



**International Covenant on Civil and
Political Rights**

Distr.: General
10 January 2007
English
Original: French

HUMAN RIGHTS COMMITTEE

Eighty eighth session

SUMMARY RECORD OF THE 2407th MEETING*

Held at the Palais Wilson, Geneva,
on Monday, 23 October 2006, at 10 a.m.

Chairperson: Ms. CHANET

SUMMARY

CONSIDERATION OF REPORTS SUBMITTED UNDER ARTICLE 40 OF THE
COVENANT (*continued*)

Sixth periodic report of Ukraine

* No summary record was prepared for the 2406th meeting.

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The meeting was called to order at 10 a.m.

CONSIDERATION OF REPORTS SUBMITTED UNDER ARTICLE 40 OF THE COVENANT) (agenda item 6) (*continued*)

Sixth periodic report of Ukraine (CCPR/C/UKR/6; CCPR/C/UKR/Q/6)

1. *At the invitation of the Chairperson, Mr. Kotlyar, Ms. Shestakova, Mr. Panchenko and Mr. Zadvorny (Ukraine) took places at the Committee table.*

2. Mr. KOTLYAR (Ukraine), in presenting Ukraine's report (CCPR/C/UKR/6), was seeking to give the Committee a general overview of the latest developments in Ukraine with respect to the human rights situation. The December 2004 presidential election had brought in a democratic government whose reform policy, known as the "orange revolution", had strengthened a certain number of human rights and fundamental freedoms, such as freedom of expression and the right of assembly. In March 2006, parliamentary elections had been held freely under the supervision of international observers.

3. In July 2006, Ukraine had ratified the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, which entered into force in September of that year and was henceforth an integral part of Ukraine's domestic law. The second Optional Protocol to the Covenant, intended to abolish the death penalty, was soon to be reviewed by Parliament with a view to its ratification. Ukraine was also a party to Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, setting out a general prohibition of discrimination.

4. The Ukrainian Government was striving to reform the legal system. To that end, it had drawn up a ten-year plan of action which, among other things, called for legislative reform. In July 2006, a new law had been adopted providing that all decisions rendered by Ukraine's courts must be made public via the Internet; its implementation was under way, and the judgements of the highest jurisdictions were henceforth available to the public. The goal was to make the legal system more transparent and so limit corruption. In September 2005, a new Code of Civil Procedure had entered into force, as well as an Administrative Code under which a new jurisdiction was created: administrative tribunals having specific responsibility for punishing human rights violations committed by law enforcement personnel. A bill to institute free legal aid was on the point of being completed. Penitentiary administration was no longer under military authority but, since May 2006, that of the Ministry of Justice. Thanks to a five-year program adopted in August 2006 with a budget of approximately UAH 2 billion, it should be possible to improve conditions in prisons and detention centres.

5. The CHAIRPERSON asked the delegation to reply to questions Nos. 1 to 16 on the list of issues to be taken up by summarizing its written replies; the Committee had been unable to read them, as they had been provided in Russian only.

6. Mr. KOTLYAR (Ukraine), responding to question No. 1, said that under the Constitution the Covenant was part of domestic law and took precedence over all domestic laws in the event of a conflict with the latter's provisions. Thus, the Covenant could be directly invoked before the courts and cited in court judgements.

7. Mr. YATSENKO (Ukraine), responding to question No. 2, said that since its inception, more than 700,000 complaints had been submitted to the office of the Ombudsman, more than a third of which had led to prosecution; in a third of those cases, he noted, the court had found for the plaintiff. Every year, the Ombudsman submitted an activity report to Parliament and the Cabinet recommending measures to be taken to improve the human rights situation, and government increasingly heeded his recommendations. At the Ombudsman's behest and with UNDP support, treaty bodies' concluding observations were henceforth published in the form of a compendium in Ukrainian, Russian and English. A peculiarity of the function of the Ombudsman in Ukraine was that he also sat in Parliament. As a result, he had had the opportunity to present bills, including one intended to reduce the duration of remand in custody from seventy-two to forty-eight hours, in accordance with the recommendations made by the Human Rights Committee at the conclusion of its consideration of Ukraine's fifth periodic report.

