</sup> In 2001, 154 criminal cases against police abuses were initiated, of which 37 led to court proceedings, as a result thereof 52 police officers were convicted.<sup>11</sup> In 2002, the Ombudsman received 2,209 complaints on ill-treatment of suspects by the police.<sup>12</sup> Regarding information on police abuses from the law enforcement institutions, the oblast prosecutor's office in L'viv oblast initiated 14 criminal cases for torture of convicts in 2000. However, only 7 cases were brought to court. There were 129 complaints filed on degrading treatment by police, but these were left without attention.<sup>13</sup> In Kharkiv oblast during the first months of 2001, the oblast administration of the Ministry of Internal Affairs received more than five hundred complaints regarding police actions. The prosecutor's office in Kharkiv oblast initiated 21 criminal cases against police officers. Three police officers were convicted for ill-treatment of suspects.<sup>14</sup>
11. Ukrainian human rights NGOs collect and disseminate information on police abuses as a priority activity targeted at ceasing torture and ill-treatment by police. The Kharkiv Group on Human Rights Protection published a book based on newspaper publications and its own findings on ill-treatment and torture in Ukraine, which includes information on 205 cases of torture and ill-treatment of suspects by police. In 26 of these 205 cases, suspects were murdered.<sup>15</sup>
12. Thus, despite a tremendous number of complaints against police abuses, only a minor part of complaints are actually tried (reviewed) in court. The general conclusion drawn by the majority of interviewed human rights leaders is that the bulk of torture and ill-treatment of police take place during preliminary questioning and before suspects are accused of crimes; thus it is very difficult to impose liability on police officers for these abuses. Even when police officers are sentenced for abuses, the majority of them get suspended sentences. Only in 17 of 26 cases involving police killings, as described in the Kharkiv Group book, were police officers actually imprisoned.<sup>16</sup>
13. Suspended sentences typically are accompanied by court orders banning sentenced police officers from further employment by police forces. However, even after a court's order to ban convicted officers to serve in police, convicted officers often remain at their positions.<sup>17</sup> This contributes to a perception of police impunity. The impunity of police encourages torture and inhuman/degrading treatment by police officers. Therefore, it is of extreme importance to impose liability on police officers for torture and ill-treatment of suspects.
14. Allegations of torture and ill-treatment by law enforcement officials of people deprived of their liberty have been accompanied by frequent reports that detained and arrested persons have been refused access to legal representation or have not been allowed to inform family members of their detention — constituting violations of rights — that among other things guard against torture and ill-treatment and allow a person to prepare a defence. Conditions in Ukraine's places of detention and imprisonment often fall below international minimum standards, with the result that people deprived of their liberty are subjected to cruel, inhuman, or degrading treatment.
15. To take definitive measures in fighting the impunity of police abuses, it is crucial to introduce a remedy such as compensation for moral and pecuniary damages caused by police abuses.

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<sup>10</sup> [www.ombudsman.gov.ua/d\\_04\\_4.htm](http://www.ombudsman.gov.ua/d_04_4.htm), August 30, 2002.

<sup>11</sup> Kievskie Vedomosti, newspaper, March 6, 2002.

<sup>12</sup> Ukraina Moloda, newspaper, #179, July 11, 2002

<sup>13</sup> Interview with Mr. Z. Siryk, President of the Law and Democracy Foundation, L'viv.

<sup>14</sup> Zerkalo Nedeli, newspaper #45, November 17, 2001.

<sup>15</sup> Information Bulletin of the Kharkiv Group for Human Rights Protection, [www.khpg.org/plu/0222/cont/html](http://www.khpg.org/plu/0222/cont/html), August 23, 2002.

<sup>16</sup> Ibid.

<sup>17</sup> Newspapers "Trud-7", #41, June 6, 2001, Vechirni Visti #43, 2002, 22 March Facy #94, May 31, 2002.

Presently though, while Ukrainian law provides for assessing the extent of damage inflicted, there is no efficient mechanism to recover damages for victims of illegal police actions.<sup>18</sup> We must note here that the above law provides for rights to compensation only for those acquitted by trial — or in cases of a pre-trial dismissal due to a lack of *corpus delicti* — and in cases of refusal to present charges. Thus, if the victim of torture or ill-treatment by police committed a crime or violation, he or she cannot hope to obtain a court verdict on compensation for moral and/or pecuniary losses.

