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Ukraine before the United Nations Human Rights Committee



15 October 2001
AI Index: EUR 50/001/2001
Distr: SC/CO/GR/CC

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Ukraine before the United Nations Human Rights Committee

Introduction

Ten years have passed since Ukraine gained independence in 1991, following the collapse of the Soviet Union. During the past decade the country has experienced a great deal of economic, political and social change. During this same period Amnesty International has continued to monitor the human rights situation in the country, documenting various violations of human rights which fall within the organization's mandate. The organization is concerned that, although there have been some improvements in the human rights situation in Ukraine in recent years, such as the abolition of the death penalty, the country continues to fall short of meeting its international treaty obligations regarding human rights. Allegations of torture and ill-treatment by law enforcement officials of people deprived of their liberty persist. These allegations have been accompanied by frequent reports that detained and arrested persons have been refused access to legal representation or have not been allowed to inform family members of their detention, constituting violations of rights, which among other things, guard against torture and ill-treatment and allow a person to prepare a defence. Conditions in Ukraine's places of detention and imprisonment often fall below international minimum standards, with the result that people deprived of their liberty are subjected to cruel, inhuman or degrading treatment. In recent years the right of freedom of expression has also come under increased pressure from the Ukrainian authorities. The abduction and possible killing of the investigative journalist, Georgiy Gongadze, and alleged state involvement have brought Ukraine's human rights record further into question.

Amnesty International is publishing this report on the eve of a review of Ukraine's implementation of the International Covenant on Civil and Political Rights by that treaty's monitoring body.¹ This review is due to take place during the 73rd session of the United Nations Human Rights Committee, beginning in October 2001. Amnesty International is concerned that Ukraine has failed to implement fully its treaty obligations under the International Covenant on Civil and Political Rights and has issued a briefing highlighting its concerns to the Human Rights Committee.² This report incorporates the briefing submitted to the Human Rights Committee and details Amnesty International's concerns relating to human rights violations in Ukraine since its fourth periodic review by the Human Rights Committee in 1995.

It is important to note that in the period June - July 2001 the Ukrainian parliament, *Verkhovna Rada*, adopted a package of ten laws on judicial and legal reforms, after several years of considerable debate. The new legislation, which is intended to bring Ukraine's

¹Human Rights Committee.

²*Ukraine: A Briefing for the Human Rights Committee*, September 2001, AI Index: EUR 50/002/2001.

legislation into conformity with Council of Europe standards, included a new Criminal Code and Criminal Procedure Code as well as a series of laws which amended existing legislation relating to the judiciary, procuracy, police and pre-trial detention. A Council of Europe Secretariat Delegation, which visited Ukraine between 26 - 29 August 2001, commenting on the package of laws, recommended: "... new legislation and amendments to existing laws adopted in June-July 2001 be transmitted to the Secretariat as a matter of urgency for an analysis of their compatibility with European norms and standards."³ The Secretariat Delegation also stated: "... needless to add, the real value of these changes can only be made by an assessment of how, in practice, these laws are implemented."⁴ Similarly, while Amnesty International recognizes that changes have recently been made to existing legislation, their impact on the human rights situation in the country remains to be seen.

What is the International Covenant on Civil and Political Rights?

The fundamental principles enshrined in the Universal Declaration of Human Rights are given a more precise legal form in two treaties: the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights. These three instruments (plus the attached protocols) are known as the International Bill on Human Rights. The provisions of the covenants and the protocols are binding on the states which have become a party to them.

The ICCPR guarantees a number of fundamental rights including the right to life; the rights to freedom of conscience, expression, and association; the right to be free from arbitrary arrest or detention; the right to freedom from torture and ill-treatment; and the right to a fair trial. States parties to the covenant elect the Human Rights Committee. This 18-member body of independent human rights experts monitors implementation by each state party of the provisions of the covenant and its protocols. It is this committee which, at its forthcoming Geneva session, will examine Ukraine's fifth periodic report on measures the state has taken to implement its obligations under the covenant.⁵ In addition to reviewing Ukraine's written report, the committee will seek further details from Ukraine's representatives at the session before making public its authoritative comments and recommendations. Amnesty International's concerns about Ukraine's failure to implement fully its obligations under the ICCPR are outlined below.

³Doc. SG/Inf (2001) 27, *Report of the Secretariat's Assistance and Information Mission to Ukraine (26 - 29 August 2001)*, 6 September 2001 - paragraph 38.

⁴*ibid* - paragraph 37.

⁵Ukraine's report [UN Doc. CCPR/C/UKR/99/5, 16 November 2000] is available at: <http://www.unhchr.ch/tbs/doc.nsf>.

The Right to Life

"Every human being has the inherent right to life. The right shall be protected by law. No one shall be arbitrarily deprived of his life."

Article 6(1) of the ICCPR

Abolition of the death penalty

Amnesty International welcomed the abolition of the death penalty in Ukraine. On 30 December 1999 the Ukrainian Constitutional Court ruled that the death penalty was unconstitutional and stated that changes should be made to the Ukrainian Criminal Code to reflect this decision. The basis for this decision was that the death penalty violated the right to life and the prohibition against torture and cruel, inhuman and degrading treatment or punishment, which is safeguarded in Ukraine's constitution. Following the court's decision, on 22 February 2000 the Ukrainian parliament, *Verkhovna Rada*, removed the death penalty from the criminal code - replacing it with a maximum sentence of life imprisonment.⁶

In April 2000 Ukraine ratified Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms prohibiting the use of the death penalty in peace time in line with Ukraine's commitments to the Council of Europe, which it had joined in November 1995. After accession as a member state of the Council of Europe, Ukraine had repeatedly been criticized by the Parliamentary Assembly of the Council of Europe for its lack of progress initially in introducing a moratorium on executions and, thereafter, in moving towards abolition. Although Ukraine introduced a *de facto* moratorium on executions in March 1997 it continued to sentence people to death. At the time of the ruling of the Ukrainian Constitutional Court approximately 400 prisoners had been reportedly under sentences of death.⁷ While Amnesty International welcomes the decision to abolish the death penalty during peace time, the organization urges the Ukrainian authorities to completely abolish this cruel, inhuman and degrading punishment during times of war as well as peace.

The possible "disappearance" of journalist Georgiy Gongadze

Amnesty International is concerned about the lack of progress which has been made in determining who was responsible for the abduction and apparent killing of the independent journalist, Georgiy Gongadze (see below). The concerns of Amnesty International have been

⁶See UN Doc. CAT/C/55/Add.1, 17 November 2001 - paragraph 73 (a).

⁷According to the Ukrainian authorities 399 prisoners were under sentence of death as of 1 April 1999 - UN Doc. CCPR/C/UKR/99/5, 16 November 2000 - paragraph 122.

echoed by various bodies which defend and promote press freedom, including the Parliamentary Assembly of the Council of Europe, the Organization for Security and Cooperation in Europe's (OSCE) Representative on Freedom of the Media, the Committee to Protect Journalists, and Reporters without Borders.⁸

In two Resolutions adopted in January and April 2001 the Parliamentary Assembly of the Council of Europe expressed concern about the apparent "disappearance" of Georgiy Gongadze and the failure of the Ukrainian authorities to investigate the incident, stating: "[t]he measures taken by the Ukrainian authorities and the Verkhovna Rada (parliament) to investigate the disappearance of the journalist Heorhiy Gongadze, and their efforts to do justice to all parties involved, should be considered a test for the freedom of expression and the functioning of parliamentary democracy in Ukraine. The Assembly voices its concern over the drawn-out manner in which the General Prosecutor's office of Ukraine has handled this matter."⁹ The Parliamentary Assembly of the Council of Europe called on the Ukrainian authorities to "... conduct an expeditious, full and transparent investigation into the disappearance or death of Mr Gongadze, and to make known the results of this investigation as quickly as possible" and "... bring to justice those responsible for committing this crime".¹⁰ It repeated these recommendations in April 2001, urging the Ukrainian authorities to take all necessary measures to discourage and curb attacks and threats against journalists and other media representatives (see the section of this report, on page 24, entitled 'Freedom of expression').¹¹

The OSCE Representative on Freedom of the Media, Freimut Duve, has also commented on the investigation into the apparent "disappearance". In a Statement to the Permanent Council of the OSCE on 8 February 2001 he recommended: "[t]he Government of Ukraine should undertake a new effort to investigate the Gongadze case especially related to the identification of the body and to the circumstances around his disappearance. The possibility of starting such a new investigation should be explored, headed by a well-respected independent judge and involving foreign experts. The investigation should be transparent with information

⁸See the Reporters without Borders' (Reporters sans frontières) report, *Mutilation of the Truth: Inquiry into the murder of journalist Géorgiy Gongadze*, 22 January 2001.

⁹Resolution 1239 (2001), *Freedom of expression and the functioning of parliamentary democracy in Ukraine*, adopted by the Parliamentary Assembly of the Council of Europe on 26 January 2001 - paragraph 2.

¹⁰*ibid* - paragraphs 6 (ii) and 6 (iii).

¹¹Resolution 1244 (2001), *Honouring of obligations and commitments by Ukraine*, adopted by the Parliamentary Assembly of the Council of Europe on 26 April 2001 - paragraph 5.

provided in a timely manner to the public."¹² The OSCE's human rights institution, the Office for Democratic Institutions and Human Rights (ODIHR) repeated this appeal in late September 2001. ODIHR Director Gérard Stoudmann stated: "[i]t is unacceptable that after so many months we still don't know anything about who was behind the murder of Mr. Gongadze".¹³ Earlier in the year, on 20 April 2001, the OSCE Parliamentary Assembly jointly awarded Georgiy Gongadze the 2001 OSCE Prize for Journalism and Democracy with José Luis López de Lacalle, a Spanish journalist who was allegedly murdered by Euskadi Ta Askatasuna (ETA) in Northern Spain in May 2000.