8. Mr. ZADVORNYI (Ukraine) invited committee members to refer to the two Ombudsman's reports distributed to them, one on the protection of the human rights of Ukrainian nationals abroad and the other on the protection of the rights and freedoms of national minorities, in order to have an overview of the various solutions in those fields proposed by the Ombudsman to the legislative and executive branches.

9. Mr. KOTLYAR (Ukraine) added that it was essential to bolster the role of the Ombudsman in Ukraine. To that end, the Minister of Justice was currently working on amendments to the Ombudsman Act whereby he would be empowered to investigate complaints of human rights violations committed during detention and to enforce the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

10. In response to question No. 3, Mr. KOTLYAR (Ukraine) said that the Human Rights Committee's concluding observations and the findings the Committee had adopted under the first Optional Protocol were being sent by Ukraine's Permanent Mission in Geneva to the Ministry of External Affairs, which in turn shared them with the Government, together with precise recommendations on the measures to be taken to implement them. The Government then gave instructions to the competent bodies, which saw to their implementation. The findings adopted by the Committee in the case of *A. Aliev v. Ukraine* (communication No. 781/1997)—establishing that a violation of article 14 of the Covenant had occurred in that the perpetrator had not been represented by counsel and that his appeal to the Supreme Court had been reviewed in his absence—had been sent to the Supreme Court and to the regional trial court, to prevent any more such violations from occurring. At the same time, the Supreme Court had issued recommendations to lower jurisdictions, reminding them that guarantees of due process, such as representation by counsel at all stages of the procedure, must in every case be respected.

11. Equality between the sexes (question No. 4) was a principle enshrined both in the Constitution and in legislation. On the specific question of the representation of women in the senior public service, it was true that despite a slight rise in the proportion of parliamentary seats held by women—39 out of 450 in 2006, as against 23 in 2002—women remained a minority in, or were indeed completely absent from, the highest echelons of power. There were, however, great numbers of women—almost 70% of the workforce—at the lower levels of the public service. Under the

Law on Ensuring Equal Rights and Opportunities of Women and Men adopted in September 2005, the Government was obliged to review all legislation in force and all bills from the standpoint of the equality of women and men, a task that the Ministry of Justice had undertaken in September 2006. The law also required political parties' lists to include women, though no quotas were set, as Parliament was not in favour of that. The law also made it unlawful for employers, whether public or private, to specify gender in their job offers, but allowed them to take positive steps to ensure a balanced representation of men and women in their workforce. Women facing gender discrimination could refer the matter to the Ombudsman or the courts or, where domestic remedies had been exhausted or consideration of their complaint was being unreasonably delayed, to the Committee on the Elimination of Discrimination against Women. The right to redress was guaranteed by law.

12. Mr. YATSENKO (Ukraine) said that although the legislation did provide a number of guarantees of equality between men and women, in practice the situation was not yet in line with international requirements in that regard. Ukrainian society was marked by a patriarchal tradition that hindered the achievement of equality. Public hearings were to be held in Parliament in November 2006 to take stock of the current situation and define the measures to be taken.

13. The problem of domestic violence (question No. 5) was more relevant than ever in Ukraine. Complaints to the Ombudsman on that score had doubled over the past two years. According to a study by sociologists, one Ukrainian woman in five experienced domestic violence at least once in her life. The Domestic Violence (Prevention) Act established a set of bodies and institutions with the responsibility to take measures to prevent domestic violence and provided for the establishment of crisis centres and shelters for victims of domestic violence.

14. Mr. KOTLYAR (Ukraine) said that study of the Domestic Violence (Prevention) Act was included in the training of Ministry of the Interior staff and that a manual had been developed for the police. Moreover, since 2003 it had been possible to prosecute acts of domestic violence as an administrative offence.

15. With respect to question No. 6, on derogations in time of public emergency, he observed that under Article 64 of the Constitution, constitutional rights could be restricted only where martial law or a state of emergency was proclaimed. In addition, the exercise of certain rights could not be suspended under any circumstances. A state of emergency had been declared in Ukraine in December 2005 after several deaths from avian flu had been reported. Villages had been quarantined. True, the state of emergency decree ought to have specified its duration, but it had been difficult to make an immediate assessment of the measures being taken to address that urgent worldwide problem.

