

# Human Rights Watch

## Torture, Former Combatants, Political Prisoners, Terror Suspects, & Terrorists

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Events of 2005

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Presidential elections in November 2004, which were neither free nor fair, sparked a popular uprising in support of presidential candidate Viktor Yushchenko. In what became known as the Orange Revolution, thousands of Ukrainian citizens took to the streets to peacefully protest the government's manipulation of the elections in favor of Prime Minister Viktor Yanukovich. Yushchenko secured a victory over Yanukovich in repeat elections on December 26 and was sworn in as president in January 2005.

While the new government enjoyed relative stability for the first nine months of 2005, many government agencies remained unformed and economic indicators deteriorated. Following a wave of resignations by senior presidential administration and other officials amid mutual recriminations of corruption, Yushchenko fired Prime Minister Yulia Tymoshenko, his closest ally in the Orange Revolution, on September 8, 2005. Yuriy Yekhanurov was sworn in as prime minister on September 21 following a political compromise brokered between Yushchenko and his former rival Yanukovich to secure parliamentary approval.

The popular uprising that helped sweep Yushchenko to the presidency was rooted in the belief among many Ukrainians that a Yushchenko administration would improve the government's record in economic, social, and political spheres and demonstrate greater respect for human rights and political liberties. For years, under the leadership of President Kuchma, the government had imposed strict controls on media coverage, manipulated electoral processes, and ignored widespread discontent.

Upon taking office, the Yushchenko government announced its intention to protect and promote human rights and to rectify the abuses of the previous government. While some important measures were taken in 2005, numerous serious human rights problems remain.

#### **Media Freedom**

Under the Yushchenko government, state manipulation of television and other media rampant in previous years appears to have ceased, although major television and radio stations remain under the control of either the state or a few wealthy business owners, rendering media outlets vulnerable to political pressures. Attempts to pass legislation that would establish independent public television and radio outlets have failed despite the new government's stated support for reform of the media sector.

Upon entering office, Yushchenko pledged to make the investigation into the unsolved kidnapping and murder of investigative journalist Georgy Gongadze in 2000 a priority. Many considered progress on this front a political litmus test of the seriousness with which the new authorities were pursuing the restoration of the rule of law in Ukraine. In September 2005, a parliamentary commission accused former President Kuchma and three senior officials, including the current Parliamentary Speaker, Vladimir Litvin, of masterminding the murder and recommended that the Prosecutor General's Office open criminal cases against the men. At this writing, the Prosecutor General's Office still had not done so. In August, the Prosecutor General's Office identified and charged three police officers with Gongadze's murder, but closed the investigation without finding and charging senior Interior Ministry official Olexy Pukach, who allegedly led the group that killed Gongadze, and without identifying those who ordered the crime.

#### **Torture and Conditions in Detention**

The national human rights ombudsman has campaigned vocally to end the practice of torture and ill-treatment in Ukrainian police

detention facilities and prisons, but the problem persists. In its December 2004 report on Ukraine, the Council of Europe's Committee for the Prevention of Torture noted that detainees are at high risk of being physically ill-treated at the time of their apprehension and while in police custody, particularly when being questioned. Those responsible for crimes against detainees are very rarely investigated or prosecuted. Serious problems in detention facilities include overcrowding, substandard conditions of detention, high rates of tuberculosis and other infectious diseases, as well as inadequate food, medical, and other provisions.

Migrants hoping to enter E.U. countries increasingly attempt to transit through Ukraine. Ukraine, however, fails to comply with its international obligations related to migration management and the right to seek asylum. Police and border guards regularly detain undocumented migrants, including asylum-seekers, in appalling conditions in border guard and police detention facilities, often for many months. Migrants rarely have access to interpreters or legal counsel and are unable to challenge their detention. Government officials often refuse to accept applications for asylum, and the migration service is ill-equipped to handle the applications it does receive. Refoulement is also a serious concern. In the first four months of 2005, 1,500 migrants were deported from Ukraine. UNHCR estimates that of these, four hundred persons (mostly from Afghanistan and Chechnya) should have been granted access to asylum procedures. Despite having ratified the 1951 Convention relating to the Status of Refugees and the 1967 protocol, Ukrainian legislation fails to provide adequate protection to persons who risk persecution if deported.

### ***Human Rights Abuses Fueling the HIV/AIDS Epidemic***

As many as five hundred thousand people are living with HIV/AIDS in Ukraine, and Ukraine is believed by many to be home to the world's fastest growing HIV/AIDS epidemic. The epidemic is fueled by a wide range of human rights abuses against those at greatest risk of HIV/AIDS: injection drug users, sex workers, men who have sex with men, and prisoners. As a result of their HIV status, these vulnerable groups face discrimination in access to health and social services and violations of their right to privacy. In addition, they often face discrimination in the workplace and ill-treatment by police.