Amnesty International considers incommunicado detention for anything but the briefest length of time as amounting to cruel, inhuman and degrading treatment, even when not accompanied by further abuse. Prolonged incommunicado detention, certainly for months, amounts, in Amnesty International's view, to torture as defined in Article 7 of the ICCPR. This is especially true in cases where isolation from the outside world is total, and the very fact of the person being held in custody is denied by the authorities. The victims of torture in such cases would be not only those who "disappeared" but their families as well, since the "disappearance" of a person is a cause of great suffering and hardship to their family members.¹⁴ Amnesty International is certainly not alone in reaching this conclusion. "Disappearances" constitute violations of the ICCPR and the UN Convention against Torture and Other Cruel, Inhuman, Degrading Treatment or Punishment (Convention against Torture). UN and human rights mechanisms such as the Human Rights Committee¹⁵ and the Inter-American Court of Human Rights¹⁶ have in the past also determined that "disappearances" constitute torture or other cruel, inhuman or degrading treatment of the families of the "disappeared" as well. The Special Rapporteur on Torture, Sir Nigel Rodley, recently concluded that "there is a trend towards recognizing that to make someone 'disappear' is a form of prohibited torture or ill-treatment, *clearly as regards the relatives of the 'disappeared' person*, and arguably in respect of the

¹²The OSCE Representative on Freedom of the Media, Statement to the Permanent Council, 8 February 2001 - page 3.

¹³ODIHR press release, 21 September 2001.

¹⁴Georgiy Gongadze is married to Miroslava Gongadze and the couple have two young children.

¹⁵*Maria del Carmen Almeida de Quinteros, on behalf of her daughter, Elena Quinteros Almeida, and on her own behalf v. Uruguay*, Communication No. 107/1981 (17 September 1981), UN Doc. Supp. No. 40 (A/38/40) at 216 (1983) - paragraph 14.

¹⁶*Godínez Cruz Case*, Compensatory Damages (Art. 63(1) American Convention on Human Rights), Judgment of July 21, 1989, Inter-Am.Ct.H.R. (Ser. C) No. 8 (1990) - paragraphs 48 - 9.

disappeared person him or herself [emphasis added].¹⁷ This “trend” should, in Amnesty International’s view, be strengthened.

The case of Georgiy Gongadze

The whereabouts of 31-year-old Georgiy Gongadze became unknown late in the evening of 16 September 2000 when he failed to return home after leaving a friend’s house in the capital, Kyiv. At the time Georgiy Gongadze was the editor of the Internet newspaper *Ukrayinskaya Pravda* (Ukrainian Truth), which is reportedly one of a few media outlets that have been highly critical of the government and its alleged links with corrupt business groups. On 3 November 2000 a decapitated body believed to be that of missing journalist Georgiy Gongadze was found in a shallow grave in woodland in the Tarashcha Rayon, not far from the capital, Kyiv.

The apparent "disappearance" of Georgiy Gongadze escalated into a fully-blown political scandal when, on 28 November 2000, the leader of the Socialist Party of Ukraine, Olexandr Moroz, accused President Leonid Kuchma of being implicated in the possible "disappearance". Olexandr Moroz claimed to have an audiotape recording in which President Kuchma can reportedly be heard discussing with other senior government officials how to silence Georgiy Gongadze. The audiotape recordings were reportedly made by a 34-year-old former officer of the Ukrainian State Security Service, Mykola Melnychenko, who is said to have surreptitiously digitally recorded around 40-50 hours of conversations involving the President from under a sofa inside the President’s office while working there. Since making his allegations, Mykola Melnychenko has reportedly been charged by the Ukraine’s prosecutor’s office with: abuse of office; divulgence of state secrets; slander of a state official; and forgery and use of forged documents. In mid-April 2001, Mykola Melnychenko reportedly obtained asylum in the USA, which refused to extradite him to Ukraine. Georgiy Gongadze’s 31-year-old wife, Miroslava Gongadze, also obtained asylum in the USA around the same time.

In the light of the seriousness of the allegations against President Kuchma the authenticity of the audiotape recordings became a subject of considerable debate. On 21 December 2000 Ukraine’s parliament, *Verkhovna Rada*, passed a resolution requesting that the Council of Europe carry out an independent investigation into the authenticity of the audiotape recordings. The Vienna-based organization, the Independent Press Institute (IPI), and the US-based organization Freedom House, after attempting to establish the authenticity of the tapes, stated that, although they were unable to completely affirm authenticity, they decided it was highly unlikely that it was possible to manipulate 300 minutes of tape.¹⁸

¹⁷ Nigel Rodley, *The Treatment of Prisoners in International Law*, second edition, Oxford, Oxford University Press 1999 - page 261.

¹⁸ Independent Press Institute Report, 2001, No.1.

Controversy also surrounds the efforts made to establish the identity of the decapitated corpse believed to be that of Georgiy Gongadze. According to the non-governmental organization Reporters without Borders, the results of a medical inquiry published on 11 January 2001, during which 16 different DNA tests were supposedly carried out in Ukraine and Russia, revealed that there was a 99.64 per cent chance that the body belonged to the missing journalist.¹⁹ However, a DNA test conducted in Munich, Germany, in March 2001 contradicted these original findings, finding that muscle tissue supposedly taken from the body was not compatible with a blood sample taken from the mother of Georgiy Gongadze. In contrast, the results of a joint US-Ukrainian DNA test published in May 2001 re-confirmed the identity of the body as Georgiy Gongadze. Georgiy Gongadze's wife, Miroslava Gongadze, and mother have refused permission to bury the body, fearing that its identity has not been correctly established. At the end of May 2001 Ukraine's prosecutor's office reportedly ordered that the body be buried against the wishes of Georgiy Gongadze's family. However, this ruling was reversed at a later date.

The newly appointed Minister of the Interior, Yury Smirnov, created further controversy on 15 May 2001 when he stated that the criminal investigation into the "disappearance" of Georgiy Gongadze had been solved and the case was to be closed. According to the Minister of the Interior, the murder of Georgiy Gongadze had not been politically motivated and had been committed by two criminals, who themselves had been murdered by other criminals at a later date. The men accused of killing Georgiy Gongadze's killers were reportedly being held in police custody. Few people attached much credibility to the statement and the Minister of the Interior himself refuted his earlier statement as "premature" 10 days later on 25 May 2001.

The Prohibition of Torture or Cruel, Inhuman or Degrading Treatment or Punishment

"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation."

Article 7 of the ICCPR

Amnesty International continues to be concerned about allegations of ill-treatment and torture of detainees by police officers, which appear to be relatively widespread. The organization has received a series of reports from victims and Ukrainian human rights organizations alleging ill-treatment and torture of people deprived of their liberty in places of police detention. Reports

¹⁹Reporters sans frontières - *Mutilation of the truth: Inquiry into the murder of journalist Géorgiy Gongadze*, 22 January 2001 - page 11.

received include allegations that police officers have punched, hit and kicked detainees or struck them with other objects. In some instances, police officers have allegedly subjected detainees to various torture techniques, such as ‘elephant’ (‘slonik’) during which police officers place a gas mask over the face of a detainee and block the flow of incoming air, causing near-suffocation. Another torture technique reportedly used by police officers involves handcuffing the detainee’s hands behind his back and hanging the detainee from an elevated point in a room and beating him, causing extreme pain. Victims of torture and ill-treatment have suffered serious injury, sometimes resulting in death (see the case of Sergey Ostapenko below). According to the *International Helsinki Federation Annual Report 2001*: “[t]here were no statistics on the use of torture, but NGOs estimated that there were several thousands of cases each year. The Parliamentary Ombudsman, Nina Karpachova once said that 30 per cent of prisoners were victims of torture.”²⁰ Amnesty International is also concerned about the continuing practice of alleged ill-treatment and torture of young recruits in the Ukrainian army, referred to as hazing or ‘*dedovshchina*’, which in a number of cases has reportedly resulted in death. In other instances, recruits have been driven to suicide or desertion as a result of their violent treatment at the hands of other soldiers and officers.

Ukraine is party to a number of European and international treaties which not only prohibit torture and ill-treatment but require the state to ensure that an independent and impartial investigation is promptly initiated, whenever there is reasonable ground to believe that an act of torture or other cruel, inhuman or degrading treatment has been committed.²¹ The prohibition of torture and the requirement to investigate allegations of torture are also guaranteed in the Ukrainian Constitution and domestic legislation²². However, in recent years Amnesty International has repeatedly expressed concern that, when formal complaints have been lodged and investigations opened in cases of alleged torture or ill-treatment by police officers, they have been slow, frequently lacking in thoroughness and often inconclusive. The impartiality of a significant number of investigations into allegations of torture and ill-treatment has also been questioned. Also individuals who have complained about torture and ill-treatment by police have sometimes been subjected to threats and harassment. Amnesty International considers that one of the most important factors contributing to the continuation of torture and ill-treatment is impunity, whereby perpetrators of human rights violations are exempt from punishment. The organization believes that until the Ukrainian authorities take definite measures to counteract

²⁰*International Helsinki Federation Annual Report 2001* - page 323.

²¹See Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Articles 12 and 13 of the UN Convention against Torture and Other Cruel, Inhuman, Degrading Treatment or Punishment.

²²Article 28 of the Ukrainian Constitution states: "Everyone has the right to respect for his or her dignity. No one shall be subjected to torture, cruel, inhuman or degrading treatment or punishment". See UN Doc. CAT/C/55/Add.1, 17 November 2000 - paragraph 31 and paragraphs 83 - 85.

police impunity and police officers are held accountable, the practice of torture and ill-treatment, examples of which follow below, will continue.

The death of Sergey Ostapenko

Sergey Ostapenko died from gangrene after reportedly being tortured by police officers from the Cherkasy branch of the Directorate Against Organized Crime. The case was the subject of an inquiry by the Special Rapporteur on Torture in October 2000.²³ Sergey Ostapenko died in the prison unit of hospital Number Three in Cherkasy on 10 May 1999. It is reported that he was detained by police officers from the Cherkasy branch of the Directorate Against Organized Crime in early April 1999, who allegedly tortured him during a preliminary interrogation. Relatives, who visited Sergey Ostapenko in prison prior to his death, have stated that he told them that police officers hung him by his handcuffed hands from an elevated point in a room so that his feet did not touch the floor. He alleged that he was left in this painful position for several hours. Sergey Ostapenko's relatives maintain that he developed gangrene after the flow of blood to his hands was stopped as a result of being suspended by his hands.