16. Mr. PANCHENKO (Ukraine) (question No. 7) explained, regarding deportation, that article 6 of the new Code of Administrative Procedure granted aliens and stateless persons the same rights as Ukrainians. An alien could be detained or deported on the orders of a court and could appeal the decision. Mechanisms were provided to help individuals seek redress when they felt they had been unfairly dealt with by an official. The judge could even go beyond the substance of the complaint if it was in the plaintiff's interest. In addition, the burden of proof was on the official in question, not the plaintiff.

17. Mr. KOTLYAR (Ukraine) added that the Refugees Act of 2001 had been harmonized with the Convention relating to the Status of Refugees and its Protocol, to which Ukraine had acceded in 2002. Article 3 of the Act prohibited deportations to any country where the person deported risked torture, in virtually the same terms as the Convention against Torture. The decision to deport the 10 Uzbek asylum seekers (question No. 8) had been taken by local judicial authorities after reviewing the file submitted by the Ministry of the Interior. The delegation recognized that the formal procedure had not been complied with, as the asylum seekers had not had the opportunity to appeal their deportation or to consult the representative of the High Commissioner for Refugees. The ministries of Justice, the Interior and Foreign Affairs had been seized of the matter, as had the President himself, and everything would be done to prevent any recurrence of such a mistake.

18. Mr. YATSENKO (Ukraine) now turned to the enquiry about torture (question No. 9). The Ombudsman had been the first to draw attention to the problem, and several measures had been taken at his behest: the Criminal Code had been amended so that torture as a means of obtaining confessions became an indictable offence and stiffer penalties were provided when the torture was inflicted by an agent of the state or resulted in the victim's death; moreover, neither the militia nor any official of the Ministry of the Interior were allowed to interrogate a prisoner before the arrival of the prisoner's counsel and must notify the family of the arrest within two hours, whereas the deadline had formerly been twenty-four hours. In addition, to combat impunity a cooperation agreement had been reached between the Ombudsman and the Ministry of the Interior which involved the creation of a torture adviser position within the Ministry. The Ombudsman supported the Board's recommendation for the creation of an independent body to investigate cases of violence allegedly committed by the militia. Finally, Ukraine had ratified the Optional Protocol to the Convention against Torture.

19. Ms. SHESTAKOVA (Ukraine) added that the State Prosecutor's Office had a unit with special responsibility for monitoring the militia's behaviour. Any complaints of excessive use of force were carefully examined. In 2005, the Office had received some 1,500 complaints of use of illegal investigative methods; in 2006, the figure had fallen by half. A procedure for monitoring the Ministry of the Interior's militia posts and detention centres had been established by decree in 2005. Inspections were conducted every ten days without notice. State Prosecutor's Office representatives spoke directly with inmates complaining of abuse and had medical examinations done as appropriate.

20. Mr. KOTLYAR (Ukraine) added that the inspections were done by Ministry of the Interior flying squads whose membership was drawn from non-governmental and civil society organizations; furthermore, their activities were supervised by a public board within the Department made up of prominent human rights activists.

21. With respect to national minorities (question No. 10), it could happen that because of social prejudice members of certain communities, such as the Roma, were victims of unlawful treatment, but these were isolated cases and the authorities were doing their best to make law enforcement authorities aware of the equal rights provisions.

22. Mr. ZADVORNYI (Ukraine) added that the Ombudsman was paying great attention to the issue. Up until five or six years ago, some Roma had been illegally detained or tortured, but the Ombudsman had worked intensively with the militia on

that issue and his efforts were beginning to bear fruit. National minorities were indeed the target of some intolerance, but their own attitude was sometimes a contributing factor. The Crimean Tatars were a special case, to be discussed later.

23. Mr. KOTLYAR (Ukraine), in response to question No. 11, said that the definition of human trafficking had been harmonized with the Convention against Transnational Organized Crime and its Additional Protocol. A unit of the Ministry of the Interior had specific responsibility for that matter, while the Minors Unit was also concerned with it through its fight against the sexual exploitation of children. In addition, a prevention program was being implemented. Some 57 human trafficking networks had been dismantled and more than 700 victims repatriated from abroad.

24. Ms. SHESTAKOVA (Ukraine) added that the State Prosecutor's Office too had a role to play in the fight against trafficking. It faced a difficult task in that trafficking was a transnational activity and was also favoured by the country's economic instability. The Office was conducting studies at the local and national level to identify action lines. It organized seminars and had developed a special methodology for trafficking investigations. In 2006, 42 traffickers had been convicted, half of them being sentenced to terms of imprisonment.

