

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	431
Land:	Ukraine
Kilde:	Human Rights Watch
Titel:	Submission to the Human Rights Committee Review of Ukraine, 133 rd Session
Udgivet:	september 2021
Optaget på baggrundsmaterialet:	15. oktober 2021



Submission to the Human Rights Committee Review of Ukraine 133rd Session September 2021

We write in advance of the 133rd session of the Human Rights Committee regarding Ukraine's compliance with the International Covenant on Civil and Political Rights (ICCPR). This submission relates to arts. 6, 7, 9, 19, 26, of the ICCPR and includes information about issues that Human Rights Watch has been closely following. These are: several aspects of freedom of expression, secret detention, security service reform, discrimination against pensioners, and gender-based violence. We hope to see the Committee take up these issues as part of its examination of the Ukrainian government's implementation of the ICCPR.

This submission also refers to human rights violations that people experience in areas of Ukraine that are not under control of the Ukrainian government, as a result of the war in eastern Ukraine and Russia's occupation of Crimea.

For deeper analysis of some of these issues, please see the following Human Rights Watch reports:

"Ukraine: Torture, Ill-Treatment by Armed Groups in East"

<https://www.hrw.org/news/2021/07/05/ukraine-torture-ill-treatment-armed-groups-east>

"Ukraine: Armed Groups' Arbitrary Pandemic Restrictions"

<https://www.hrw.org/news/2020/11/17/ukraine-armed-groups-arbitrary-pandemic-restrictions>

"Ukraine: Covid-19 Rules Blocked Access to Pensions"

<https://www.hrw.org/news/2020/08/03/ukraine-covid-19-rules-blocked-access-pensions>

"Ukraine: People with Limited Mobility Can't Access Pensions"

<https://www.hrw.org/news/2020/01/24/ukraine-people-limited-mobility-cant-access-pensions>

"Crimean Tatars Face Unfounded Terrorism Charges"

<https://www.hrw.org/news/2019/07/12/crimean-tatars-face-unfounded-terrorism-charges>

“‘You Don’t Exist:’ Arbitrary Detentions, Enforced Disappearances, and Torture in Eastern Ukraine”

<https://www.hrw.org/report/2016/07/21/you-dont-exist/arbitrary-detentions-enforced-disappearances-and-torture-eastern>

Freedom of Expression (Art. 19)

Investigations into physical attacks and online threats against human rights defenders, anti-corruption activists, and independent journalists have been slow and at times ineffective.

Ukrainian groups including [Zmina Human Rights Centre](#), [Association UMDPL](#), [Kharkiv Human Rights Protection Group](#), [Centre of Civil Liberties](#) as well as the OHCHR’s Special Monitoring Mission in Ukraine, documented numerous incidents of violent attacks and threats.¹

In 2016, a car bomb killed investigative journalist Pavel Sheremet. Two of the five suspects in his killing, all veterans of the war in the eastern Ukraine, were placed under house arrest in June 2021 pending trial.² The other three suspects remain in pretrial detention.

In 2018 anti-corruption activist Kateryna Handziuk died from injuries from an acid attack. In 2019, a court convicted five people for carrying out the attack, sentencing them to prison terms. However progress in efforts to prosecute those allegedly responsible for ordering the attack has been slow.

The trial of the suspects in the 2015 murder of journalist Oles Buzyna is still ongoing. In the course of the investigation, three suspects were identified by the authorities but were quickly released from custody. Two of them have been placed under curfew pending trial, which began in 2018 but has yet to progress to the merits stage. Buzyna was strongly critical of the Ukrainian government and supported closer ties with Russia.³

The authorities do not act decisively to investigate and hold accountable those responsible for online harassment, threats, and doxing against journalists and others. In 2020, the private information of journalist Katerina Sergatskova was hacked and published online, after a media outlet she co-founded published investigative reports alleging ties between far-right groups and

¹ “Report on the human rights situation in Ukraine: 16 August to 15 November 2018,” OHCHR, https://www.ohchr.org/Documents/Countries/UA/24thReportUkraineAugust_November2018_EN.pdf; “Freedom of Speech in Ukraine Has Deteriorated,” Institute of Mass Information, January 16, 2020, <https://imi.org.ua/en/news/freedom-of-speech-in-ukraine-has-deteriorated-imi-i31255>.