The relatives of Sergey Ostapenko have also expressed concern about the apparent failure of the prison authorities to provide Sergey Ostapenko with adequate medical care. They have alleged that he was not released from detention because the investigating police officers attempted to conceal the injuries which they had inflicted on Sergey Ostapenko during the preliminary interrogation. As a result, he was not given necessary medical care until the gangrene was in an advanced state. Amnesty International wrote to the Ukrainian authorities in November 1999 urging them to investigate promptly and impartially the alleged torture of Sergey Ostapenko and requesting to be informed of the steps the Ukrainian authorities were intending to take to bring the offending police officers to justice. The organization also requested to be informed of the steps the prison authorities had taken to ensure that Sergey Ostapenko received necessary medical care while in detention. To date the organization has not received a reply.

Subjects of concern of various intergovernmental bodies relating to torture and ill-treatment

Amnesty International has not been alone in expressing concern about alleged torture and ill-treatment in Ukraine and the apparent failure of the Ukrainian authorities to promptly and impartially investigate such allegations. During its consideration of Ukraine's fourth periodic report in 1995 the Human Rights Committee expressed concern that "... torture and ill-treatment of persons committed by members of the police and other security forces continue to be

²³UN Doc. E/CN.4/2001/66, 25 January 2001 - page 220.

reported, particularly to the Public Prosecutor's Office."²⁴ The Human Rights Committee emphasized "... the need for greater control over the police", recommending: "[t]here should be intensive training and educational programmes in the field of human rights aimed at law-enforcement officials. Steps should be taken to strengthen recourse procedures for victims of police abuse and detained persons. Adequate follow-up to reports of such abuse should be ensured by thorough investigations and appropriate penal and administrative sanctions."²⁵ In 1997 the Committee against Torture²⁶ reiterated many of these same concerns during its consideration of Ukraine's third periodic report. It expressed concern "... about the large number of reports by non-government organizations of cases of torture and violence committed by officials during preliminary investigations, causing suffering, bodily injury and, in a number of cases, death."²⁷ The Committee against Torture also expressed concern about the thoroughness and impartiality of investigations into incidents of torture and ill-treatment and holding police officers accountable before the law: "[t]he State party lacks a sufficiently effective system of independent bodies capable of successfully investigating complaints and allegations of the use of torture, preventing and putting an end to torture and ensuring that the perpetrators of such acts are held fully responsible for them."²⁸ It recommended that Ukraine establishes "... a system of independent institutions for rapid and effective follow-up of complaints regarding the use of torture and other degrading treatment or punishment."²⁹

Most recently, in August 2001, the Committee on the Elimination of Racial Discrimination (CERD)³⁰, expressed concern about reports of discriminatory treatment and police brutality against Roma during its consideration of Ukraine's 15th and 16th periodic reports in Geneva. The Committee expressed concern: "... about reports of the continuing discriminatory treatment of Roma and violence against them and their property. The Committee is particularly concerned about reports of police brutality against the Roma population, including arbitrary arrests, and illegal detention. The Committee recommends that the State party take immediate

²⁴UN Doc. A/50/40, 3 October 1995 - paragraph 317.

²⁵*ibid* - paragraph 328.

²⁶The expert body which monitors the implementation of the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment by states parties.

²⁷UN Doc. A/52/44, 1 May 1997 - paragraph 131.

²⁸*ibid* - paragraph 132.

²⁹*ibid* - paragraph 144.

³⁰The body of experts which monitors states parties implementation of their obligations under the International Convention for the Elimination of All Forms of Racial Discrimination.

and effective steps to stop these abuses and that the next report contain information on human rights training for the police, investigations of complaints of abuse and disciplinary and criminal measures taken against those found guilty of committing abuses."³¹ CERD had expressed similar concerns and made similar recommendations in March 1998 during its consideration of Ukraine's 13th and 14th periodic reports.³²

The body of experts which monitors states parties implementation of their obligations under the International Covenant on Economic, Social and Cultural Rights also recently commented on incidents of police ill-treatment and the harassment of ethnic minorities and foreign nationals in Ukraine. During its consideration of Ukraine's fourth periodic report in August 2001 the Committee on Economic, Social and Cultural Rights noted with concern: "... *de facto* discrimination against ethnic minorities, such as the Crimean Tartars, and Roma, and harassment of foreigners of African origin by law enforcement officials."³³ The Committee stated: "[r]ecalling the Code of Conduct for Law Enforcement Officials (General Assembly resolution 34/169), the State party should take all necessary steps to prevent incidents of racially-motivated ill-treatment from occurring, and ensure that timely and thorough investigations and effective precautions are carried out."³⁴

In the period 1998 - 2000 the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) carried out three country visits to Ukraine, inspecting a number of places where people are deprived of their liberty, including prisons, pre-trial detention centres, police stations, military detention centres, vagrant holding centres and airport detention centres. However, Amnesty International is informed that to date the Ukrainian authorities have not consented to the publication of any of the reports relating to its three fact-finding visits. During its visit to Ukraine between 26 - 29 August 2001 the Council of Europe Secretariat Delegation also raised the question of the possible declassification of the CPT's reports "... as a measure which could stimulate further reforms in the field [of penitentiary reform and conditions of detention]."³⁵ According to the CPT report of its mission,

³¹UN Doc. CERD/C/59/Misc.24 Rev.3, 16 August 2001 - paragraph 14.

³²UN Doc. CERD/C/304/Add.48, 30 March 1998 - paragraphs 10 and 16.

³³UN Doc. E/C.12/1/Add.65, 31 August 2001 - paragraph 12.

³⁴*ibid* - paragraph 22.

³⁵Doc. SG/Inf (2001) 27, *Report of the Secretariat's Assistance and Information Mission to Ukraine (26 - 29 August 2001)*, 6 September 2001 - paragraph 79.

published on 6 September 2001, the Secretariat Delegation stated: "[n]o commitment was undertaken on the Ukrainian side to this effect."³⁶

The police ill-treatment of Oleg Cherkashin and his girlfriend

Amnesty International learned about the alleged ill-treatment of two detainees in the town of Zaporizhzhya on 19 February 2000.³⁷ Oleg Cherkashin and his girlfriend, whose name is not known to Amnesty International, reportedly drove to Zaporizhzhya in order to sell home-made produce in the town on 18 February 2000 and remained in the town overnight. On 19 February 2000 they were arrested by police officers on suspicion of car theft and reportedly were taken to Khortitsa police station in Zaporizhzhya. Police officers allegedly ill-treated and threatened Oleg Cherkashin's girlfriend in order to force him to confess to stealing several cars. Oleg Cherkashin has stated that the police officers handcuffed his girlfriend to metal bars in a room where the interrogation took place. During the interrogation the police officers allegedly forced Oleg Cherkashin's girlfriend to strip while they made derogatory sexual comments about her. One police officer allegedly sexually assaulted the woman, violently squeezing her breasts, causing her considerable pain. The police officers are also alleged to have threatened to beat both of the detainees. After Oleg Cherkashin signed a "confession" stating that he had been involved with various car thefts, he and his girlfriend were reportedly held in detention for a further two days. They were thereafter released on the condition that Oleg Cherkashin did not leave his place of residence. The police reportedly confiscated his car and the amount of money he had in his possession at the time of his arrest. Amnesty International wrote to the Ukrainian authorities requesting to be informed of the findings of the investigation into the alleged incident, but has not yet received a response.

Factors contributing to torture and ill-treatment of people deprived of their liberty:

(A) Denial of access to a lawyer

The requirement that people deprived of their liberty should be given immediate access to a lawyer is a provision enshrined in Article 63 (2) of the Ukrainian Constitution and in the Ukrainian Criminal Code.³⁸ The right is also guaranteed in several international human rights standards, including Article 14 (3) of the ICCPR. In the experience of Amnesty International detainees are at the greatest risk of ill-treatment and intimidation in the period immediately

³⁶*ibid* - paragraph 79.

³⁷Information supplied by the Kharkiv Group for Human Rights Protection.

³⁸UN Doc. CCPR/C/UK/99/5, 16 November 2000 - paragraphs 321 - 322.

following deprivation of liberty. Access by people, who have been deprived of their liberty, to a lawyer during this period may serve as an important safeguard against torture and ill-treatment. The presence of a lawyer is particularly important in the context of interrogation, during which a detainee may be subjected to verbal and physical pressure by police officers. Immediate access by a detainee to a lawyer also allows the detainee access to the assistance and advice they need immediately after detention, such as to determine whether their rights have been infringed and to seek remedial action.

Both the Human Rights Committee and the Committee against Torture have previously expressed concern about reports that detainees have been denied access to counsel in Ukraine. During its last consideration of Ukraine's implementation of its obligations under the ICCPR in October 1995 the Human Rights Committee stated that "... denial of access to legal counsel and long periods of pre-trial detention are matters of great concern."³⁹ During its consideration of Ukraine's implementation of its obligations under the Convention against Torture in May 1997 the Committee against Torture also stated: "[a] major obstacle in efforts to prevent torture is the difficulty experienced by accused persons in gaining access to a lawyer of their choice in cases where the lawyer's participation in the proceedings depends on his presentation of an authorization to act as defence counsel; this problem can be solved only by the Ministry of Justice which issues such authorizations."⁴⁰ The Committee against Torture recommended that "... interrogation of any person detained or arrested without the participation of defence counsel or when the person is being held incommunicado should be prohibited by law."⁴¹

The International Helsinki Federation stated in its *Annual Report 2000*: "As a rule relatives and the lawyers of the apprehended persons were informed about the detention only after the arrestee had been transferred from temporary cells to a pre-trial investigation facility. This fact contributed to arbitrary abuse. The Ukrainian Committee Helsinki - 90 received regularly information about cases where detainees held in temporary cells had not been allowed to see a legal counsel for two weeks."⁴² This - among other concerns - has also been shared by the US Department of State, which stated: "[t]he Constitution requires immediate notification of family members concerning an arrest, but this action often is not taken in practice ... The law stipulates that a defence attorney be provided without charge to the indigent from the moment of detention or the filing of charges, whichever comes first. There are insufficient numbers of defence attorneys to protect suspects from unlawful, lengthy imprisonment under extremely poor

³⁹UN Doc. A/50/40, 3 October 1995 - paragraph 317.