25. Mr. YATSENKO (Ukraine) said that Ukraine was the third European country to introduce the criminalization of trafficking into its criminal law. Great efforts had been made since 1998 to identify victims: 3,000 had so far been identified with the help of non-governmental organizations.

26. Mr. KOTLYAR (Ukraine) says that the protection of detainees (question No. 12) had been much improved since January 2005 through several legislative reforms. Every detainee had to be immediately informed of his or her rights, including the right to consult with a lawyer in private. Redress was available in the event of the violation of any of those rights. The Code of Criminal Procedure provided that a lawyer must be appointed for any prisoner who could not afford his own counsel. In practice, however, that provision was ineffective, as counsel for the State were not well paid and were reluctant to accept such cases. In June, therefore, the Government had adopted a strategy to completely reform the legal aid system, in particular by extending it to civil and administrative proceedings, for which it had not previously been available. The Ministry of Justice was already testing a number of experimental formulas with the help of NGOs.

27. Mr. YATSENKO (Ukraine) said that the issue was a high priority. Two thirds of the population were poor and could not afford a lawyer. Parliament was examining a number of bills aimed at guaranteeing the right to legal aid and it was hoped that a suitable mechanism would be established soon.

28. Ms. SHESTAKOVA (Ukraine), responding to question No. 13, on cases of compensation for unlawful detention, said that in 2005 and the first half of 2006 the civil courts had reviewed 15 cases of arbitrary arrest or detention. In 10 of those cases the courts had concluded that the complaints were founded and ordered compensation for the victims amounting to more than UAH 430,000. In two other cases, they rejected the plaintiff's claim. A ruling was still pending in five other cases. In addition, in 2005-2006, the courts had handed down 17 decisions in cases of unlawful arrest or detention and had ordered compensation to victims totalling over UAH 1.8 million.

29. Mr. PANCHENKO (Ukraine) added that cases of unlawful pre-trial detention could also be challenged under the Code of Administrative Procedure, which sought to control unlawful behaviour by law enforcement agencies and called for compensation for material or non-material injury due to such occurrences.

30. Mr. KOTLYAR (Ukraine), responding to the question on “custody as a ‘temporary preventive measure’” (question No. 14), said that under Article 29 of the Constitution, the legal duration of police custody without charge could be extended to seventy-two hours in case of urgent necessity, to prevent or halt an infraction. If by the end of that period a judge had not ordered the suspect’s continued detention, the suspect was released. That constitutional provision was broadly in line with Article 9 of the Covenant, although it must be recognized that the period of seventy-two hours was excessive. However, as it would be very difficult to amend the relevant provision of the Constitution, the government planned instead to revisit the issue in the context of reform of the Code of Criminal Procedure. The provision providing for extension of police custody to ten or even fifteen days was obsolete—a relic of the Code of Criminal Procedure in force in the Soviet era. A group of experts had begun to develop proposals for the amendment of the Code of Criminal Procedure, and the Ukrainian authorities hoped their work would remove the provision in question and a number of others that were no longer in keeping with the current situation.

31. Mr. YATSENKO (Ukraine) said that the Committee against Torture had made recommendations in that regard that the Ombudsman fully endorsed. The Ombudsman had prepared a proposal for the amendment of Article 29 of the Constitution, and he hoped the Supreme Council would approve the proposal and cancel the provisions of that article that were incompatible with Article 9 of the Covenant.

32. Mr. KOTLYAR (Ukraine) replied to the question on the alleged arbitrary detentions of students during the 2004 election campaign (question No. 15). Many human rights violations had been committed during that period, and had indeed led the Supreme Court to invalidate the results of the second ballot and to require a new second ballot to be held. Initially, the student demonstrations the Committee referred to had been related to a dispute over the university, but the movement’s concern subsequently shifted to the election. Steps had been taken against the perpetrators of the arbitrary detentions. The head of the regional police department had been dismissed and arraigned in court, but his guilt had not been proven; his deputy had been tried and sentenced to prison but had then been granted an amnesty. More generally, with reference to human rights violations committed during the election period, the police and the State Prosecutor’s Office had investigated more than 2,000 criminal cases involving more than 6,000 people. A number of court decisions had been rendered and penalties imposed, in particular on certain election commission members and candidates. The measures had borne fruit, since it was generally considered that the 2006 election campaign had taken place under satisfactory conditions, and the penalties had clearly been a disincentive for regional electoral commissions.