16. However, even if there is a court's verdict to compensate for losses, receiving monetary compensation is problematic because there is a very limited amount of money allocated by the Ministry of Finances for such compensation. Moreover, this money — until a recent decision of the Constitutional Court of Ukraine — constituted a part of the budget of law enforcement institutions, i.e., police, the prosecutor's offices, SBU (Security Bureau of Ukraine), and judiciary. One can speculate that the Ukrainian judiciary, which has practically no financial resources other than the state budget, was reluctant to redress damages to its own expense. The Constitutional Court of Ukraine held as “unconstitutional” provisions of the law on the state budget, which stipulated compensation of the damages from the budget of the law enforcement institutions and the judiciary.<sup>19</sup> However, the Verkhovna Rada of Ukraine (the legislative body) has not passed any new law to provide a new source of compensation damages to those abused by police.
17. Ill-treatment committed by police in Ukraine is not and cannot be justified by the high level of crime in the country. According to the data on crime referred to above, the level of crime has significantly decreased since 1996. The roots of police abuses according to Ukrainian human right activists include:
  - lack of understanding of human rights by police officers, namely, that suspects and detainees enjoy the same human rights as others;
  - unsatisfactory equipment and insufficient funding;
  - overestimated expectation to police efficiency in detecting crimes; and
  - low professional level of police officers.
18. After the tenth year of Ukraine's independence, the state's crime fighting policy continues to be targeted at the punishment of criminals as a means of deterring crime. Furthermore, police use the old Soviet principle while investigating the crime, “Confession is a Queen of Fact-finding”, which also encourages them to extort the confession from suspects by any means necessary. Additionally, there is a belief that those who are suspected of a crime do not enjoy rights and freedoms as others. The consequences of such a policy have unfortunately produced a lack of respect for individuals, and their rights and freedoms by police and other law enforcement institutions in charge of maintaining public order. One of the manifestations of this occurrence is the commonly employed detention and arrest of alleged criminals as a measure to limit their freedom of movement during an investigation.
19. According to Ukrainian law, the police can detain an alleged criminal for 72 hours without a court order. To arrest the person, it is necessary to obtain a court order. After 72 hours, the alleged criminal should be released or a court should issue an order to arrest him or her. The data gathered by the human rights NGOs and the Ombudsman show that often police breach the law and keep alleged criminals until they get a court's permission or refusal to arrest a suspect, and this takes much longer than 72 hours in detention centres. Detainees have been frequently

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<sup>18</sup> Law of Ukraine “On Compensation of Damages Suffered in the Result of Illegal Actions of Police, Public Prosecutor's Office and Judiciary from December 1, 1994, ( 266/94-вр ) Visnyk Verkhovnoji Rady Ukrainy, 1995, N 1, p. 2.

<sup>19</sup> Decision of the Constitutional Court of Ukraine №12-пг/2001 dated 03.10.2001; newspaper Holos Ukrainy, #183, October 10, 2001.

refused access to legal representation or have not been allowed to inform family members of their detention.

20. Until recently there was no provision in the Criminal Code of Ukraine<sup>20</sup> prohibiting and imposing liability for inhuman treatment or torture. Though Ukraine has ratified the European Convention on the Elimination of Torture and Degrading Treatment, the European Convention on Human Rights, and the International Covenant on Civil and Political Rights, the legal system of Ukraine inherited from the Soviet era recognises transformation of international treaties as the only means for their transplantation. Namely, the state avoided the implications of international treaties unless enacting such legislation would faithfully reproduce the language of an international treaty and thus put it into circulation in the respective domestic theatre.<sup>21</sup> Therefore, it was very important to introduce liability for torture and ill-treatment in the new Criminal Code of Ukraine.
21. Further, police enjoy virtual immunity for abusing human rights of suspects due to the Ukrainian judiciary's tradition not to acquit suspects. Until recently, the number of acquittals in criminal cases tried in court constituted 0.33% of the total.<sup>22</sup>
22. The situation described above has shaped human rights defence activity in Ukraine, which is targeted at the curbing of crime and violence by the police. Human rights organisations in Ukraine understand that police abuses and impunity imply a fear of society and disbelief in democratic changes. The state is in a position that it should fight against abuses committed by the governmental institutions. The battles fought against human rights abuses are difficult and not always successful.

