

Ukraine

Amnesty International Submission to the UN Universal Periodic Review

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Key Words: criminal justice, national human rights institution, *refoulement*, torture and ill-treatment, conditions of detention, domestic violence, racism

In this submission, Amnesty International provides information under sections B, C and D (as stipulated in the *General Guidelines for the Preparation of Information under the Universal Periodic Review*¹):

- Under B, Amnesty International raises concern over reform of the criminal justice system, national human rights institutions, and outstanding ratification of international instruments.
- In section C, we describe concerns related to *refoulement*, torture and ill-treatment in police custody, domestic violence, and racism and xenophobia.
- In section D, Amnesty International makes a number of recommendations in the areas of concerns listed.

B. Normative and institutional framework of the State

Reform of the criminal justice system

1. Ukraine has introduced changes to the criminal justice system aimed at bringing it into line with the European Convention on Human Rights; however, the system still retains many features of the inherently repressive Soviet criminal justice system. The administrative code is frequently misused by police to detain suspects who are later charged under the Criminal Code. Amnesty International has drawn attention to shortcomings in the Criminal Procedural Code which fails to guarantee the rights to access to a lawyer or medical care for detainees, and allows detainees to be held for up to 72 hours before being brought before a judge.
2. Amnesty International considers that impunity -- as a result of the lack of independent, impartial and effective investigations and prosecutions of law enforcement officers in connection with allegations of torture and ill-treatment -- is partly rooted in the role of the Public Prosecutor. The Prosecutor plays a central role, not only in the prosecution of cases, but also in the investigation of allegations of torture and other ill-treatment. By its very nature, however, the institution is not independent or impartial. In addition, through their work on criminal investigations prosecutors often have very close personal links with the police officers, and as a result may be reluctant to pursue complaints. When applying to join the Council of Europe in 1995, Ukraine committed to changing the role and functions of the Prosecutor's Office in order to bring this institution into line with Council of Europe standards.² Ukraine has not yet fulfilled this commitment and in 2005 the Parliamentary Assembly of the Council of Europe (PACE) called again for the Prosecutor's Office to be reformed.³

¹ Contained in Human Rights Council Decision 6/102, Follow-up to Human Rights Council resolution 5/1, section I, adopted 27 September 2007.

² Parliamentary Assembly of the Council of Europe (PACE), Opinion No.190 (1995) "On the application by Ukraine for membership of the Council of Europe", adopted 26 September 1995.

³ PACE, Resolution 1466(2005), adopted on 5 October 2005, paragraph 13.4.

National human rights institutions

3. Ukraine established the office of the Human Rights Representative of the Verkhovna Rada (Ombudsperson) in 1998; the post has been held since its inception by Nina Karpacheva. The credibility and effectiveness of the institution was seriously undermined when, in violation of the law on the Ombudsperson, Nina Karpacheva was elected as an MP for the Party of the Regions in March 2006 while retaining the post of Ombudsperson. She resigned from Parliament when re-elected as Ombudsperson in January 2007.

Ratification of international instruments

4. Ukraine signed the Rome Statute of the International Criminal Court on 20 January 2000 and acceded to the Agreement on Privileges and Immunities on 29 January 2007, but has yet to make the necessary constitutional changes to ratify the Rome Statute, and has not drafted legislation to implement these treaties.
5. Ukraine has also yet to sign or ratify the UN Convention for the Protection of All Persons from Enforced Disappearances.

C. Protection and promotion of human rights in Ukraine

Refoulement

6. Amnesty International is concerned by the failure of the Ukrainian authorities to observe the principle of *non-refoulement* and to provide full and fair refugee status determination procedures.
7. During the night of 14-15 February 2006, 10 asylum-seekers from Uzbekistan, who had been seeking international protection in Ukraine, were forcibly returned to Uzbekistan by the Ukrainian authorities. The Uzbekistani authorities had issued extradition warrants for 11 asylum-seekers in Ukraine on the grounds that they had allegedly participated in the Andizhan events in Uzbekistan on 13 May 2005. Nine of the men were registered asylum-seekers whose applications were rejected, and one had expressed an intention to apply for asylum. They were returned without the right to appeal or, in one case, the right to apply for asylum. Amnesty International has received reports that some of the deported asylum-seekers were subjected to torture and ill-treatment upon return to Uzbekistan.