² “Ukraine’s interior minister submits resignation,” Reuters, July 13, 2021, <https://www.reuters.com/world/europe/ukraines-interior-minister-resigns-2021-07-13/>.

³ “Update on the Human Rights Situation in Ukraine: 1 February- 30 April, 2021,” United Nations Office of the High Commissioner for Human Rights, page 5, https://www.ohchr.org/Documents/Countries/UA/HRMMU_Update02_2021-05-01_EN.pdf.

Ukraine's media outlets.⁴ She had to leave Ukraine for a several months for her safety after receiving threats of death and sexual violence. The authorities opened a criminal case for "invasion of privacy." Even though the hack and threats against her were clearly related to her journalism, authorities chose not to also pursue "interference with journalistic activity" charges.

In 2016 and 2017, the website Myrotvorets published the names and personal data of hundreds of journalists and others who had been accredited by the press center for the de-facto authorities in Donetsk, accusing them of "cooperat[ing] with terrorists." Authorities launched an investigation, but top government officials applauded the publication. Several reporters received threats after the data dump.⁵ Public access to Myrotvorets was shut down in 2019.

The government took steps to restrict freedom of expression, media freedom, and media pluralism justifying them by the need to counter Russia's military aggression in eastern Ukraine and anti-Ukraine propaganda. A 2018 presidential decree banned major Russian companies and their websites from operating in Ukraine, including Russian social media, the websites of many Russian television stations, and the like.

A 2020 presidential decree banned three pro-Russia television channels. The decree was based on a law that grants the government authority to sanction foreign individuals and entities that it deems have engaged in activities which could threaten Ukraine's national interests, national security, sovereignty, and territorial integrity. The law also allows the authorities to sanction other persons and entities (presumably including Ukrainian citizens and companies), for allegedly engaging in terrorist activities, without going before a court. The three channels are widely believed to be part of the media empire of Viktor Medvedchuk, an oligarch [with close ties](#) to Russia.⁶

Russian authorities in Crimea have systematically violated the rights to freedom of expression and information by imprisoning journalists and civic activists on bogus charges, expelling and banning them from the peninsula, and forcing the closure of media outlets that criticize Russia's occupation.

The Committee should urge the government of Ukraine to:

⁴ "Ukraine: Independent Journalist Threatened," Human Rights Watch news release, July 14, 2020, <https://www.hrw.org/news/2020/07/14/ukraine-independent-journalist-threatened>.

⁵ Human Rights Watch, World Report 2017 (New York : Human Rights Watch, 2017), Ukraine chapter, <https://www.hrw.org/world-report/2017/country-chapters/ukraine>.

⁶ Philippe Dam and Yulia Gorbunova (Human Rights Watch), "In Ukraine, taking three pro-Russia channels off the air raises complex issues," commentary, *openDemocracy*, February 11, 2021, <https://www.hrw.org/news/2021/02/11/ukraine-taking-three-pro-russia-channels-air-raises-complex-issues>.

- Refrain from using extrajudicial bans on media and information, when countering harmful propaganda;
- Hold timely and effective investigations into attacks on investigative journalists, human rights defenders, and the like.

Torture and Other Forms of Ill-Treatment; Secret Detention (Arts. 7 and 9)

In 2016, Human Rights Watch and Amnesty International documented the secret and prolonged detention of 18 civilians in the Ukraine's Security Service (SBU)'s facility in Kharkiv, from 2014 to 2016.⁷ Some of them were subjected to torture and ill-treatment. All 18 were freed by the end of 2016; their detention was never acknowledged.⁸

Authorities opened an investigation into complaints filed by several former secret prisoners and granted these former detainees "victim" status. However, the investigation into their allegations has been marred by ongoing delays and complications, and witness intimidation.⁹ In some instances, the latter resulted in victims' withdrawal from the case.

A draft law that was, at time of writing, pending a second reading in Ukraine's parliament, seeks to carry out long-overdue reforms of the SBU but would still grant the security service wide authority to carry out law enforcement functions.¹⁰ This is problematic considering the bill's lack of human rights guarantees and the agency's reputation on corruption, arms trafficking, secret detention and use of torture.