## HUMAN RIGHTS ORGANISATIONS IN UKRAINE

23. The human rights movement is represented in Ukraine by dissident groups (Memorial and the Helsinki Group), branches of international human rights organisations such as Amnesty International, Helsinki-90, the International Human Rights Society,<sup>23</sup> civic activists, lawyers, and others interested in the human rights movement. An interesting phenomenon that has recently developed is the founding of "institutional" human rights organisations. Usually, they are associated with law schools and either operate free human rights clinics or provide analysis on legislation. Institutional human rights organisations — due to their academic origin and restricted spheres of activity — barely fit into the notion of the human rights NGOs used in this research. Therefore, they will not be further referred to. Overall, there are a limited number of active and efficient human rights organisations, and there is practically no national network that could co-ordinate the work of human rights NGOs around the country. There are few human rights NGOs dealing with human rights protection conceptually. This is so despite statistics<sup>24</sup> claiming more than one hundred NGOs registered as human rights organisations. In fact, there are approximately twenty active organisations involved in curbing crime and violence.<sup>25</sup>

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<sup>20</sup> Criminal Code of Ukraine (not in force) dated 28.12.60 ( 2000-05 )Visnyk Verkhovnoji Rady Ukrainy, 1961, N 2, p. 14.

<sup>21</sup> Ginsbergs, G. From Soviet to Russian International Law. Studies in Continuity and Change, Kluwer Law International, 1998.

<sup>22</sup> Den #191, October 20, 2001.

<sup>23</sup> The Ukrainian-American Bureau on Human Rights is a synthesis of a dissidents' movement and a partner of an international organisation. This organisation was founded by the group of dissidents. It then joined American human rights organisations. Currently, although it preserved its name, it is a purely Ukrainian organization.

<sup>24</sup> <http://khp.org/organ/list.html>, May 6, 2002.

<sup>25</sup> Interviews with Mr. E. Zakharov, Leader of Kharkiv Group on Human Rights Protection, Zenovi Siryk, President of Democracy and Law Foundation, L'viv; Oleksander Shevchenko; Co-Chair of Helsinki-90, Kyiv;

24. A common feature of Ukrainian human rights NGOs is the modest number of NGO leaders who possess legal education and background in human rights protection. As a rule those who are genuinely interested in human rights, the so called human rights activists, do not have an adequate background and experience in practising public law and human rights law, and those lawyers who possess the requisite knowledge are not often human rights activists. The lack of adequately trained and educated leaders undermines the effectiveness of the work of human rights organisations by restricting information and resources available for their effective work.
25. Ukrainian human rights NGOs are not self-sustainable entities and rely on foreign or international donors. Donor financial assistance reached its peak in 1994-1995, according to those interviewed. Since then, it has declined significantly. Dependence on international or foreign donors impedes consistency and the integrity of human rights NGOs strategy and activity planning — as well as the co-operation between them. As grantees, they are dependent on the terms of the grant programs, which are often “taken out of context” due to the communication problem between donors in management of their human rights activities in Ukraine. NGOs identify quickly the new trends and “catchwords” in the donors’ community and respond accordingly. Additionally, a competition for grants confines co-ordination of human rights NGOs’ activities. There are countless honest and diligent organisations in great need of support. There are well-intentioned groups, which are still in a state of infancy. However, there are also groups led by charlatans and sometimes it is challenging to identify who is who.
26. Unsatisfactory funding of Ukrainian NGOs limits the number of active staff. According to the majority of NGO leaders interviewed, few human rights NGOs have more than five-eight active staff members and after obtaining a grant, human rights NGOs as a rule, hire additional staff *ad hoc*, but these people cannot be reckoned members of human rights organisations. The limited human resources undermine the effectiveness and types of activity that human rights organisations can perform.
27. An additional factor that impedes the effectiveness of Ukrainian human rights organisations is limited public support for their activity. Due to limited information on and unsatisfactory advertising of human rights NGO activity and *a priori* indifference to human rights on the part of Ukrainian society, human rights organisations often cannot rely on broad public support for their activity. Besides, mainstream human rights organisations do not consider their activity to be politically affiliated, and frequently do not work with any political parties or other political entities. The lack of co-operation between political parties and blocks and human rights organisations limits their ability to draw the attention of Parliament to their findings, and their ability to lobby changes in Ukrainian legislation. In point of fact, human rights NGOs can lobby improvements to legislation via the Ombudsman. What is more, Ukraine is still developing its laws governing non-governmental organisations and there is a substantial legislative vacuum as far as regulation of NGO activities is concerned.
28. The indifference of Ukrainian society to human rights has been called forth by the very concept of human rights. Ukraine, like many other states that for a long time espoused Soviet ideology, faces a serious problem in defining human rights as the rights of a person to be an autonomous human being, namely, rights that preserve the person’s responsibility for making choices without state interference and that put individual’s rights before the state’s needs. The — until recently dominant — Soviet ideology turned human rights away from the idea of personal rights, i.e. socialist legal theory did not address any theory of inherent or natural rights, nor did it acknowledge them.<sup>26</sup> That ideology sacrificed individual rights to the goals of society; the most