Torture and ill-treatment in police custody

8. Amnesty International continues to receive reports of torture and ill-treatment of individuals detained in police custody. These cases indicate that suspects and detainees are frequently not informed of their right to a lawyer or to be represented by a lawyer during questioning. The right to legal assistance is set out in Ukrainian legislation, but Amnesty International is concerned that the law is not clear enough about when a person should be granted access to a lawyer. Article 21 of the Criminal Procedural Code of Ukraine states that detainees have the right to legal assistance; it requires investigators, prosecutors and judges to make suspects aware of this right *before the first interrogation*. The Law on the Police states that detainees are entitled to a lawyer *from the moment of arrest*. However, there is wide disagreement as to when arrest actually occurs – when a suspect is apprehended by police or when the arrest is registered in the police station. The Criminal Procedural Code lists exceptional circumstances when the presence of a lawyer is required such as for minors and disabled detainees, but otherwise a lawyer is required only when requested by the detainee. Many detainees are not properly informed of their rights. The Minister of Internal Affairs issued an order in April 2006 that all detainees must be informed of their rights. However, according to information available to Amnesty International, no practical measures have yet been agreed as to how this will be done.

9. In April 2007, Eduard Furman was reportedly tortured at the offices of the State Security Service in Dnipropetrovsk. He was arrested on 11 April and police investigators allegedly beat him, pressed their fingers into his eye sockets and applied electric shocks to his testicles to force him to confess to a murder. He was initially detained on the basis of an allegedly fabricated administrative charge. Eduard Furman's family was not informed of his arrest, and did not discover his whereabouts until 24 April. Reportedly, no medical examinations were carried out despite the fact that Eduard Furman complained to a judge that he had been subjected to torture and ill-treatment. Eduard Furman remains in detention and the Prosecutor General's Office has so far refused to open an investigation into the allegations.
10. As highlighted in its 2005 report on torture and other ill-treatment in Ukraine, Amnesty International's research indicates that perpetrators of torture or ill-treatment enjoy effective impunity.⁴ When investigations are carried out, they do not meet international standards of promptness, thoroughness, independence and impartiality. Such flawed investigations have resulted in very few prosecutions of law enforcement officers; and in the few cases where an official is convicted, only minimal sentences have been imposed. Acts of torture or ill-treatment by police officers, if brought to court, are prosecuted under two articles of the Criminal Code. Article 127 which criminalizes torture was added to the Ukrainian Criminal Code in 2001. In January 2005 the law was amended so that it expressly criminalizes such conduct when committed by state officials. Police officers can also be prosecuted for exceeding authority or official powers under Article 365 of the Criminal Code. However, despite these legal provisions victims find it difficult to lodge complaints with prosecutors, to get their complaints investigated promptly, independently and impartially (see section B), and to obtain justice through those responsible being disciplined or prosecuted. Of the six cases of alleged torture or other ill-treatment that featured in Amnesty International's September 2005 report, only two cases have resulted in the prosecution of some of the police officers alleged to have been responsible.
11. Four of the individuals who featured in Amnesty International's 2005 report have faced reprisals from police, since the publication of this report, aimed at dissuading them from pursuing their complaints. Three of the individuals have been forced to leave Ukraine and are currently seeking asylum in other countries.

Conditions in detention and deaths in custody

12. In a country with a very high rate of tuberculosis (TB), overcrowding and poor conditions in pre-trial detention have led to a high rate of infection among detainees. Amnesty International has been particularly concerned about conditions in the Sevastopol investigation isolation facility (ITT) where, in violation of the Criminal Procedural Code, people are frequently detained for the full period of their pre-trial detention instead of being transferred to a remand prison (SIZO). This is due to the long-standing practice that the nearest SIZO in Simferopol does not accept detainees infected with TB. On 25 October 2007, the European Court of Human Rights ruled that Ukraine had violated the prohibition against torture and other inhuman or degrading treatment under the European Convention on Human Rights: Oleg Yakovenko had been held in conditions that were degrading and deprived of timely and appropriate medical assistance and treatment.
13. In a press statement in November 2007 the human rights Ombudsperson, Nina Karpacheva, expressed concern about the number of deaths in custody in the 20 SIZO facilities in Ukraine. According to statistics gathered by the Ombudsperson's office, between 2004 and 2007 130-135 people died annually in

⁴ *Ukraine: Time for Action: Torture and ill-treatment in police detention*, September 2005, AI Index: EUR 50/004/2005

detention in SIZOs. Most deaths were due to inadequate medical care, including failure to diagnose pre-existing medical conditions, such as TB.