Under the current draft, the SBU largely retains its law enforcement functions but does not have the same human rights constraints as other law enforcement. It can, without a court order:

- Gain access to access to public and private premises
- Detain individuals (without the specific obligation that police or other law enforcement have, to contact Legal Aid Society so detainees have access to a lawyer)
- Demand relevant companies and institutions grant it unlimited, unrestricted access to online financial or personal information and communications and collect and store information about individuals and institutions

⁷ Human Rights Watch, *"You Don't Exist:" Arbitrary Detentions, Enforced Disappearances, and Torture in Eastern Ukraine* (New York: Human Rights Watch, 2016), <https://www.hrw.org/report/2016/07/21/you-dont-exist/arbitrary-detentions-enforced-disappearances-and-torture-eastern>.

⁸ "Ukraine: Justice Still Needed for Victims of Unlawful Detention in Eastern Ukraine," Human Rights Watch news release, August 6, 2020, <https://www.hrw.org/news/2020/08/06/ukraine-justice-still-needed-victims-unlawful-detention-eastern-ukraine>.

⁹ Ibid.

¹⁰ June 3 Letter from Human Rights Watch to the Members of the Verkhovna Rada of Ukraine, June 3, 2021, <https://www.hrw.org/news/2021/06/03/june-3-letter-members-verkhovna-rada-ukraine>.

- Use physical force, including by special means and firearms, more widely than other law enforcement, raising proportionality concerns.

The current bill not only does not achieve its stated goal of streamlining the SBU's work, but also provides the SBU with overly broad powers in both intelligence and law-enforcement spheres, while lacking essential necessary safeguards against abuse of these powers. There is a provision to gradually phase out the SBU's pre-trial investigative functions by 2023, however there is no clear roadmap to ensure this happens and to avert an indefinite phasing-out process.

In response to civic groups' criticism of previous drafts, the draft bill shared by parliament on June 3, 2021 contains a new provision strengthening the prohibition of torture and ill-treatment and requiring a court order for temporarily restricting human rights and individual freedoms. However, the draft does not provide sufficient protections to prevent abuses in detention or guarantee due process for those in SBU custody. For example, as noted above, there is no explicit provision requiring the SBU to ensure a detainee has access to a lawyer. Additionally, the last publicly available version of the draft at time of writing provides that the SBU will: "have specially designated places for temporary detention (temporary detention cells) for persons detained in the manner prescribed by law, during the performance of tasks and functions by the Security Service of Ukraine." International best practices suggest that national law explicitly prohibit intelligence services from operate their own detention facilities.

In areas of Donestska and Luhanksa under the control of Russia-backed armed groups, de facto authorities hold people in arbitrary detention for conflict-related reasons and subject many of them to torture and ill-treatment.¹¹ The UN estimated in June 2021 that de-facto authorities in these areas are holding between 300 and 400 conflict-related detainees. De facto authorities use charges of "espionage" and "state treason" to detain those perceived to have pro-Ukraine views.

A recent Human Rights Watch report documented the detention of four women held by de-facto authorities in Donetsk who have serious medical conditions for which they have not received treatment; one was tortured and held incommunicado.¹²

The Committee should urge the government of Ukraine to:

- Thoroughly investigate and hold accountable those responsible for enforced disappearances and torture in SBU custody;

¹¹ "Arbitrary Detention Torture and Ill-Treatment in the Context of Armed Conflict in Eastern Ukraine: 2014-2021," OHCHR, https://www.ohchr.org/Documents/Countries/UA/UkraineArbDetTorture_EN.pdf.

¹² "Ukraine: Torture, Ill-Treatment by Armed Groups in East," Human Rights Watch news release, July 5, 2021, <https://www.hrw.org/news/2021/07/05/ukraine-torture-ill-treatment-armed-groups-east>.

- Ensure that the bill on SBU reform will not advance further until concerns mentioned above are resolved; submit the bill for review with the Council of Europe’s European Commission for Democracy through Law (Venice Commission) and commit to follow the Commission’s recommendations.

Gender-Based Violence (Arts. 6, 7, and 26)

The Covid-19 pandemic-related restrictions led to a surge in reports of domestic violence in Ukraine, with the number of cases reported to the police increasing by 30 percent.¹³ According to service providers, victims were often unable to escape abuse during the pandemic due to lack of shelter space and inadequate police response.