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<sup>26</sup> Rett. R. Ludwikowski, “Fundamental Constitutional Rights in the New Constitutions of Eastern and Central Europe”, *Cardozo Journal of International and Comparative Law*, Spring, 3, 1995, pp. 73-158..

important of which was the building of “flourishing communism.”<sup>27</sup> Individual autonomy was strictly limited by this major goal. The government and the society were seen to be one entire whole; socialism regarded human rights to autonomy, namely personal rights, as anachronistic and necessary only in the “pre-historic” times (before Socialism), when individuals needed protection from injuries and dangers generated by an imperfect world full of class conflict. Additionally, Soviet ideology and long established practice did not recognise the rights of those who breached the law, and based the system of curbing crime on the punishment of those who breached the law.

29. Once that world was transformed and the Soviet Union was born, emancipated human beings were denied the need for rights in abundance, communal relations, and real freedom to develop their manifold human powers.<sup>6</sup> Hidden behind the ideological *umbrella*, which presupposed the absence of confrontation between the interests of the state and an individual, the issue of protection of individual autonomy was not considered. The individual was just a means for accomplishing this “crucial” task. The popular thesis of the priority of public over individual interests excluded the Western European concept of human rights based on the doctrine of individualism. Consequently, the individual’s personal interests and rights were not taken into account.
30. The Western European and the Soviet Ukrainian concept of human rights both presumed the protection of human rights through the mediation of a state. Consequently, they both put the emphasis on positive human rights, and considered that negative rights should be protected through positive state obligations. The difference lay in the goals of the concepts: the Western European notion aimed at protecting the individual, whereas the Soviet concept secured the interests of society as a whole (there existed no conceptual difference between the state and the society). The Ukrainian Soviet concept of human rights did not, therefore, consider the individual subject to human rights, contrary to the Western concept, and the state was to satisfy the needs of individual. This concept gave rise to the perception that it is impossible to fight for individual rights against state institutions. Those who dared fight were in danger of losing the support of the wider public and might become social outcasts. Thus, frequently victims of police abuses do not want to pursue a legal remedy of their violated rights. Some of them are afraid to file a complaint against police due to distrust in justice and/or in due process.
31. Under these circumstances, human rights organisations determined the increase of public human rights awareness as a general strategy to fight human rights abuses. They are fostering awareness of human rights through their publications, educational programs, and other activities. Another widespread strategy of human rights organisations is to monitor the activity of public institutions, and to increase their accountability to human rights.
32. Regarding more specific problems, such as curbing police human rights abuses, human rights organisations in Ukraine are dealing with this problem comprehensively- though the efficiency of their work could be questioned. First, they organise human rights training and/or disseminate brochures on rights of detainees and those under arrest during investigations and court trials to inform people about their rights and how to protect their rights. This activity is especially important since the state has withdrawn from this. Second, human rights organisations (the Law and Democracy Foundation, Ukrainian Legal Foundation, the Kharkiv Group on Human Rights Protection, Donetsk Memorial, Podilsky Centre for Human Rights, Sevastopol Human Rights Group etc.) organise human rights clinics to provide individuals whose rights were abused with free legal aid. This activity helps to provide both financial as well as moral support for those

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<sup>27</sup> Under current circumstances this idea was substituted by the idea of “building an independent and powerful Ukrainian state”. Save the change of the idea, no further conceptual changes have been achieved. Namely, the concept of relations between individuals and the state apparatus, respect to autonomy — as will be shown herein — have undergone very slight changes (author).

abused, and gives an opportunity to cumulate and generalise human rights case law, as well as information on human rights abuses that have taken place in Ukraine.

33. The following part of this research will discuss the activities of human rights organisations aimed at curbing police abuses.