⁴⁰UN Doc. A/52/44, 1 May 1997 - paragraph 138.

⁴¹*ibid* - paragraph 146.

⁴²*International Helsinki Federation Annual Report 2001* - page 324.

conditions. Although the concept of providing attorneys from the state system exists in principle, public attorneys often refuse to defend indigents for the low government fee.¹⁴³

The Ukrainian human rights organization, the Kharkiv Group for Human Rights Protection, brought a number of reports of human rights violations to the attention of Amnesty International in the period 1998 - 2000. Amnesty International subsequently wrote to the Ukrainian authorities, expressing concern about the allegations and requesting to be informed of the findings of any investigations into the incidents of alleged torture and ill-treatment. In the following cases detainees were reportedly not given prompt access to a lawyer:

Alleged torture in the Donetsk region

The Kharkiv Group for Human Rights Protection informed Amnesty International that it had written to both the Ukrainian Prosecutor General, Mykhaylo Potebenko, and the Human Rights Ombudsperson, Nina Karpachova, about a series of cases of torture, allegedly committed in the Donetsk region of Ukraine in the period 1998 to 2000. An Azerbaijani national, Guseynov Sarvar Musa-Ogly, was reportedly tortured by police officers while being held in custody in Artemovsk in February 1999. Guseynov Sarvar Musa-Ogly has alleged that he was beaten by the investigating police officers to the degree that he lost consciousness. In contravention of international human rights standards he was also allegedly not permitted access to a lawyer while in detention. Guseynov Sarvar Musa-Ogly has stated that after regaining consciousness he was subjected to the 'slonik' or 'elephant' torture method, whereby a gas mask was placed over his head and the air supply was blocked, causing him to slowly start to suffocate. Guseynov Sarvar Musa-Ogly alleged that, after he lost consciousness several times, the police officers placed a written "confession" before him to sign, which he did. Amnesty International wrote to the Prosecutor General in August 2000, calling for an investigation into Guseynov Sarvar Musa-Ogly's allegation that he signed a confession as a result of torture and requesting to be informed of its findings. The organization has not yet received a reply.

A further case of alleged torture, highlighted by the Kharkiv Group for Human Rights Protection, related to Anatoly Voskoboinikov. It is alleged that on 3 November 1998 Anatoly Voskoboinikov was forced to sign a confession at the Ministry of the Interior in Enakievo, after he had been subjected to torture, that he had stolen a motor vehicle. Anatoly Voskoboinikov stated that an investigating police officer handcuffed his wrists under his knees. A length of wood was reportedly slotted in between his arms and chest, after which he was lifted up by the length of wood by several police officers and hung between two tables. The police officers allegedly then punched and kicked Anatoly Voskoboinikov while he was painfully suspended in this state. One of the police officers is alleged to have repeatedly punched him using a boxing

⁴³US Department of State, *Country Reports on Human Rights Practices 2000: Ukraine* - page 4.

glove. Amnesty International wrote to the authorities in August 2000, requesting to be informed whether an investigation had been initiated into Anatoly Voskoboinikov's alleged torture and forced confession and to be informed of any findings and, in particular, whether any of the accused police officers had been brought to justice. The organization has not yet received a reply.

The cases, referred to above, also cause Amnesty International to be concerned that detainees are subjected to torture and ill-treatment in order to elicit a "confession". It is important to note that under various international human rights standards no one who is charged with a criminal offence may be compelled to confess guilt or testify against themselves, including Article 14 (3) (g) of the ICCPR and Article 15 of the Convention against Torture.

(B) Refusal to inform family members of arrest

In a number of the cases which have come to the attention of Amnesty International detainees and arrested persons were allegedly not only refused access to legal counsel but also to inform family members of their arrest. Experience shows that access to the outside world is an essential safeguard against human rights violations and vital to the process of obtaining a fair trial. The following case of the journalist, Ruslan Antonik, who was allegedly not allowed to inform anyone of his arrest for five days and was refused access to a lawyer for nearly six days during his detention, underscores the imperativeness of these rights.

The case of Ruslan Antonik

Ruslan Antonik was reportedly arrested on the evening of 19 May 2000 in Pechersky Park in Kyiv. He had reportedly gone to the park after finishing work at the People's Television of Ukraine, where he was the television station's editor. Police officers from the Pechersky department of police in Kyiv arrested him and charged him with the murder of a businessman.

Ruslan Antonik's colleagues at People's Television of Ukraine were reportedly only informed of his arrest by the prosecutor's office at around 10 pm on 24 May, some five days after his arrest, and he was not given access to a lawyer until 25 May, nearly six days after his arrest. Between 20 and 25 May Ruslan Antonik was repeatedly interrogated by police officers while in detention at the Pechersky department of police. It is reported that considerable psychological pressure was applied to him during this period to sign a "confession" of guilt at a time when he had no access to a lawyer, and his family and colleagues did not know of his detention.

Reports also indicated that Ruslan Antonik was severely beaten by other detainees sharing the same cell, resulting in his eventual hospitalization. The ill-treatment reportedly continued over a period of several days and police officers did not appear to intervene in order

to prevent the beatings. Ruslan Antonik was hospitalized on 25 May 2000 at the behest of his lawyer, suffering from a fractured nose, severe concussion and multiple bruising. Ruslan Antonik's previous requests for medical help had allegedly been refused by the police officers at the Pechersky department of police. A doctor also reportedly diagnosed Ruslan Antonik as suffering from hyper-tension requiring the attention of a neurologist. Amnesty International expressed concern both that police officers allegedly did not prevent Ruslan Antonik's ill-treatment by other detainees despite his requests and that he did not appear to receive medical treatment until he was given access to a lawyer, who intervened on his behalf.⁴⁴

Amnesty International was advised that the arrest of Ruslan Antonik may have been related to his journalist activities. Prior to being arrested he is said to have received a series of anonymous threats after making a number of critical documentary films in April and May 2000, reportedly highlighting alleged corruption of Ukraine's national trade union structures and their indifference to the plight of ordinary wage-earners and the economic problems in the Ukraine. Amnesty International was informed that the anonymous threats commenced shortly after the critical documentary films were broadcast. In August 2000 Amnesty International called on the Prosecutor General to take immediate steps to investigate the allegation, which was documented in the Ukrainian media, that the arrest of Ruslan Antonik may have been related to his journalist activities.⁴⁵ Ruslan Antonik was convicted of murder on 28 December 2000 and sentenced to 13 years' imprisonment. His conviction reportedly resulted in the setting-up of a public committee for the protection of journalists in Ruslan Antonik's home town of Drohobych, which aims to overturn his conviction.

'Dedovshchina' - the alleged torture and ill-treatment of recruits in the Ukrainian army

Amnesty International is concerned that the violent abuse, torture and ill-treatment of conscripted soldiers in the Ukrainian army continues to be widespread. Officers of the armed forces continue to tolerate, permit, and sometimes participate in '*dedovshchina*', the violent and cruel hazing of young recruits, which includes beatings, torture, murder and suicide. In Ukraine conscription is compulsory and recruits normally are obliged to serve for a period of 18 months. New recruits have frequently complained of their torture and ill-treatment by longer serving

⁴⁴In this respect it is relevant to note provision 25 (1) of the United Nations Standard Minimum Rules for the Treatment of Prisoners, which states: "The medical officer shall have the care of the physical and the mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed".

⁴⁵Amnesty International has yet to receive a response from the Prosecutor General's Office.

soldiers, especially in the initial period after entering the army. Amnesty International is also informed that longer serving soldiers have taken money from the pay of the new recruits, forced them to hand over any valuables they possessed and beaten them if they showed any resistance. New recruits are also forced to perform menial tasks, sometimes outside their official duties, while longer serving soldiers look on.

Torture and ill-treatment have resulted in serious injuries and in some cases, death. According to the *US Department of State Country Reports on Human Rights Practices* there were around 800 cases of injury in 1997 which resulted from the use of force against recruits, resulting in five deaths and 44 permanently crippling injuries. Between 10 and 12 recruits reportedly died as a direct result of being beaten in 1998 and it is believed that between 20 and 30 men died as an indirect result of their injuries.⁴⁶ The 2000 Report stated: "[p]unishment for committing or condoning such activities did not serve as an effective deterrent to the further practice of such abuses."⁴⁷ Each year a significant number of recruits are reportedly driven to commit suicide as a result of their violent treatment at the hands of other soldiers and officers. Amnesty International is concerned that hazing is an institutionalized practice, since not only do soldiers, who themselves were subjected to hazing, subject new recruits and their physically weaker colleagues to various forms of ill-treatment in the course of their military service, but also the pervasiveness of the practice suggests that officers tolerate the hazing of new and physically weaker recruits.

Amnesty International is also concerned about reports that recruits who have deserted from the army in order to escape hazing by other soldiers may subsequently be sentenced to periods in prison of up to five and seven years respectively, for desertion under Articles 240 and 241 of the Ukrainian Criminal Code. The Kharkiv Union of Soldiers' Mothers has stated that in the period May 1998 - September 1999 18 recruits, who had deserted from their units, turned to the organization for help.⁴⁸ The organization has claimed that 16 of these 18 recruits stated that they deserted because they had been subjected to hazing. In one instance a recruit, referred to only as A. by the union, who had deserted from his unit in Simferopol, returned to his home in Kharkiv and appealed to a local military prosecutor's office, stating he had been a victim of hazing in his unit. Two other recruits reportedly had previously deserted from the same unit as a result of their violent treatment. After being medically examined by doctors, evidence of beatings and cigarette burns was found on A's body. Although the military prosecutor's office

⁴⁶*US Department of State Country Reports on Human Rights Practices 1999: Ukraine*, February 2000 - page 4.

⁴⁷*US Department of State Country Reports on Human Rights Practices 2000: Ukraine*, February 2001 - page 3.