33. Corruption within the judiciary (question 16) was of concern to the authorities. Judicial reform was planned and should bring a number of improvements, particularly with respect to the procedure for the appointment of judges, disciplinary measures, etc., but it was estimated that it would take ten years to complete all

aspects of the reform. As a first step, bills on the fight against corruption and the status of judges were soon to be presented to the Supreme Council. One of the major problems facing judicial reform was inadequate financial resources, including judges' low salaries. Judges' salaries had been increased in 2005, but remained inadequate. A new Law on Access to Judicial Decisions had come into force in June 2006, which would enable all citizens to keep abreast of all such decisions, which would be posted on the Internet, with due regard for the requisite protection of the parties' personal data. For now, only Supreme Court judgments were available on the Internet, but over time all lower courts' decisions should be too. In general, the Ukrainian authorities were well aware of the need for legislative reform in the fight against corruption in the judiciary. To that end, the President of the Republic had recently brought in a number of bills and had prepared instruments for the ratification of the United Nations Convention against Corruption and both Council of Europe conventions on the issue. All of the above provisions were under consideration by the Supreme Council, and the Ukrainian Government hoped that their adoption would bring its legislation in line with international standards and enable proper anti-corruption efforts to be made, particularly within the judiciary.

34. The CHAIRPERSON thanked the Ukrainian delegation and invited Committee members to ask additional questions orally.

35. Ms. WEDGWOOD asked whether the study of international instruments was included in the curricula of law schools, to familiarize future lawyers with their provisions. She also asked whether training was provided to lawyers dealing with matters of international law. In addition, it would be good for police officers too to receive training in that area, to make them aware that the protection of human rights was not an abstract principle but had practical importance to them in the performance of their duties. With specific reference to the Covenant, should it be in conflict with the Constitution of Ukraine, Ms. Wedgwood would like to know which would prevail.

36. With respect to compliance with Article 9 of the Covenant, and more specifically to protection against torture and ill-treatment, difficulties similar to those faced by the Ukrainian authorities were found the world over, and even in those States most respectful of human rights, torture was sometimes practised in police detention facilities. It was essential, therefore, for the executive branch to sensitize police to the prohibition of torture and ill-treatment. In this regard, Ms. Wedgwood would appreciate information on several cases, including the case of a 36-year-old man (unidentified) who had allegedly been beaten to death on 7 April 2005 in a holding cell in Jhitomir. An investigation was said to have been undertaken, whose findings the Committee would like to know. It was reported that another suspect, Armen Melkonian, had succumbed to ill-treatment in police custody on 17 December 2005, at the detention centre in Kharkiv, and that the director of the Centre, Mr. Tkachenko, had concealed the cause of death. Apparently a criminal investigation had been undertaken, and Ms. Wedgwood would know what its findings were and, in particular, whether the director of the Centre was still in place or had been punished. Another person, Mykola Zahachevsky, was also reported to have died in custody in 2004; again, Ms. Wedgwood wanted to know what measures the Ukrainian authorities had taken.

37. Non-governmental organizations concerned with the defence of human rights were clearly very active in Ukraine, and that was highly praiseworthy. In particular,

the Kharkiv Social Research Institute had published a study showing that 62% of persons detained by the police complained of being tortured, and 44% said that security forces had brutalized them. The Ombudsman acknowledged that torture and ill-treatment in police custody continued to be practised. One of the essential ways of putting an end to that practice was to allow suspects to retain counsel as soon as possible, so that detention was subject to public scrutiny. In that connection, Ms. Wedgwood asked whether the Ukrainian authorities were considering the establishment of oversight committees for the local police, which would be made up of members of civil society. Obviously, it would be an undue burden on the Ombudsman if all cases of alleged violations of the human rights of suspects in custody were referred to him—cases in which in any event he had no say—and local members of civil society were often better able to identify problematic situations. It would also be useful, too, to know how the authorities intended to solve the problem of access to legal aid. In very many countries, there were now lawyers working on such cases exclusively, so that there was no need to rely solely on the goodwill of local bars.