#### **HUMAN RIGHTS ORGANISATIONS ACTIVITIES**

34. To resolve the compound problem of human rights abuses and police violence with impunity, human rights organisations have developed a strategy, which includes the following activities:
  - collecting information on human rights violations and processing gathered information;
  - monitoring adherence to human rights by police and other state institutions;
  - opening and operating human rights clinics which provide free legal aid;
  - analysing domestic legislation and promoting changes to it which bring the Ukrainian legislation in compliance with its international obligations;
  - popularising international human rights standards (translation and dissemination of human rights reports, international instruments, case-law, and so on);
  - organising trainings, workshops and conferences for state officials, lawyers, and human rights activists; and
  - human rights advocacy (lobbying changes to legislative acts, increasing law enforcement officials' accountability for human rights, attempts to co-operate with the Ombudsman's office).
35. In the next section, we examine each of the above activities, identifying problems and possible ways of increasing their effectiveness.

#### **COLLECTING INFORMATION ON CRIME**

36. The bulk of ill-treatment and torture by police takes place at detention centres which are accessible for neither human rights NGOs nor the media — not to mention the average person. There are no official statistics on police abuses provided by the Ministry of Internal Affairs. Detainees who were victims of ill-treatment and torture often are threatened and harassed and as a consequence do not reveal information on police abuses. Therefore, it takes lot of commitment and ingenuity for human rights NGOs to collect facts on police ill-treatment and torture.
37. There is no national network of human rights organisations that collect information on human rights abuses on a local level. Better developed organisations initiate information collection with the assistance of smaller associated organisations or human rights activists. Recent practice proved the usefulness of co-operation with environmental organisations such as Green World (Zelenyj Svit) and other NGOs such as the Soldiers' Mothers Union (Souz Soldatski materi), Union of Officers of Ukraine (Spilka Ofitseriv Ukrainy), and numerous associations of the handicapped and groups which are well equipped, very active, with numerous offices in different regions, and can be engaged in the collecting and dissemination of information on violations.
38. Human rights legal aid centres (human rights clinics) also provide some information on cases of police abuses. However, only limited numbers of those abused come to human rights clinics, as discussed below.
39. Even when human rights organisations collect information on police ill-treatment and torture, they often have problems disseminating this information. Human rights organisations publish

limited editions of their information bulletins, which as a rule, are disseminated among a narrow readership. A few human rights organisations have their web-sites that are regularly updated, furthermore no human rights organisations, except for the Kharkiv Group, have web pages with extensive proprietarily collected information on police torture and ill-treatment. Technological advances such as fax machines, computers, and electronic mail are not affordable for many human rights organisations in sufficient quantities. Unfortunately, human rights organisations often do not work closely with the media. Although the ability to generate immediate responses to events is crucial to their activity, human rights organisations do not always react promptly by engaging other activists, police leaders, and the media in denouncing violations.

40. While human rights NGOs have limited capacities for collecting and disseminating information, their capacity to process information is not fully used. Some of the human rights leaders interviewed supported co-operation with the Ombudsman's office. The Ombudsman's office is overloaded with an immense number of complaints regarding torture and inhuman treatment, but being understaffed and having no regional offices, they cannot process the complaints received and cannot generalise them. Perhaps, human rights organisations could be successful in assisting the Ombudsman's office to process received complaints.

#### **ORGANISING HUMAN RIGHTS CLINICS**

41. A number of human rights organisations operate legal aid centres (human rights clinics) to enhance the available protection of the rights of those abused in court. Essentially, the scope of services provided at the human rights clinics as well as their quality varies. Some only consult on legal actions to be taken in case of human rights abuses, while others help to file claims and plead cases in court. There are also human rights organisations that assist in monitoring court decisions to be implemented. As was mentioned above, obtaining compensation, as well as expelling a convicted police officer from work sometimes are cumbersome procedures, and are not automatically guaranteed by court orders. Human rights organisations assist in monitoring the implementation of court's decisions by drawing the broader public's attention through the mass media to cases when the court's decisions are not executed.
42. The undisputed leader in providing legal assistance and litigating cases is the Ukrainian-American Bureau of Human Rights. This organisation does not have offices for human rights clinics. Rather its staff is reachable by telephone or email in cases of abuses.
43. Many abused who have suffered torture or ill-treatment by police are harassed and threatened in case they file complaints against police abuses. However, even when they turn to human rights organisations and the latter assist them in lodging a complaint and opening an investigation in cases of alleged torture or ill-treatment by police officers, the investigation as a rule is slow, frequently lacking in thoroughness, and often inconclusive. The impartiality of a significant number of investigations into allegations of torture and ill-treatment has also been questioned. Also, individuals who have complained about torture and ill-treatment by police have sometimes been subjected to auxiliary threats and harassment. In many such cases, human rights organisations dealing with the case organise press-conferences and by drawing attention to the case protect the abused from further perpetration. Some human rights organisations film bruises and other evidences of police ill-treatment to use these materials as evidence in court.
44. Last but not least, human rights organisations assist victims of torturing and ill-treatment in exhausting all domestic remedies and submitting their case to the European Court on Human Rights. The effectiveness of this activity might be questioned, due to the lack of professionalism and knowledge of European case-law in the near-term perspective, but in the long-term

perspective it could be potentially useful to pressure the Ukrainian authorities to change the situation in the country.