⁴⁸Information supplied by the Kharkiv Group for Human Rights Protection.

reportedly acknowledged that the recruit had voluntarily turned to them and there existed a medical report supporting the recruit's allegations of having been subjected to violent physical abuse, the military prosecutor's office in Simferopol reportedly refused to consider the evidence and put pressure on the recruit to withdraw the allegations. In desperation, the recruit reportedly deserted again shortly afterwards.

In another case a recruit, referred to as Private Gula by the Kharkiv Union of Soldiers' Mothers, who deserted from his unit in Zhytomyr was sentenced to three years in a 'disciplinary battalion' under Article 240 of the Ukrainian Criminal Code.⁴⁹ The recruit, who reportedly suffered from mental health problems, had alleged that he became an object of ridicule in his unit and was subjected to various forms of ill-treatment by other recruits. His family have stated that, prior to his desertion, they received letters from him describing his ill-treatment. After returning to his home in Kharkiv oblast (region) a medical examination confirmed that he was suffering from mental health problems. However, during his trial by a military court in Zhytomyr Private Gula was reportedly not represented by a lawyer, his family members were not summoned to give evidence and the medical report confirming his mental health difficulties was reportedly not taken into consideration. The Kharkiv Union of Soldiers' Mothers has stated that only after they repeatedly contacted the commanding officer of the disciplinary battalion, highlighting Private Gula's mental health problems and his alleged ill-treatment in his previous unit, was he transferred to the psychiatric department of Kyiv military hospital. Doctors at the hospital subsequently considered him unfit for military service and the court's sentence was reportedly overturned.

Under Article 7 of the ICCPR, as well as under other European and international treaties which prohibit torture, the Ukrainian authorities are obliged to prevent the ill-treatment and torture of recruits. During its consideration of Ukraine's third periodic report in May 1997 the Committee against Torture considered "... that the systematic mistreatment and beating of recruits in the armed forces constitutes a flagrant violation of the Convention [against Torture]."⁵⁰ The Parliamentary Assembly of the Council of Europe has also condemned the practice of hazing in the armies of its member states. Paragraph 8 of Recommendation 1380 (1998), *Human Rights of Conscripts* states: "[t]he Assembly notes that there are, unfortunately, situations and practices within the armed forces of certain member states which contravene the European Convention on Human Rights ... Cruel treatment of new conscripts by older servicemen in violation of the military code, such as cases of *dedovshchina* in Russia, also poses a serious problem. The Assembly urgently requests the states concerned to take the necessary measures to change these situations and practices without delay". Amnesty International

⁴⁹Disciplinary battalions are special military prisons with very strict regimes.

⁵⁰UN Doc. A/52/44, 1 May 1997 - paragraph 136.

continued to call on the Ukrainian authorities to put an end to the cruel, inhuman and degrading practice of hazing or ‘*dedovshchina*’ in the Ukrainian armed forces.

The Right of All Persons Deprived of their Liberty to Humane Treatment

"All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."

Article 10(1) of the ICCPR

Ukraine’s fifth periodic report to the Human Rights Committee outlines a series of legal safeguards for the humane and dignified treatment of detainees and prisoners in places of detention and prisons. In particular, the report highlights various domestic and international human rights standards which regulate the treatment of persons deprived of their liberty in Ukraine, including the Ukrainian Constitution, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and the European Prison Rules.⁵¹ However, Amnesty International considers that a wide gap between law and reality still exists.

Amnesty International has repeatedly expressed concern that conditions in many prisons and pre-trial detention centres fall below international minimum standards and amount to cruel, inhuman or degrading treatment. Reports received by Amnesty International indicate that people deprived of their liberty are poorly fed, receive inadequate medical care and are housed in poorly heated and ventilated conditions, often in overcrowded cells. As a result of their poor diet, lack of medical provision and substandard conditions of detention, disease and illness among prisoners is reported to be widespread.

Moreover, long delays in the administration of justice have also resulted in unconvicted persons spending prolonged periods of time in pre-trial detention. In its *2000 Country Report on Human Rights Practices* the US Department of State echoed many of Amnesty International’s concerns, stating: "[t]here was no improvement during the year in prison conditions, which are harsh, life-threatening, and do not meet international minimum standards. Prison officials intimidated and mistreated inmates. Due in part to the severe economic crisis, prisons and detention centres were severely overcrowded and lacked adequate sanitation and medical facilities."⁵² Conditions in pre-trial detention facilities were little better, routinely failing "... to meet minimum international standards. Inmates were sometimes held in investigative isolation

⁵¹UN Doc. CCPR/C/UKR/99/5, 16 November 2000 - paragraphs 224, 226 and 245.

⁵²*US Department of State, Country Reports on Human Rights Practices 2000: Ukraine*, February 2001
- page 4.

for extended periods and subjected to intimidation and mistreatment by jail guards and other inmates. Overcrowding is common in these centres."⁵³

The Human Rights Committee and the Committee against Torture have expressed similar concerns in the past. In 1995 the Human Rights Committee expressed concern "... at the conditions in places of detention, whether in prisons or curative labour establishments, which do not comply with article 10 of the Covenant or other international standards. Prison overcrowding is a further matter of concern to the Committee."⁵⁴ The Committee recommended that prison conditions be brought into compliance with Article 10 of the ICCPR and with the UN Standard Minimum Rules for the Treatment of Prisoners.⁵⁵ In May 1997 the Committee against Torture also stated that: "[t]he conditions prevailing in premises used for holding persons in custody and in prisons may be described as inhuman and degrading, causing suffering and the impairment of health."⁵⁶ It considered that "... a radical reform of correctional institutions, such as colonies and prisons, and places of pre-trial detention is essential to ensure full compliance with the provisions of the Convention."⁵⁷

Far-reaching reform of Ukraine's prison system has also been urged by the Council of Europe, as Ukraine's fifth periodic report to the Human Rights Committee acknowledges: "[i]n 1996, experts from the Council of Europe carried out a study of the correctional labour legislation of Ukraine and the manner in which it is applied in 22 institutions of the penal enforcement system in 8 Ukrainian oblasts. On the basis of the results, a report entitled 'Assessment of the prison system of Ukraine' was prepared and published in January 1997; it contained recommendations for bringing the system into line with all-European standards which it has agreed to meet."⁵⁸ The 1997 report, *Assessment of the Ukrainian Prison System*, was commissioned and authored by the Joint Programme between the Commission of the European Communities and the Council of Europe for legal system reform, local government reform and the transformation of the law enforcement system in Ukraine. It contained a significant number of recommendations to reform Ukraine's prison system. Its recommendations included: the demilitarization of the prison system including its transfer to the Ministry of Justice and the severance of organizational and operational links with the military and police services; the

⁵³*ibid* - page 4.

⁵⁴UN Doc. A/50/40, 3 October 1995 - paragraph 318.

⁵⁵*ibid* - paragraph 328.

⁵⁶UN Doc. A/52/44, 1 May 1997 - paragraph 137.

⁵⁷*ibid* - paragraph 149.

⁵⁸UN Doc. CCPR/C/UKR/99/5, 16 November 2000 - paragraph 238.

creation of an independent prison inspectorate; improvements in medical provision; changes to the training and recruitment of staff; changes to the prisoner allocation system; and measures to reduce the prison population including early release and the increased use of non-custodial sanctions. The report also recommended changes to conditions of solitary confinement; to the treatment of prisoners on death row; improvements in sanitation; and urged that greater opportunities be made available to prisoners with regard to exercise and recreational pursuits as well as work and vocational training and education.⁵⁹

The initial visit and subsequent report of the Council of Europe also resulted in the creation of a steering committee to reform the prison system, comprised of international experts and Ukrainian officials, who selected five main areas for reform. These priority areas included the reform of organizational structure; selection and training of staff; classification and placing of convicted persons; organization of carrying out long-term punishment and related prisons. However, according to the Council of Europe report, *Honouring of obligations and commitments by Ukraine*, at the end of 1998 little progress had been made in carrying out reform in these priority areas.⁶⁰ As recently as April 2000 the Parliamentary Assembly of the Council of Europe questioned the extent to which the essential task of demilitarizing the prison system in Ukraine had progressed, stating: "[u]pon accession to the Council of Europe, Ukraine had committed itself to transfer the prison administration to the Ministry of Justice before the end of 1998. This has still not been done."⁶¹

The Right to Freedom of Thought, Conscience and Religion

"Everyone shall have the right to freedom of thought, conscience and religion."

Article 18(1) of the ICCPR

The right to conscientious objection is also a basic component of the right to freedom of thought, conscience and religion. It has been recognized as such in resolutions and recommendations adopted by the United Nations Commission on Human Rights, the Human Rights Committee,

⁵⁹For a summary of the recommendations see Doc. JOINT PROGR. Proj. UKR V.B.4 (97) 1, Joint Programme between the Commission of the European Communities and the Council of Europe for legal system reform, local government reform and the transformation of the law enforcement system in Ukraine: *Assessment of the Ukrainian Prison System*, January 1997 - pages 79 - 92.

⁶⁰Doc. 8272, *Honouring of obligations and commitments by the Ukraine*, Parliamentary Assembly of the Council of Europe, 2 December 1998 - paragraph 83.

⁶¹Doc. 9030, *Honouring of obligations and commitments by the Ukraine*, Parliamentary Assembly of the Council of Europe, 9 April 2001 - paragraph 54.

the Council of Europe and the European Parliament.⁶² However, Amnesty International has repeatedly expressed concern about the restricted nature and prolonged length of the alternative civilian service to military conscription in Ukraine.

The right of a person to object to military service on the basis of his religious beliefs is enshrined both in the Ukrainian Constitution and legislation. Article 35(3) of the Ukrainian Constitution, adopted in 1996, provides for civilian alternative to military service on the basis of religious beliefs: "[i]f performance of military service is contrary to the religious beliefs of a citizen, the performance of this duty shall be substituted by alternative (non-military) duty." A Law on Alternative Non-Military Service, which was introduced in February 1992, granted citizens of Ukraine the right to alternative civilian service in fulfilment of compulsory military service to individuals who had genuine religious beliefs which did not allow them to use arms and serve in the military forces and belonged to religious organizations registered with the authorities.