38. Still on the subject of police custody, Ms. Wedgwood noted that a suspect could remain in custody for seventy-two hours, while a judge could subsequently increase that period to ten or fifteen days. A long period of detention in police custody was likely to lead to human rights violations, and Ms. Wedgwood suggested that at the least the authorities should arrange for the systematic video recording of interrogations. New York City's district attorney's office, for example, had adopted that principle, and had found that the video recording aided the fact-finding mission and saved the prosecution time. By taking suspects' statements in humane conditions, the authorities were better able to punish the guilty and obviated the exclusion of evidence because it had been obtained under duress.

39. Mr. WIERUSZEWSKI was sorry to see that the Ukrainian executive branch, in particular the Ministry of the Interior, was hardly represented at all in the State party's delegation; and it was a matter of regret for the Committee that non-governmental organizations, though they were very active in Ukraine, had not provided it with information on the human rights situation.

40. Mr. Wieruszewski welcomed the State party's ratification of Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, which was an important step forward for the respect of human rights. He noted, however, regarding the processing of complaints submitted to the Ombudsman, that a human rights violation had been found in only three cases. That was a low proportion and, although it was of course possible that the remaining complaints were unfounded, it was important to know why only one third of the complainants had been successful. The situation described by the delegation raised questions about the effectiveness of the institution of the Ombudsman, and Mr. Wieruszewski would like to hear the delegation's remarks in that connection. More generally, he would appreciate more information on the reforms planned for the State Prosecutor's Office.

41. With regard to equality between men and women, it was clear that little progress had been made since the consideration of the previous periodic report (CCPR/C/UKR/99/5). Some indication was needed as to whether the Women's and Men's Equal Rights and Opportunities Council, whose creation had been announced, was already at work and what effects the Presidential Decree adopted

26 July 2005 had had on improving the executive branch's work in that area. Had measures already been taken under that decree? Furthermore, the current law prohibited any favouritism for one sex over the other in job offers, and Mr. Wieruszewski wondered how that provision worked out in practice. The evidence he had was that there was still discrimination in employment. He would welcome the delegation's comments on all those points.

42. With regard to alleged violations of Article 7 of the Covenant targeting the members of certain minorities, the written replies to the list of issues (CCPR/C/UKR/Q/6) added nothing concrete, but the delegation had said things were changing. According to the information available to the Committee, it appeared that racial discrimination was a real problem in Ukraine, where in some areas the police tended to detain persons with darker skin and verify their identity more often than they did other people. The fact that, as stated in the written replies, the State Prosecutor's Office did not have information on police discrimination against minorities did not mean there was no such discrimination, but rather suggested that victims were afraid to complain or at all events did not trust the authorities to restore their rights. The Ombudsman alone could not resolve all the problems, and he deserved to be supported in his task by a mechanism to ensure the protection of minority rights. It was also important to provide law enforcement agencies with appropriate training on how to respect human rights. Mr. Wieruszewski would be grateful if the delegation would indicate the Ukrainian authorities' point of view on those issues.

43. Mr. ANDO said that he had taken note of the existence of the mechanism for implementation of the Committee's recommendations but said that, in his capacity as Rapporteur for following up communications, he had more than once had occasion to contact representatives of the Permanent Mission of Ukraine in Geneva, and that those contacts were often hard to establish. He hoped that with the arrival of the new Ukrainian Government the situation would improve and that his successor as Rapporteur would have fewer difficulties than he. Some countries had established a specific mechanism for the implementation of the Committee's decisions under the Covenant or the Optional Protocol, and Mr. Ando asked whether such a mechanism was proposed for Ukraine. With specific reference to the follow-up to the Committee's findings on communication No. 781/1997 (*Aliev v. Ukraine*), Mr. Ando recalled that the Committee had asked the State Party to release the perpetrator, and he would like to know whether the Ukrainian authorities had acceded to that request.

44. Ms. PALM, returning to the question of the derogations authorized in emergency situations, asked what restrictions could be imposed on freedom of religion in that context and, in particular, whether all the restrictions contemplated were compatible with the provisions of Article 4 of the Covenant.