45. Human rights clinics are helpful in curbing crime, since they help to decrease the impunity with which police torture and ill-treat, whereby perpetrators of human rights violations are exempt from punishment. However, human rights organisations often experience the following problems:
  - insufficient funding for operating human rights clinics (all interviewed organisations reported not having funding for human rights clinics from donors)
  - a lack of high rank professionals (usually lawyers in their staff are young graduates of the law schools and those who are interested in improving human rights advocacy skills)
  - time-limits (due to the prolonged duration of each case investigation and trial, human rights organisations have limited abilities to plead a case).

#### **ANALYSING UKRAINIAN LEGISLATION AND LOBBYING CHANGES TO IT**

46. As mentioned above, there are significant problems with imposing liability on police officers for torturing suspects and ill-treatment of them. As a rule, abusers are accused of exceeding their authority — which anticipates only light punishment and/or no expulsion from the police, and certainly no recovery of damages inflicted on the abused. Human rights organisations have begun campaigning to introduce provisions on liability for police violence and to qualify police abuse as torture and ill-treatment. Human rights organisations helped the Ombudsman's office to prepare a comparative analysis of the European standards of protection against torture and ill-treatment with the Ukrainian legislation which embraced no corresponding standards. Besides, their report stressed the fact that Ukraine undertook an international obligation to prohibit torture and provide liability for it, since Ukraine has signed and ratified European as well as United Nations instruments against torture.
47. This report was presented by the Ombudsman to the Parliament and it influenced the member's decision to include the provision on imposing criminal liability for torture, degradation, and inhuman treatment in the new Criminal Code<sup>28</sup> of Ukraine which came into force last year.
48. Furthermore, the Kharkiv Group on Human Rights Protection presented a series of publications on non-interference into private life, in which they presented the non-compliance between the European standards and norms on non-interference into private life, and on legislative acts on surveillance in Ukraine. Their analysis has encouraged the amendments and changes to the Ukrainian legislation, namely, the Law of Ukraine on Operational Search Actions.<sup>29</sup> The Kharkiv Group in co-operation with other NGOs campaigned for decriminalisation of libel and defamation of high ranking state figures, and their efforts have influenced changes to the appropriate provisions in the new Criminal Code of Ukraine.<sup>30</sup>
49. Currently, human rights organisations advocate further changes to the Criminal Procedure Code regarding the prohibition to conduct a custodial questioning without the lawyer. NGOs are also advocating the immediate release of detainees after 72 hours of detention, even if the court has not scrutinised the appeal to arrest. Besides, human rights organisations are promoting implementation of the new Criminal Code, which limits the number of cases where detention is permissible.

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<sup>28</sup> Criminal Code of Ukraine (2001), Articles 126, 127, Vidomosti Verkhovnoji Rady Ukrainy, 2001, N 25-26, p. 131.

<sup>29</sup> Vidomosti Verkhovnoji Rady Ukrainy, 2001, N 14, p.72.

<sup>30</sup> Vidomosti Verkhovnoji Rady Ukrainy, 2001, N 25-26, p.131.

## **Lobbying Problems**

50. The human rights NGOs experience two major problems:
  - a lack of understanding of the importance of lobbying as a means to curb human rights abuses, and
  - a lack of knowledge of the lobbying techniques and strategies.
51. The knowledge of lobbying techniques includes the knowledge of the legislative process, establishing and maintaining personal relationships, effective communication, analysis of specific issues and the political situation, an ability to develop strong factual and policy arguments, formation of coalitions, the purchase of “grassroots” contacts and media capabilities, an ability to compromise and so forth.
52. The interviewed leaders of the human rights organisations, as a rule, acknowledged only some of the listed above techniques and strategies. Moreover, they often did not use them cumulatively. Therefore, it is crucial to train human rights organisations in lobbying techniques and strategies.