Amnesty International was concerned that the 1992 Law on Alternative Non-Military Service extended only to those who object to military service on religious grounds. Neither the Ukrainian Constitution nor the 1992 Law on Alternative Non-Military Service mention other beliefs, ethical or political convictions as a reason for objection to military service. In addition, according to reports, followers of religious faiths which were not registered officially by the authorities were denied the right to alternative civilian service on the grounds of their religious beliefs. Amnesty International also expressed concern about the punitive nature of the alternative civilian service to military conscription. From 1992 to 1999 alternative civilian service in Ukraine lasted 36 months and was twice as long as military service. In addition, at this time the duration of military service for people with a university degree was only 12 months, making the prolonged duration of military service even more punitive.

According to Ukraine's fifth periodic report to the Human Rights Committee, a new version of the 1992 Law on Alternative Non-Military Service was introduced in February 1999, reducing the duration of alternative civilian service to two years.⁶³ Although the alternative civilian service is shorter in length, it still remains punitive in length.

The case of Andrij Tvardijevych

An 18-year-old conscientious objector, Andrij Tvardijevych, was sentenced to a suspended one-year prison sentence and fined 530 Hrivnas on 12 July 2000 for refusing to serve in the Ukrainian army for reasons of conscience. The criminal case against the Kyiv resident Andrij

⁶²See the special Amnesty International report on conscientious objection, *Out of the margins: The right to conscientious objection to military service in Europe*, April 1997, AI Index: EUR 01/02/97.

⁶³UN Doc. CCPR/C/UKR/99/5, 16 November 2000 - paragraph 456.

Tvardijevych was initiated on the basis of Article 72 of the Ukrainian Criminal Code, which states: "Evasion of conscription to ordinary military service is punishable with up to three years' imprisonment." Andrij Tvardijevych had reportedly objected to performing military service on grounds of conscience but due to the restricted definition of conscientious objection in Ukraine he did not qualify for alternative civilian service. While Amnesty International welcomed the decision of the Ukrainian authorities not to imprison Andrij Tvardijevych, the organization expressed concern that Andrij Tvardijevych was tried and convicted for exercising his conscientiously-held beliefs. Amnesty International is concerned that other conscientious objectors may still face imprisonment as a result of the existing legislation relating to the right to perform a civilian alternative to military service in Ukraine. According to the International Helsinki Federation, as of early 2001 several cases - similar to that of Andrij Tvardijevych - were pending in the courts, while numerous other cases were under investigation by the Prosecutor's Office.⁶⁴

The Right to Freedom of Expression

"Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any media of his choice."

Article 19(2) of the ICCPR

The right to freedom of expression in Ukraine is guaranteed both domestically, by Article 34 (1) of the Ukrainian Constitution, and by international treaties which Ukraine has ratified and is therefore legally bound to observe. However, Ukraine has frequently faced both domestic and international criticism for violation of these rights, particularly with regard to lack of press freedom in the country. Various regional governmental bodies and international non-governmental organizations which defend and promote press freedom, including the Parliamentary Assembly of the Council of Europe, the OSCE Representative on Freedom of the Media, the Committee to Protect Journalists and Reporters without Borders have been particularly critical of the authorities for stifling press freedom in Ukraine.

In late November 2000 the parliamentary Human Rights Ombudsperson of Ukraine, Nina Karpachova, in a report about human rights protection reportedly outlined a number of ways by which press freedom is curtailed in the country. In a plenary meeting of Ukraine's parliament, *Verkhovna Rada*, she was quoted as stating: "... the policy of suppressing free speech and free opinion is used in everyday life" and "... as the monitoring of human rights

⁶⁴*International Helsinki Federation Annual Report 2001* - page 326.

protection in Ukraine shows, the authorities and their officials are increasingly using legal forms of pressure, like targeting checks by tax, fiscal, law enforcement, fire control and health and sanitary agencies [against newspapers]. They also use libel cases in courts against freedom of speech, alternative publications and journalists."⁶⁵ Amnesty International shares many of these concerns, which have been similarly expressed by the Parliamentary Assembly of the Council of Europe as well as other non-governmental organizations.⁶⁶

The alleged harassment, intimidation and ill-treatment of journalists

Press freedom in Ukraine has been curtailed through overt forms of harassment and intimidation - in addition to the 'legal forms of pressure', referred to above. In addition to the possible "disappearance" of the editor of *Ukrayinskaya Pravda*, Georgiy Gongadze (see section of this report, entitled 'The possible "disappearance" of Georgiy Gongadze', on page 4), there have been a number of reports of journalists being attacked by unknown assailants. According to the *US Department of State Country Reports on Human Rights Practices 2000*: "[m]embers of the press were hurt in violent incidents throughout the year [2000]. In July Anatoliy Zhuchynsky, a reporter for the Vinnytsia newspaper 33 Chanel, was assaulted outside his home. He linked the attack to his political reporting. In August two men assaulted Valentyna Vasylychenko, a reporter from the Cherkassy newspaper Antenna, in the stairway outside her apartment. She attributed the attack to coverage of criminal groups. In September Nikolay Severin, an editor of the independent paper in Lugansk, was attacked by brick-wielding assailants outside his home. He blamed the assault on his critical reporting."⁶⁷ In 1999 the US Department of State documented attacks on members of the press in Lviv in February, Kyiv in March and in Odessa in June.⁶⁸

In the March 2000 report, *Current Situation of Media in Ukraine*, the OSCE Representative on Freedom of the Media, Freimut Duve, documented a number of attacks against journalists, stating: "[i]n recent years, many journalists have been subjected to physical threats and criminal prosecution. Forty journalists have died in tragic circumstances over the past

⁶⁵UNIAN news agency 28 November 2000.

⁶⁶See Resolution 1244 (2001), *Honouring of obligations and commitments by Ukraine*, adopted by the Parliamentary Assembly to the Council of Europe on 26 April 2001 and past country reports on Ukraine by the Committee to Protect Journalists and Reporters without Borders.

⁶⁷*US Department of State, Country Reports on Human Rights Practices 2000: Ukraine*, February 2001
- page 3.

⁶⁸*ibid* - page 4.

years in Ukraine.⁶⁹ Most recently, the head of the *TOR* television station in Slavyansk, Igor Alexandrov, was beaten by unknown assailants wielding baseball bats as he arrived at work on 3 July 2001. He died of injuries to his head four days later on 7 July. According to the Committee to Protect Journalists, colleagues of the deceased journalist believe that "... the murder was connected to his television program, "Bez Retushi," ("Without Censorship") which featured investigative coverage of government corruption and organized crime. The program often criticized Slavyansk municipal authorities."⁷⁰ Shortly afterwards, the Committee to Protect Journalists expressed concern about an attack by unknown assailants on the head of the *Avers* media company, Oleg Velichko, outside his home in the city of Lutsk on 11 July 2001.⁷¹ His colleagues have reportedly stated that the attack may have been related to *Avers* TV's critical reportage of a range of local authorities, including the local police, government officials as well as business and criminal groups. Amnesty International is informed that few incidents of assaults against journalists have ever been solved by the Ukrainian police. According to one report, the National Union of Journalists of Ukraine has called for a public commission to look into the circumstances of the deaths of 24 journalists.⁷²

In the light of acts of violence being committed against journalists, most notably the possible "disappearance" of Georgiy Gongadze, the Parliamentary Assembly of the Council of Europe stated in April 2001 that it was concerned "... by the murders of journalists, repeated aggression and continuing intimidation of journalists ... and the frequent and serious abuses of power by the Ukrainian executive authorities in respect of freedom of expression and assembly."⁷³ It urged the Ukrainian authorities, notably President Leonid Kuchma, "... to put an end to the practice of intimidation and repression of opposition politicians and the independent press, and to take all necessary measures to discourage and curb attacks and threats against journalists and other media representatives".⁷⁴

⁶⁹Current Situation of Media, March 2000 - page 9.

⁷⁰CPJ protest letter 10 July 2001.

⁷¹CPJ 2001 news alert, 17 July 2001.

⁷²Doc. SG/Inf (2001) 27, *Report of the Secretariat's Assistance and Information Mission to Ukraine* (26 - 29 August 2001), 6 September 2001 - paragraph 95.

⁷³Resolution 1244 (2001), *Honouring of obligations and commitments by Ukraine*, adopted by the Parliamentary Assembly of the Council of Europe on 26 April 2001 - paragraph 4.

⁷⁴*ibid* - paragraph 5.

Journalists: threats/convictions of criminal libel

The Parliamentary Assembly of the Council of Europe has also adopted several resolutions, urging the Ukrainian authorities to put an end to the practice of subjecting journalists to charges of criminal libel and threats thereof. In January 2001 it called on the Ukrainian authorities to adopt "... without any further delay of amendments to the legislation concerning fines or damages for libel and decriminalization of libel".⁷⁵ It repeated its recommendation in April 2001.⁷⁶ According to the report of the mission of the Council of Europe Secretariat Delegation to Ukraine, the law of libel was decriminalized with the introduction of the new Criminal Code on 1 September 2001.⁷⁷ However, as was stated previously, the new Criminal Code has not been examined by Council of Europe experts as to its conformity with the organization's standards.⁷⁸ In the recent past Amnesty International has also repeatedly expressed concern about the use of criminal libel to curb legitimate exercise of the right to freedom of expression in Ukraine. Journalists convicted of libel under Articles 125 of the Ukrainian Criminal Code faced possible imprisonment of up to three years. Alternatively, newspaper editors faced fines, to which there was reportedly no limit, which resulted in the closure of a number of newspapers. The overwhelming majority of criminal libel cases against journalists was reportedly initiated by state officials. The conviction of the newspaper editor, Oleg Lyashko, as recently as June 2001, is an illustrative example of how the criminal code has been used to stifle press freedom in Ukraine:

The conviction of editor Oleg Lyashko

Journalist Oleg Lyashko was convicted of criminal libel on 7 June 2001 and banned from practising as a journalist for two years. Amnesty International considers that the conviction for criminal libel under Article 125 of the Ukrainian Criminal Code and the professional ban violated his right to freedom of expression.