In February, President Volodymyr Zelensky pledged to submit the Council of Europe Convention on the Prevention of Violence against Women and Domestic Violence (Istanbul Convention) to parliament for ratification, pending additional instructions by the Foreign Ministry and the Ministry for Social Policy. Ukraine signed the convention in 2011. The Rada considered ratification in 2016, but progress was halted after religious and political leaders pushed back claiming, baselessly, a perceived threat to Ukrainian traditional values.

The Committee should recommend the government of Ukraine to:

- Swiftly submit the Istanbul Convention to parliament for ratification and in the meantime implement measures to ensure that Ukraine is adopting the standards in the Convention, whether a party or not, including provisions on police response and provision of shelter and other essential services for all survivors of gender-based violence.

Discrimination against Internally Displaced Persons in Receiving Pensions (Art. 26)¹⁴

Government policy requires pensioners from parts of eastern Ukraine under the control of Russia-backed armed groups to register as internally displaced persons in government-controlled areas, maintain residential addresses there, and regularly travel to those areas in order to receive their pensions.

¹³ Оксана Расулова, “Пандемія всередині пандемії”. Як карантин в Україні впливає на домашнє насильство,” hromadske, <https://hromadske.ua/posts/pandemiya-vseredini-pandemiyi-yak-karantin-v-ukrayini-vplivaye-na-domashnye-nasilstvo>.

¹⁴ Parts of this section repeat Human Rights Watch’s written submission to the 47th session of the Committee on Social, Economic, and Cultural Rights, for its review of Ukraine. <https://www.hrw.org/news/2020/01/17/submission-committee-economic-social-and-cultural-rights-ukraine>.

The requirement to register as a displaced person as a condition for maintaining pension eligibility is set out in Cabinet of Ministers' decrees adopted in 2014 and 2016.¹⁵ Older people eligible to receive pensions must prove and maintain residency in government-controlled areas, and they are required to cross into government-controlled areas every 60 consecutive days.

In February 2020, parliament failed to pass legislation that would have de-linked pension eligibility from displaced person status on the premise that the state budget could not cover the cost of arrears owed to these pensioners.

Under current rules, pensioners from nongovernment-controlled areas must appear in person every three months for an identity verification procedure at the only state bank where pensions are paid. Unlike other pensioners living elsewhere in the country, they may not appoint an authorized representative to collect their pensions for them at the state bank. In practice, this means older people, many of whom have physical disabilities that impede their ability to walk easily, face repeated journeys across the separation line (or "line of contact") to collect their pensions or else have to leave their homes for the foreseeable future. Older people, who due to limited mobility, have not been able to cross into government-controlled areas to obtain displaced person status have had to forego their pensions altogether.¹⁶

In July 2018, the Kyiv Administrative Court of Appeals upheld a lower court's ruling finding several provisions of the Cabinet of Ministers decrees on displaced persons' pension eligibility discriminatory on "territorial and displacement grounds" and in violation of the rights of displaced people to pensions and social protection. These included the decrees' provisions authorizing social protection officials to visit an individual's registered address any time if they have reason to believe that the displaced person might not live there. Under this inspection regime, if the person is not at home, officials leave a notice instructing the person to come in person to verify their residence address within three days. If they fail to do so, the government can stop paying pensions and other social benefits. In 2018, older people and local activists told Human Rights Watch that in practice, the authorities would suspend pensions and other welfare payments after the first visit without waiting for the individual to appear in person.¹⁷ Once an individual's pension

¹⁵ Cabinet of Ministers of Ukraine Decree No. 637, entered into force November 5, 2014, <http://zakon2.rada.gov.ua/laws/show/637-2014-%Do%BF> (accessed August 29, 2018). Cabinet of Ministers of Ukraine Decree No. 365, entered into force June 8, 2016, <http://zakon3.rada.gov.ua/laws/show/365-2016-%Do%BF> (accessed August 31, 2018).

¹⁶ "Ukraine: People with Limited Mobility Can't Access Pensions," Human Rights Watch news release, January 24, 2020, <https://www.hrw.org/news/2020/01/24/ukraine-people-limited-mobility-cant-access-pensions>.

¹⁷ "Ukraine: Ensure All Pensioners Have Access to Benefits: Discriminatory Policies Restrict Older People's Access to Pensions," Human Rights Watch news release, August 31, 2018, <https://www.hrw.org/news/2018/08/31/ukraine-ensure-all-pensioners-have-access-benefits>.

has been suspended, they have to reapply for it to be reinstated, an onerous process which can take months.