45. With respect to Articles 9 to 14 of the Covenant, the Ukrainian delegation had indicated that the authorities had decided to implement judicial reform. Ms. Palm welcomed that development, as both the report and the information available to the Committee showed that the independence of the judiciary was still far from being a reality in Ukraine. In that connection, she would like to know more specifically how judges were appointed and for how long, and she would also like information on their remuneration level—an aspect that took on particular importance in view of the apparently rampant corruption among judges.

46. Ms. PALM, noting that legal aid was a critical problem, especially since court-appointed lawyers were ill paid and reluctant to take on certain cases, asked whether the measures that the State party was considering were intended to facilitate detainees' access to counsel and enable them to choose a lawyer. Was there a sufficient number of lawyers from whom courts could appoint counsel in criminal cases? And was there any provision for lawyers in private practice to be compensated by the State?

47. Regarding the right to defence and measures to be taken to improve its effectiveness, some sources had reported that suspects and detainees were not always informed of their rights, while the delegation claimed that was done as soon as they were detained; accordingly, she asked what concrete measures the State party had taken to ensure that that obligation was respected in practice. In particular, were there routine procedures or specific instructions the police had to follow? And had mechanisms been put in place to ensure that those rules were followed? According to the State party's report, the presence of a lawyer was mandatory from the time of arrest. Ms. Palm asked the delegation whether it could confirm that no questioning was allowed except in the presence of counsel. Indeed, the report did not state clearly what was meant by "time of arrest". Did it mean the moment when the police physically apprehended the suspect, or the time when the arrest was recorded?

48. Sir Nigel RODLEY welcomed the State party's exemplary punctuality in presenting its reports and commended the delegation on its sincerity and openness. He would like clarification on the manual on domestic violence distributed to police departments: in particular on its nature, objectives, date of preparation and distribution, and corporate recipients. Noting that, according to the report of the 2005 United States Department of State, the Ukrainian media were loath to report family violence, he asked what the Government meant to do to raise awareness in society, and in particular among judges, of actions that seemed to be part of traditional culture and were liable only to light sentences.

49. Sir Nigel Rodley had duly noted that the State party's domestic law imposed an obligation not to return a person to a country where they risked torture or other cruel, inhuman or degrading treatment, and that Ukraine was also party to the European Convention on Human Rights. However, Uzbeks had been deported, as well as Chechens and nationals of other countries of the Commonwealth of Independent States; he wondered to what extent the High Commissioner for Refugees was involved in making decisions, as it seemed UNHCR did not always receive the information it needed in a timely fashion. He was pleased that the delegation had acknowledged that a violation of procedural rules had been committed in the case of the 10 Uzbeks deported, and had given assurances that steps had been taken to prevent any recurrence. He would like to know whether the State party had inquired about the fate of the persons deported or attempted to repatriate them. In other words: did the State party acknowledge that it had violated Article 7 of the Covenant by deporting those persons? If not, why not? And had measures had been taken against the officials of the Ministry of the Interior who had put them at risk of being tortured and deprived them of their right to appeal?

50. Sir Nigel Rodley had been interested to hear that unannounced inspections were done at places of detention to detect any cases of ill-treatment or acts of torture; he asked why the violations discovered were reported through the hierarchy

but not prosecuted by the State Prosecutor's Office. Again, it was his understanding that the definition of torture was taken from Article 1 of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, not from Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and would be glad to know the reasons for that choice, given that the two definitions were significantly different. Finally, he welcomed the measures the State party had taken to combat trafficking: creating a specialized service, dismantling gangs, starting prosecution, etc.; but noted that there was no witness protection program available to the victims of trafficking, who were generally very vulnerable and were afraid to testify; he would like to know what action the Government meant to take in that regard.

51. Mr. LALLAH said he was impressed by the country's progress, in particular in modernizing its legislation. He endorsed the comments of Ms. Wedgwood, Mr. Wieruszewski, Sir Nigel Rodley and Ms. Palm and asked the delegation whether it could accurately describe what happens in the police station from the time a suspect is arrested by the police. He asked what attitude the police took towards lawyers and what the status of lawyers was in society. Given the role the police had formerly played in the system and the absolute respect they had long commanded in society, were lawyers afraid or in awe of the police? He also wondered about lawyers' exact role. Was it simply to ensure that their client did not suffer abuse or did receive necessary medical care? Or must they see to it that the police do not use "tough" methods to get a confession? Could they tell their client, in the presence of the police, that he or she need not answer any questions or make any admissions? Could they denounce any abuse to the State Prosecutor? Finally, he asked whether there was a procedure for challenging a confession during trial. If so, how did that work? Had any complaints been filed by suspects or charges brought against police officers?