Minsk District Court in Kyiv convicted 28-year-old Oleg Lyashko, the former editor of the now defunct newspaper, *Polityka*, on 7 June 2001 after a protracted trial. Although the criminal case against Oleg Lyashko was originally filed in July 1997, he was reportedly not

⁷⁵Resolution 1239 (2001), *Freedom of expression and the functioning of parliamentary democracy in Ukraine*, adopted by the Parliamentary Assembly of the Council of Europe on 26 January 2001 - paragraph 5.

⁷⁶Resolution 1244 (2001), *Honouring of obligations and commitments by Ukraine*, adopted by the Parliamentary Assembly of the Council of Europe on 26 April 2001 - paragraph 5.

⁷⁷Doc. SG/Inf (2001) 27, *Report of the Secretariat's Assistance and Information Mission to Ukraine* (26 - 29 August 2001), 6 September 2001 - paragraph 98.

⁷⁸*ibid* - paragraph 40.

formally charged until June 1998, almost a year later. He was accused of libelling two prominent government officials, the then acting Prime Minister, Vasyl Durdynets, and the head of the Ministry of the Interior of Odessa oblast (region), Ivan Hryhorenko. Oleg Lyashko was reportedly accused of having libelled the officials in three newspaper articles which were published in *Polityka* in June 1997, alleging that Vasyl Durdynets and Ivan Hryhorenko were involved in corrupt business practices.

The criminal libel case was instituted against Oleg Lyashko under Article 125 (2) of the Criminal Code of Ukraine, of which he was acquitted by Judge Mykola Zamkovenko at Pechersk District Court in Kyiv on 23 December 1999. The court reportedly ruled that there was no evidence that a crime had been committed and that the preliminary investigation had been biased. However, in November 2000 Kyiv City Court overruled Oleg Lyashko's acquittal, sending the case to Minsk District Court for retrial. On retrial, he was convicted of libel, sentenced to a two-year suspended prison sentence and banned from working as a journalist for a period of two years. Amnesty International is informed that Oleg Lyashko intends to appeal against the conviction and the two-year professional prohibition. Oleg Lyashko, who is now the editor of the newspaper, *Svoboda*, has previously been an object of attention for the Ukrainian authorities. According to a *US Department of State Country Report on Human Rights Practices*, in recent years government officials have initiated more than 20 criminal and civil libel cases against Oleg Lyashko, claiming damages of more than 40 million dollars.⁷⁹

Amnesty International is informed that a number of other journalists have in the past similarly been barred from practising their profession as a result of convictions of criminal libel. Most notably, the head of the *TOR* television station in Slavyansk, Igor Alexandrov, who was beaten to death by unknown assailants on 3 July 2001, had been barred from working as a journalist for five years and given a suspended two-year prison sentence in 1998 after being convicted of libelling a state official.

In December 1999 the Office of the OSCE Representative on Freedom of the Media, Freimut Duve, staged a roundtable discussion on the issue of libel in Kyiv. According to the OSCE Representative: "[t]his roundtable was based on our assessment that the abuse of libel suits by politicians of all political groupings is a serious obstacle to free media and independent journalism."⁸⁰

⁷⁹US Department of State, *Country Reports on Human Rights Practices 1999: Ukraine*, February 2000 - page 11.

⁸⁰OSCE Representative on Freedom of the Media, Freimut Duve, *Report to the Permanent Council*, 30 March 2000.

Oleg Lyashko has certainly not been the only journalist to face charges of criminal libel in recent years. In January 1999 charges of criminal libel were reportedly brought against the editor of the newspaper, *Pravda Ukrainy*, who was later arrested in September 1999. The editor of the newspaper, *Rio*, based in the town of Uzhhorod, was reportedly detained for two days on 25 February 1999, on suspicion of criminal libel, relating to unprinted allegations that members of the *Verkhovna Rada* had abused their positions. Amnesty International is informed that in September 1999 an investigation on suspicion of criminal libel was initiated against a regional newspaper, *Pravilny Vybor*, following the publication of a report critical of the government. In August 1998 criminal investigations were reportedly launched under Article 125 of the Ukrainian Criminal Code into the newspapers *My* and *Dneprovskaya Pravda*, and in December 1998 against the newspaper *Zerkalo Nedeli* after the publication of a satirical pamphlet. However, the criminal investigations against *Dneprovskaya Pravda* and *Zerkalo Nedeli* were reportedly later terminated. In relation to the use of charges of criminal libel in Ukraine, the *US Department of State Country Report on Human Rights Practices 2000* stated:

"According to Ministry of Justice statistics, 123 persons were convicted in 1998 for criminal libel. Of these seven cases resulted in prison sentences. According to the Union of Journalists of Ukraine, journalists lose two of every three cases against them in the courts. In 1999 approximately 2,250 libel cases were filed. Exact figures for this year are not available; however, media analysts expect a similar number of cases for the year. Journalists complain that because the law does not limit damages, it can be used to drive opposition newspapers out of business."⁸¹

The non-governmental organization, Committee to Protect Journalists, which promotes and defends press freedom internationally, was reportedly also threatened with criminal libel in 1999, after it included President Kuchma in its 1999 list of "the world's 10 worst enemies of the press", although no criminal prosecution was actually initiated.

Amnesty International considers that the use of the criminal code to curb the legitimate exercise of the right to freedom of expression violates the government's international human rights obligations. Both Article 19 of the ICCPR and Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms guarantee the right to freedom of expression. Both also acknowledge that the exercise of that right "carries with it special duties and responsibilities" and may therefore be subjected to restrictions. Article 19 of the ICCPR specifies that such restrictions on the right to freedom of expression may only be imposed if they are necessary to respect the rights or reputations of others, or for the protection of national security or public order, or other issues affecting the community as a whole. Article 10 of the

⁸¹ *US Department of State, Country Reports on Human Rights Practices 2000: Ukraine*, February 2001 - pages 8 - 9.

European Convention for the Protection of Human Rights and Fundamental Freedoms permits only those restrictions necessary in a democratic society: "in the interest of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary". However, both Article 19 of the ICCPR and Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms recognize a wide latitude for robust criticism of government and other public officials. The European Court of Human Rights, in the case of *Thorgeirson v. Iceland* (1992), held that conviction of a person for criticism of police brutality by the Reykjavik police force "in particularly strong terms", based largely on reports of others, violated Article 10 of the European Convention. The Court declared that the conviction and sentence "were capable of discouraging open discussion of matters of public concern."⁸² It emphasized that "freedom of expression constitutes one of the essential foundations of a democratic society; subject to paragraph 2 of Article 10, it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb."⁸³

The Court has also made clear that "[t]he limits of permissible criticism are wider with regard to the Government than in relation to a private citizen" and that "the dominant position which the Government occupies makes it necessary for it to display restraint in resorting to criminal proceedings, particularly where there are other means available for reply to the unjustified attacks and criticisms of its adversaries in the media."⁸⁴ In the case of *Castells v. Spain*, the Court found that the conviction of a person for writing an article accusing the Spanish police of responsibility for a series of murders in the Basque region violated Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The European Court of Human Rights has reached similar conclusions in other cases, such as *Prager v. Austria*⁸⁵ and *Lingens v. Austria*.⁸⁶

⁸²The European Court of Human Rights, *Thorgeirson v. Iceland*, Vol. 239, Series A, Judgement (1992) - paragraph 68.

⁸³The European Court of Human Rights, *Thorgeirson v. Iceland*, Vol. 239, Series A, Judgement (1992) - paragraph 63.

⁸⁴The European Court of Human Rights, *Castells v. Spain*, Vol. 236, Series A, Judgment (1992) - paragraph 46.

⁸⁵The European Court of Human Rights, *Prager v. Austria*, Vol. 313, Series A, Judgment (1995): conviction for defamation of judges for alleged lack of impartiality.

⁸⁶The European Court of Human Rights, *Lingens v. Austria*, Vol 103, Series A, Judgment (1986): conviction for defamation of Chancellor for alleged Nazi associations.

As regards the need to protect the rights or reputations of others, Amnesty International believes that public officials or authorities who consider themselves defamed can resort to other legal actions which anyone, regardless of status or function, can resort to in order to protect his or her reputation. However, criminal law should not be used in such a way as to stifle criticism of state authorities or to intimidate those who voice legitimate concerns about the actions or practices of state authorities. The high number of instances in which charges of criminal libel have been brought against the independent press suggest that the Ukrainian authorities have not exercised restraint in resorting to criminal proceedings.

Academics: threats of criminal conviction

The arrest of the internationally-renowned academic, Sergey Piontkovski, in October 1999 caused a significant amount of concern among academics world-wide. To many organizations and individuals, concerned about academic freedom, his arrest appeared arbitrary and a violation of Ukraine's obligation to respect and ensure the right to freedom of expression.

The case of Sergey Piontkovski

Sergey Piontkovski of the Institute of Biology of the Southern Seas in Sevastopol was detained by the Ukrainian Security Service in October 1999. Sergey Piontkovski was charged with various offences under the Criminal Code of Ukraine for allegedly passing on sensitive state information to a number of Western European marine research institutes in the course of an international collaborative research project and receiving hard currency research grants from abroad. Under the Criminal Code of Ukraine convictions for illegal hard currency transactions could have resulted in up to eight years' imprisonment.

Officials of the Sevastopol branch of the Ukrainian Security Service (former KGB) reportedly raided the homes and offices of Sergey Piontkovski and two other scientists of the Institute of Biology of the Southern Seas, Galina Piontkovskaya, Sergey Piontkovski's former wife, and the Deputy Director of the Institute of Biology of the Southern Seas, Yury Tokarev, on 16 and 18 October 1999. They confiscated several computers, scientific equipment, various scientific papers, files, money and the passports of the three scientists. Sergey Piontkovski was arrested on 16 October 1999 and allegedly interrogated by a team of officials of the Ukrainian Security Service. Galina Piontkovskaya and Yury Tokarev were not reported to have been charged but were interrogated several times by officials of the Sevastopol branch of the Ukrainian Security Service. A fourth scientist, Boris Sokolov, was also reported to have been interrogated in connection with the case.