Domestic violence

14. The Law on the Prevention of Violence in the Family was passed on 15 November 2001, and came into effect in January 2002. However, Amnesty International is concerned that the law is flawed and has not proved effective in combating domestic violence. The Law contains the concept of "victim behaviour", defined as "the behaviour of a victim of domestic violence that provokes domestic violence", which has been used to blame women for provoking violence, and contributed to impunity by allowing perpetrators to avoid prosecution. A draft law "On amendments to some legislative acts of Ukraine (concerning improving the legislation of Ukraine to counteract violence in a family)" was presented to Parliament in February 2007, but has not yet been passed. The draft law omits the concept of "victim behaviour", but Amnesty International remains concerned that provisions of the draft law do not go far enough to ensure that adequate short-term and long-term alternative housing would be made available to victims of domestic violence.

Racism

15. Asylum-seekers and foreigners living in Ukraine often suffer racist attacks by members of the public and are subjected to racist treatment at the hands of the police, including disproportionately frequent document checks. There are no government statistics for the number of racist crimes, and most racist attacks are classified by the police as "hooliganism". In meetings with Amnesty International in September 2007, representatives of the Ministry of Internal Affairs and the State Security Services (SBU) denied the existence of racism in Ukraine and confirmed that racially motivated crimes are usually prosecuted as "hooliganism". Article 161 of the Criminal Code related to racially motivated crimes is flawed because it applies only to victims who are citizens and requires proof of intention.

D. Achievements, best practice, challenges and constraints

16. Some positive steps have been taken over the past two years by the Ministry of Internal Affairs to combat torture and ill-treatment. During 2005, the Ministry set up a system of mobile groups to monitor places of detention under its control, with the participation of the National University of the Ministry and local human rights groups. The Ministry also took steps to increase the use of bail measures in order to cut down on overcrowding in pre-trial detention centres. In mid-April 2006, measures were taken aimed at ensuring that suspects are informed of their rights; however, detailed instructions have yet to be issued to the police. In November 2007 the National Commission for the Strengthening of Democracy and the Rule of Law approved a Draft Concept for Reform of the Criminal Justice System which proposes far-reaching changes aimed at humanizing criminal legislation and restructuring the whole system on the basis of human rights.
17. One of the greatest challenges facing Ukraine is the failure so far to prosecute crimes under international law such as the killing of investigative journalist, Georgiy Gongadze, in 2000.

AI's recommendations to the government

Refoulement

18. Abide by their obligations under international human rights and refugee law not to send individuals to countries where they face a real risk of grave human rights abuses, including torture or other ill-treatment;

19. Ensure that the principle of *non-refoulement* is fully understood and upheld by all law enforcement officials, including those involved in immigration and asylum-determination;

Torture and ill-treatment in police custody

20. A lawyer should always be present during police interrogations unless a detainee waives the right to a lawyer, and all interrogations should be recorded accurately, preferably with the use of video/audio equipment;
21. Prosecutors and judges should initiate investigations whenever a person brought before them alleges torture or other ill-treatment and whenever there are reasonable grounds to believe that an act of torture or other ill-treatment has occurred; they should also ensure that those responsible for torture or other ill-treatment are brought to justice;
22. Victims of torture should be able to obtain redress and adequate reparation, including compensation and the means for the fullest possible rehabilitation, and protection from reprisals;
23. Steps should be taken to set up an independent body to monitor places of detention in accordance with Ukraine's obligations under the Optional Protocol to the Convention against Torture;

Conditions in detention and deaths in custody

24. Ensure that all people deprived of their liberty are held in conditions that meet international standards and implement fully the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment regarding conditions in pre-trial detention;

Domestic Violence

25. Amend the Law on the Prevention of Violence in the Family and promptly allocate secure, long-term funding to ensure that a sufficient number of appropriate shelters are set up across the country in collaboration with NGOs working to protect women from violence.

Racism

26. Ensure that law enforcement officers, prosecutors and judges involved in enforcing the law relating to racist crimes fully understand the nature of such crimes;
27. Review legislation relating to racist crimes to bring it in line with international standards and ensure that proper statistics related to racist incidents are kept centrally and publicized.

Appendix: Amnesty International documents for further reference

- *Ukraine: Briefing for the Committee against Torture on Ukraine*, 29 April 2007, AI Index: EUR 50/001/2007
- *Ukraine: Domestic Violence – Blaming the Victim*, November 2006, AI Index: EUR 50/005/2006
- *Ukraine: Ten asylum-seekers forcibly returned to Uzbekistan*, AI Index: EUR 50/001/2006
- *Ukraine: Briefing to the UN Human Rights Committee*, 6 November 2006, AI Index: EUR 50/003/2006,
- *Ukraine: Time for Action: Torture and ill-treatment in police detention*, September 2005, AI Index: EUR 50/004/2005,