The government has enacted a body of legislation and policies designed to protect the rights of people living with and at high risk of HIV/AIDS. However, drug and law enforcement officials regularly prevent people living with or at high risk of HIV/AIDS from obtaining critical services, often subjecting them to violence or other ill-treatment. Proposed changes in drug policies to criminalize possession of small amounts of narcotics, pending at this writing, threaten to further accelerate HIV infection rates by driving those most vulnerable to HIV infection away from HIV prevention services and exposing many to health risks in prison that would put them at risk of contracting HIV or exacerbate existing HIV infection. Methadone and buprenorphine, widely recognized as among the most effective means to treat opiate dependence, are critical to prevent HIV among injection drug users (IDUs) and to support antiretroviral treatment adherence for HIV-positive IDUs. Ukraine began to provide buprenorphine on a limited basis, but law enforcement opposition to methadone has thus far prevented its use.

### ***Racism***

Racism and xenophobia remain entrenched problems in Ukraine. Police regularly target minorities for so-called document checks, which almost always result in bribes or illegal detention accompanied by beatings or other ill-treatment.

Numerous anti-Semitic attacks were reported in 2005, but police have been reluctant to label the incidents as hate crimes. In January, ten Orthodox Jewish children and three adults were assaulted by skinheads near a synagogue in Simferopol. A group of young men yelling anti-Semitic insults attacked and repeatedly stabbed Yeshiva student Mordechai Molozhenov in Kyiv in August. Two weeks later, also in Kyiv, a group of eight young people attacked and beat Rabbi Mikhail Menis and his fourteen-year-old son. In all cases, police again denied that anti-Semitism had anything to do with the attacks.

Roma in Ukraine continue to suffer frequent and unremedied police abuse, despite repeated appeals by Romani organizations to the police, prosecutors, and the Ombudsperson calling for effective investigations and punishments. In a positive development, the Parliament's Human Rights Committee held its first ever hearing on The Situation of the Romani People, on April 12, 2005.

### ***Discrimination against Women and Trafficking in Persons***

Women in Ukraine do not enjoy equal access to employment opportunities as a result of discriminatory attitudes among both public and private employers, including blatantly discriminatory recruitment practices. Men hold a disproportionate number of senior government and managerial positions and receive better pay than women in comparable jobs. Women are forced into the low-paying and unregulated informal economy or remain unemployed. A large number of women opt to seek better economic opportunities abroad, rendering them vulnerable to trafficking. According to the Interior Ministry, up to four hundred thousand women under the age of thirty have left Ukraine in the last decade.

Ukraine remains a primary source country and an important transit country for the trafficking of women, men, and children to Europe, the Middle East, and Russia for sexual exploitation and forced labor. Anti-trafficking legislation, prosecutions of those complicit in trafficking, and implementation of rehabilitation programs for victims remain inadequate.

### ***Key International Actors***

International organizations continue to monitor closely Ukraine's human rights record. The Council of Europe's Parliamentary Assembly has maintained its monitoring procedure on Ukraine and issued a report in October 2005 which noted the first achievements of the new leadership but reiterated statements from previous reports regarding Ukraine's failure to meet many key human rights obligations.

The European Court of Human Rights took a number of key decisions in cases related to Ukraine in 2005. In the case of the Ukrainian Media Group vs. Ukraine, the Court ruled that there had been a violation of freedom of expression when domestic courts ruled in favor of two politicians in defamation cases against a Kyiv newspaper. In the case Gongadze vs. Ukraine, the Court ruled that Ukrainian authorities failed to protect the life of slain journalist Georgii Gongadze, failed to conduct an effective investigation into his death, treated Gongadze's wife, Myroslava Gongadze, in an inhuman and degrading manner during the course of the investigation, and failed to provide Myroslava Gongadze with an effective remedy. The court awarded Myroslava Gongadze, who fled to the United States after her husband's death, 100,000 euros (U.S.\$118,000) in damages.

The European Union offered Ukraine no immediate prospects for accession, but signed a three-year Action Plan with Ukraine that deepened cooperation and includes requirements that the government further strengthen human rights guarantees. The European Bank for Reconstruction and Development's Country Strategy for Ukraine noted that women face employment discrimination.

The U.S. continues to maintain close ties with Ukraine, but in its June 2005 Report on Human Trafficking criticized the government for not taking sufficient action to combat the problem.

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