All of the research projects under scrutiny by the authorities broadly related to plankton ecosystems in a number of the world's seas and oceans. One of the research projects was an

officially-sanctioned joint research project between the Ukrainian Ministry of Science and the European Union agency, the International Association for the Promotion of Cooperation with Scientists of the New Independent States of the Former Soviet Union (INTAS). In the course of the project, agreement had been reached on both the transfer of scientific data and hard currency payments between the participant countries.⁸⁷

Another collaborative research project under scrutiny was between the Institute of Biology of the Southern Seas and the Centre for Coastal and Marine Sciences in the United Kingdom, which was funded by the British government's Department for Education, Transport and the Regions' (DETR) Darwin Initiative. The project investigated biodiversity and biovariability in tropical plankton ecosystems in the Indian and Atlantic Oceans using data collected in the Soviet era. The aim of the project was to create a number of scientific reports and CD-Rom databases. Amnesty International received a copy of a letter written by a senior research officer from the Centre for Coastal and Marine Sciences in the United Kingdom stating that the research project contained no sensitive information and that agreement had been obtained between the two research institutes over the project's funding. The Director of the Institute of Biology of the Southern Seas, Professor Zaika, had sanctioned the institute's part in the collaborative research project.

The case of Sergey Piontkovski and his colleagues caused a significant amount of concern among academics and human rights defenders around the world. Amnesty International called on the Ukrainian authorities to make public the reasons for the arrest of Sergey Piontkovski and the subsequent charges brought against him and his colleagues. In the light of the fact that Sergey Piontkovski and his colleagues apparently had permission to participate in the aforementioned INTAS and DETR research projects and to receive grants in hard currency for the purpose of funding the projects, Amnesty International considered it incomprehensible that Sergey Piontkovski was deprived of his liberty and that he and his colleagues faced possible prison sentences. Amnesty International learned that all charges against Sergey Piontkovski and his colleagues were dropped in February 2000 and he left Ukraine with his family to work in the USA on 22 March 2000.

Human rights defenders: the harassment of Amnesty International's Ukrainian Association

Amnesty International expressed concern about reports that members of Amnesty International's Ukrainian Association were summonsed by the police to be interviewed in

⁸⁷Amnesty International was provided with documentation from both the Ukrainian Ministry of Science and INTAS, which confirmed these facts.

connection with a petition about alleged violations of the UN Convention on the Rights of the Child in Pakistan. As part of its campaigning activities, the Ukrainian Association of Amnesty International had drawn up the petition and collected signatures in various Ukrainian cities and towns. At a later date the various signed petitions were sent with letters to the Ukrainian Ministry of Foreign Affairs, highlighting Amnesty International's concerns in Pakistan in relation to violations of the UN Convention on the Rights of the Child.

Members of the Ukrainian Association of Amnesty International in Lviv, Cherkasy Oblast (region) and Drohobych were summoned by their local police on various dates during the second half of April 2001, and asked to make statements about the organization's activities in relation to Pakistan. The police asked for the personal details of all the signatories of the petitions, not all of whom are members of Amnesty International, reportedly with the aim of interviewing them. The impetus for the action against the members of the Ukrainian Association of Amnesty International and the signatories of the petition is believed to have come from the Ministry of Foreign Affairs.

Amnesty International wrote to the Ukrainian authorities in May 2001, expressing concern that its members had been called in for questioning by the police, apparently on account of their human rights-related activities and stated that such activities may amount to the unwarranted intimidation of human rights defenders in the country. In doing so, the organization considered that the Ukrainian authorities were in violation of Article 19 (2) of the ICCPR, which guarantees the right to freedom of expression, and contravened the Declaration on Human Rights Defenders,⁸⁸ which sets out principles aimed at ensuring that states take measures to ensure that human rights defenders are free to carry out their legitimate activities to promote and defend human rights without fear of reprisals, hindrance or obstacles. Amnesty International also requested to be informed of the legal basis of the authorities' action. At the time of writing no reply had been received from the Ukrainian authorities.

Conclusion

This report has highlighted a number of Amnesty International concerns about Ukraine's apparent failure to fully implement its obligations under the ICCPR. Disturbingly, incidents of torture and ill-treatment by law enforcement officials of people deprived of their liberty continue to be reported. Allegations of torture and ill-treatment have often been accompanied by statements that victims were refused access to legal counsel or were not allowed to inform family members of their detention by law enforcement officials. Reports of brutality have been

⁸⁸The full title of the Declaration on Human Rights Defenders is the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

received not only in relation to places of detention and imprisonment, but also to Ukraine's armed forces, where soldier on soldier violence persists in the form of hazing. While Amnesty International recognizes that the Ukrainian authorities have engaged in a process of dialogue and action with the Commission of the European Communities and the Council of Europe in order to bring Ukraine's penal system up to international minimum standards, conditions in places of detention and imprisonment still frequently fall below what is acceptable according to such standards. As a result people deprived of their liberty are often subjected to cruel, inhuman or degrading treatment.

In recent years the right to freedom of expression, particularly media freedom, has also come under increased pressure from the Ukrainian authorities. Editors of independent newspapers and television companies have complained of being repeatedly subjected to tax audits as well as health, sanitary and fire checks by the authorities in an apparent attempt to stifle their journalist activities, a fact reportedly acknowledged by the parliamentary Human Rights Ombudsperson, Nina Karpacheva. The Ukrainian authorities have resorted to the charge of criminal libel on a significant number of occasions, apparently in order to silence critical journalism. It has also been alleged that press freedom has also been curtailed through overt forms of harassment and intimidation - in addition to so-called 'legal forms of pressure' - whereby journalists have been physically attacked by unknown assailants, sometimes resulting in death. The circumstances surrounding many of these attacks remain unresolved and only occasionally have those responsible been brought to justice. In the past year allegations of state involvement in the possible "disappearance" of the investigative journalist, Georgiy Gongadze, and the apparent failure of the Ukrainian authorities to promptly and impartially investigate the incident has resulted in both domestic and international concern.

In addition to its concerns about violations of the right to freedom of expression and allegations of torture and cruel, inhuman or degrading treatment or punishment, Amnesty International is also concerned about the absence of a genuine civilian alternative to military service.

Amnesty International believes that it is clearly within the power of the Ukrainian authorities to take immediate steps to implement its obligations under the ICCPR. With regard to the obligations highlighted in this report Amnesty International is urging the Ukrainian authorities to implement, as a matter of urgency, the following recommendations:

The prohibition of torture or cruel, inhuman or degrading treatment or punishment:

- inform all people deprived of their liberty of their rights, including the right to complain to the authorities against ill-treatment;

- ensure that all people under arrest are informed promptly of the charge or charges against them in a language they understand, and that they are allowed access to a lawyer of their choice from the outset of their detention and during interrogation;
- ensure that all detainees are allowed to promptly inform family members of their detention by law enforcement officials;
- ensure that all detainees are allowed access to a medical practitioner of their choice;
- initiate prompt, impartial and thorough investigations into all complaints of torture and ill-treatment of detainees, as well as when there are reasonable grounds to believe that torture or ill-treatment has occurred, even if no complaint has been made;
- introduce legislative and procedural measures to ensure that investigations are prompt, impartial and thorough;
- as part of such investigations, ensure prompt, impartial and professional medical examinations of persons alleging torture or ill-treatment;
- bring those suspected of being responsible for torture or ill-treatment of detainees to justice in the course of fair proceedings;
- ensure that senior law enforcement and prison officials deliver the clear message to their subordinates that torture or ill-treatment of persons deprived of their liberty is unacceptable and will be the subject of severe sanctions and that the use of force should be limited to what is proportionate and strictly necessary;
- establish an effective system of independent inspection of all places of detention and imprisonment with powers to review and investigate complaints of torture and ill-treatment by law enforcement and prison officials;
- ensure that information regarding the absolute prohibition of torture and ill-treatment is fully included in the training of law enforcement and prison personnel and other persons who may be involved in the custody, interrogation and treatment of any individual subjected to any form of arrest, detention or imprisonment;
- take measures to address discriminatory attitudes and behaviour among law enforcement officials.

Torture and ill-treatment in the Ukrainian armed forces:

- ensure that information regarding the absolute prohibition against the use of torture and ill-treatment is fully included in the training of military personnel, conscripts themselves and other members of the armed forces;
- implement prompt and impartial investigations of all complaints of torture or ill-treatment of conscripts by fellow soldiers or superior officers, including the ones resulting in death, as well as when there are reasonable grounds to believe that torture or ill-treatment has occurred even if no complaint has been made;
- as part of such investigations, ensure prompt, impartial and professional medical examinations of soldiers alleging torture or who may have been tortured;
- bring those responsible for torture or ill-treatment of conscripts to justice in the courts;

- allow for regular visits to the army units and for meetings with conscripts of members of the human rights community, religious representatives, medical personnel and other civilian organizations.

The right to freedom of expression:

- ensure a thorough and impartial investigation into the possible "disappearance" of Georgiy Gongadze and make known its findings. Those suspected of being responsible for his apparent "disappearance" should be brought to justice in the course of fair proceedings;
- ensure prompt and impartial investigations into all other attacks against journalists, or threats thereof, and bring those suspected of being responsible to justice in the course of fair proceedings;
- ensure that the Ukrainian news media is not subjected to arbitrarily-applied legal measures, referred to in this report;
- take all necessary measures in order to remove restrictions on freedom of expression, which are incompatible under Article 19 of the ICCPR, such as the complete decriminalization of libel;
- ensure that state officials exercise restraint in resorting to civil proceedings against journalists;
- put an end to the practice of imposing professional bans on journalists;
- explicitly and publicly commit themselves to promoting respect for human rights, and to the protection of human rights defenders. They should ensure that officials at every level of state collaborate with and facilitate the work of human rights defenders.

The right to freedom of thought, conscience and religion:

- introduce without delay legislative provisions to ensure that a civilian alternative of non-punitive length is available to all those whose religious, ethical, moral, humanitarian, philosophical, political or other conscientiously-held beliefs preclude them from performing military service;
- establish independent and impartial decision-making procedures for applying a civilian alternative to military service;
- ensure, after the introduction of a genuine civilian alternative service, that all relevant persons affected by military service, including those already serving in the army, have information available to them about the right to conscientious objection and how to apply for an alternative service.