## **MONITORING POLICE ABUSES**

53. Interviewed leaders of human rights organisations believe that their core function is to monitor police activity in order to make its work more transparent, to prevent torture and ill-treatment, and to hold police accountable on human rights. To accomplish this objective, human rights organisations conduct different kinds of monitoring. Bearing in mind that they have no access to police detention centres, where the majority of torture and ill-treatment take place, they employ indirect monitoring of abuses there. Thus, some human rights organisations monitor calls from police detention centres to the ambulance to find out how many times detainees required medical assistance. Others monitor the mass media for reported cases of torture or ill-treatment.
54. An interesting monitoring was conducted by the Law and Democracy Foundation as well as by the Vinnytsia Committee on Human Rights and Helsinki-90 Group, which monitored adherence to “due process” in court. Their findings were evidence that much needs to be improved.

## **Monitoring Problems**

55. Due to the lack of communication and failure to share information between human rights NGOs, the latter often duplicate their activities and produce no systematic reports on the situation in the country. Additionally, the organisations often prove to be unable to conduct at least one national monitoring of either the police or the penal system. Besides, the results of their monitoring are of limited dissemination and, therefore influence.

## **HUMAN RIGHTS EDUCATION FOR POLICE, JUDGES AND LAWYERS**

56. Human rights education takes various forms, such as seminars, training, workshops, printing, and disseminating international as well as domestic legal instruments on human rights protection etc. Human rights organisations co-operate with numerous international/foreign institutions and organisations (the European Community delegations in Ukraine, the Council of Europe, TACIS, OSCE, ABA/CEELI, the Danish, British and Canadian embassies) as well as with domestic public institutions (the Department of the Execution of Punishment and the Supreme Court of

Ukraine, ) in organising these events. Human rights education is an activity invariably supported by international and foreign donors.

57. Human rights organisations co-operate with the Department of Execution of Punishment by participating in civic councils created to provide assistance in the social adaptation of the imprisoned and monitoring of the penal system. Human rights organisations, in co-operation with the Department conduct training on international norms and standards as well as on domestic norms and standards on securing human rights. Human rights organisations contribute to the development of a probation service, which has been initiated by the Department of Punishment. All human rights organisations reported on the improvement of treatment of the imprisoned and certified the openness and transparency of the work of the above Department.
58. Unfortunately, the Ministry of Internal Affairs persists in ignoring human rights organisations as well as the media and remains a closed institution. The interviewed human rights leaders reported on the lack of co-operation with the Ministry. The lack of intention to co-operate with human rights organisations seemed to be in contradiction with the new policy toward openness, transparency, and high professionalism under the supervision of the civil society representatives, namely NGOs,<sup>31</sup> as recently proclaimed by the Minister of Internal Affairs. Moreover, the Minister has reported on the successful work of the civil advisory bodies, which consist of NGOs representatives. However, nobody among the interviewed knew of the existence of such bodies.
59. The Ukrainian-American Bureau is planning to sign a memorandum of understanding and co-operation — with the assistance of the Renaissance Foundation — with the Ministry of Internal Affairs. The Bureau is planning to concentrate their attention on banning torture and ill-treatment of suspects, explaining that evidences gained by torturing a suspect are of limited value, since the suspect can disavow them later. Further, they have offered to organise training for police on how to conduct investigations in order to advance police investigating skills and to increase human rights awareness among them. Many organisations have noted the necessity of opening psychological centres for police officers, since many of them experience psychological problems due to the specific nature of their work with criminals.
60. Human rights organisations have also initiated numerous human rights training for lawyers and judges. Such training, as a rule, is conducted with the participation of European experts on human rights law, and it has proven successful in disseminating information on international norms and standards in the prevention of punishment, torture, and ill-treatment. In their training, human rights organisations advocate that judges pay closer attention to police findings and the deployment of acquittals for alleged criminals when possible due to a lack of evidence.
61. Under established practice, suspects who have admitted their guilt are sentenced with almost no hope to be acquitted.
62. The International Society of Human Rights as well as Amnesty International (Ukrainian section), the Kharkiv Group and others contribute to the work of international institutions and organisations in preparing reports on the human rights situation in Ukraine and submit their comments to international organisations reports on the human rights situation in Ukraine. The human rights organisations also prepare their own reports to international institutions and organisations on the implementation of international instruments on human rights duly ratified in Ukraine.

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<sup>31</sup> Uriadovy Kurier, newspaper, #87, May 19, 2001.