Following the court's ruling, the Ministry of Social Policy stated that it would continue to verify displaced persons' residences prior to granting them pensions or social benefits but that it would stop inspection visits to displaced persons' homes.¹⁸ In 2018, a lawyer with a Ukrainian human rights organization told Human Rights Watch that, to his knowledge, despite this statement, the ministry continued to inspect displaced persons' registered residences.¹⁹

In March 2019, the government of Ukraine removed expiration dates for electronic passes that allow civilians to travel between government-controlled territory and areas controlled by Russia-backed armed groups in the country's east. This is a small but important step toward easing the lives of the estimated one million people who journey across the front lines dividing the conflicting parties every month.²⁰

Impact of Covid-19 on Pensioners

As a result of harsh Covid-19 restrictions imposed by armed groups in parts of Donetsk and Luhanska regions and by Ukrainian authorities at least 1.2 million people living in conflict-affected areas were unable to get their pensions or re-unite with family.

Ukrainian authorities required people entering from nongovernment-controlled areas to install a smartphone app to monitor compliance with restrictions, even though many people do not own a smartphone. They also required people to self-isolate for 14 days, which is prohibitively expensive for older people living in these areas. In a welcome move, authorities temporarily lifted the requirement for displaced people to undergo regular identification checks for the duration of the restrictions. Restricted access to pensions pushed older people deeper into poverty, forcing them to cut back on food, hygiene products, and vital medications.

The Ukrainian authorities eased crossing restrictions after achieving "green zone" status for Covid-19 measures, lifting mobile app, testing, self-isolation/observation requirements for those crossing into government-controlled territory. The mobile app requirement was reinstated in late

¹⁸ Ministry of Social Protection of Ukraine, <https://www.msp.gov.ua/news/15636.html?PrintVersion> (accessed August 30, 2018).

¹⁹ "Ukraine: Ensure All Pensioners Have Access to Benefits: Discriminatory Policies Restrict Older People's Access to Pensions," Human Rights Watch news release, August 31, 2018, <https://www.hrw.org/news/2018/08/31/ukraine-ensure-all-pensioners-have-access-benefits>.

²⁰ Laura Mills, "Making Life a Little Easier on Ukraine's Front Lines: Government Eases Crossing Pass Requirements, Should Stop Pension Discrimination," commentary, Human Rights Dispatch, April 10, 2019, <https://www.hrw.org/news/2019/04/10/making-life-little-easier-ukraines-front-lines>.

July 2021, to prevent the spread of the Delta variant. On July 22, Zelensky signed a law to end fines for those attempting to enter Ukraine through Russia.

Armed groups in Donetska region introduced severe travel restrictions in response to Covid-19, effectively prohibiting residents with local residence permits from leaving during the pandemic and preventing them from carrying out essential travel.²¹ Those with residency permits in government-controlled areas who wanted to leave Donetsk were required to sign a document undertaking not return until the end of the pandemic. When one of the four entry-exit checkpoints in Donetsk region reopened, armed groups only admitted people based on pre-approved lists and required a 14-day quarantine in medical facilities for those entering the area under their control. Armed groups in Luhanska region only admitted people who have local residence registration but imposed no restrictions on leaving.

The Committee should recommend the government of Ukraine to:

- Initiate and support legislation to drop the requirement for people from nongovernment-controlled areas to register as internally displaced persons in order to receive pensions;
- In the interim, drop the requirement to cross every 60 consecutive days and allow the appointment of an authorized representative to collect pensions for older people who continue to reside in areas under the control of Russia-backed armed groups in order to alleviate the burden of making frequent trips across the line of contact;
- Introduce reforms for that would allow for remote identity verification procedure and access to online notary services;
- Enforce court decisions, in particular by paying arrears to those pensioners denied their pensions because of these and other rules;
- Ensure that line of contact crossing restrictions aimed at preventing the spread of Covid-19 do not exceed public health needs. Restrictions should be clear and not applied arbitrarily, and they should never result in the denial of access to essential goods, medicines, health care, and social services.

²¹ “Ukraine: Armed Groups’ Arbitrary Pandemic Restrictions,” Human Rights Watch news release, November 17, 2020, <https://www.hrw.org/news/2020/11/17/ukraine-armed-groups-arbitrary-pandemic-restrictions>.