52. Mr. SHEARER observed, as a follow-up to a question he had posed in 2001 during consideration of the fifth report of the State party, that—according to reports from the Association of Soldiers' Mothers and information received by the Committee—the hazing of young recruits in the Ukrainian army was continuing. He feared that the end of conscription in 2010 would not suffice to eradicate such practices and asked what measures the State party had taken since 2001 to fight against that scourge.

53. Mr. CASTILLERO HOYOS, observing that few women attained positions of responsibility, asked whether the State party planned legislative measures to encourage women's participation in public life, in particular by legislating a quota system. What concrete steps had it taken to close the wage gap between men and women, which was some 27%? Did it intend to enshrine the principle of equal wages in the Labour Code?

54. With regard to Article 6 of the Covenant, he asked what measures had been taken to protect journalists, for at least three had been murdered. Had the delegation any information on the Georgiy Gongadze case? He wondered, too, what the State party had done to combat discrimination against Jews, since according to the United States State Department the Ukrainian authorities did not recognize the existence of anti-Semitic offences.

55. Finally, regarding Article 8 of the Covenant, he would like to know the substance of the observations (para.115 of the report) made by Ukraine when it had ratified the United Nations Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air.

56. Ms. WEDGWOOD asked why the Deputy Chief Constable, who had been convicted following the repression of student demonstrations, had been granted amnesty. She also asked whether clear and objective standards had been set for peaceful demonstrations, so that in future police chiefs would no longer be utterly free to suppress them.

57. Mr. KOTLYAR (Ukraine) said, in reply to the questions posed by Ms. Wedgwood, that international law and international humanitarian law were compulsory subjects in a university law programme. Five years of graduate studies were needed to become a lawyer, judge or prosecutor. Lawyers in private practice could choose to continue their studies in order to specialize. Police, prosecutors and judges, like all government officials, received regular courses and training at institutions throughout the country.

58. Although the Constitutional Court had no case law, and no other body had the power to interpret the Constitution, Mr. Kotlyar said that if a constitutional provision was incompatible with an international instrument to which Ukraine was planning to accede, the Constitution would have to be amended, for the provisions of the international instrument would take precedence.

59. With respect to specific cases of torture or ill-treatment by police, the delegation would try to provide information as part of the follow-up procedure. The Ministry of the Interior had set up local councils across the country to monitor the police, made up of human rights advocates. In collaboration with the Inland Security unit of the Department of the Interior, these councils made unannounced visits to detention centres, which they were empowered to inspect to verify respect for detainees' rights.

60. As regards legal aid, the first priority was to amend the legislation, as the current provisions were ineffective—in particular because court-appointed lawyers were very ill paid. By law, police custody could not exceed seventy-two hours unless extended to ten days by a court in accordance with the Constitution. Clearly, that provision was inconsistent with international standards and the legislation would have to be amended. Video recording of interrogations would certainly be very effective but also difficult to implement, as it would require resources that Ukraine currently lacked. For now, therefore, the country was striving to guarantee detainees' basic rights in police stations and detention facilities. The Code of Criminal Procedure provided that evidence must be corroborated during the trial, that is, the accused or their counsel could report any torture or mistreatment. If such acts were proven, the evidence was inadmissible.

61. The Deputy Chief Constable had been pardoned under the general amnesty for minor offenders declared in 2005 following the election. That measure had been adopted because of the severity of the law, which called for prison sentences in cases where a simple conviction would be sufficient deterrent, and to avoid overcrowding. The Ministry of Justice had prepared a bill on peaceful protests, as

there was no legislation in that regard. The bill had been forwarded for review to the OSCE Office for Democratic Institutions and Human Rights and the Council of Europe's Venice Commission; subsequently it would be submitted to Parliament by the Government. Once approved, it would guarantee the freedom of peaceful assembly and would give police clear instructions to guarantee demonstrators' safety.

62. The CHAIRPERSON thanked the Ukrainian delegation and invited them to reply to the remaining questions at the next meeting.

The meeting rose at 1 p.m.