## CONCLUSIONS

63. The assumption of increased crime, street violence, and public approval of severe laws and harsh police order is of limited application in Ukraine. The human rights dimension to the fighting of crime in Ukraine is focused on fighting the police abuses and impunity.
64. The community of the human rights organisations in Ukraine is engaged in fighting torture and ill-treatment of suspects by the police in the detention centres. Gross violations of human rights by the police take place most during the first 72 hours of the detention of suspects without a court's order. It is a common practice to refuse detained and arrested persons access to legal representation or not to allow them to inform family members of their detention, which constitutes a violation of rights that among other things, guard against torture and ill-treatment and allow a person to prepare a defence.
65. The public in general is indifferent to human rights organisations' activity, unless torturing and ill-treating concerns them personally. At the same time, indifference does not mean a negative attitude, and it encourages expectations that a shift from passive to the proactive and positive attitude to the human rights organisations activities is possible, should the concept of human rights change. It is a crucial task for human rights organisations to change this by promoting a superiority of individual's freedoms and rights over the state's interests.
66. There are two major strategies of human rights organisations curbing of human rights abuses by the police: proactive and analytical. The former includes *pro bono* legal assistance for the abused and the circulation of information on the cases of human rights abuses by the police to the mass media, the latter includes analysis of the legislation, conducting and publishing surveys on human rights standards and legal norms, monitoring public institutions, conducting training, printing and disseminating legal instruments and bulletins on human rights.
67. Ukrainian human rights organisations proved to possess a certain analytical capacity and a certain experience in representing legal interests in court, and there are some positive results of their activity in curbing human rights violations. Nevertheless, none of them has a compound approach to curb human rights abuses and to reform the police as a public institution in general. Human rights organisations — due to a lack of co-operation between them — cannot work on the national level. The lack of sustainability and dependence on international/foreign donors resulted in the advertisement of human rights organisations' activity to the donor's community rather than to the wider community. This undermines the public support of the human rights organisations and diminishes their effectiveness. Further, it would be preferable to strengthen the effectiveness of the human rights organisations' activity by improving their lobbying skills and their capacity to develop a compound strategy of reforming law enforcement public institutions and securing human rights.

## INTERVIEWEES

### Human rights NGOs

International Human Rights Society, Mr. Andriy Sukhorukov, 5/77 Politechnichna vul. Kyiv.

Donetsk Memorial, Mr. Oleksandr Bukalov, Pushkina vul. 5, Donetsk.

Democracy and Law Foundation, Mr. Zinovij Siryk, Kryva Lypa, vul. Kryva Lypa, 6.

Chernihiv Public Committee on Human Rights Protection, Mr. Oleksij Tarasov, 57/1 Horkoho vul., Chernigiv.

Kharkiv Group of Human Rights Protection, Mr. Yevgenij Zaharov vul. Ivanova 27, apt.4 61002 Kharkiv.

Ukrainian Committee “Helsinki-90”, Mr. Yuriy Murashov, Mr. Oleksandr Shevchenko.

Sevastopol Human Rights Group, Mr. Roman Romanov.

L’viv Human Rights Laboratory, Mr. Petro Rabinovych; vul. Universytetska 1, L’viv,

Crimean Human Rights Coordination Center, Mr. Serhij Rybalko; vul. Tolstoho 17, app. 3, Simferopol.

Ukrainian-American Bureau of Human Rights, Mr. Semen Hluzman, Mrs. Tetiana Yablonska.

Vinnitsia Committee on Human Rights, Mr. Vasyl Zherdiak; vul. Lenina 4, Vinnitsia.

Podilsky Center for Human Rights, Mr. Mykhailo Bardyn vul. Pushkina 11, Vinnitsia.

### Public officials

Ombudsman Mrs. Nina Karpachova; vul. Instytutska 21/8, Kyiv.

Deputy Chair of the Department of Execution of Punishment, Mr. Oleksander Ptashynski; vul. Melnyka 81, Kyiv.

Law Program Manager, Oleksandr Betsa; Renaissance Foundation, 46, Artema vul., Kyiv.

Rector of the Academy of Internal Affairs, Mr. Yaroslav Kondratiev.

Chief of the Department of International Relations, the Public Prosecutor’s Office, Mr. Oleksandr Kovalenko; vul. Riznytska 13/15, Kyiv.

Deputy Director of the National Institute for Strategic Studies, Mr. Viktor Bondarenko; vul. Pyrohova 7a, Kyiv.