

# UKRAINE

## Comments on the Third Periodic Report submitted to the United Nations Committee against Torture

### Introduction

In April 1997 the United Nations (UN) Committee against Torture in Geneva will examine the Third Periodic Report of Ukraine under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture). Ukraine ratified the UN Convention against Torture in 24 February 1987. The initial report of Ukraine to the Committee against Torture was examined on 15 November 1989, at the Committee's third session. Ukraine's Second Periodic Report was examined by the Committee on 12 November 1992, after it became independent in 1991.

### 1. Torture and ill-treatment

This report examines the issues surrounding torture and ill-treatment in Ukraine, and presents Amnesty International's recommendations.

Amnesty International has received numerous reports of torture and ill-treatment of criminal suspects in police custody and in prisons throughout Ukraine. Ethnic minorities, women and adolescents are particularly vulnerable. For example, in the beginning of 1995, Amnesty International received a response from the Ukrainian authorities about the death of Mikołaj Szpakowicz, a Polish citizen who died on 17 September 1994 of a ruptured bladder after alleged ill-treatment by Ukrainian police 10 days earlier. Amnesty International had expressed concern over the conflicting reports at the time on the circumstances under which Mikołaj Szpakowicz sustained his injuries. According to an account said to have been given by the victim to his wife before he died, Mikołaj Szpakowicz was detained on 7 September by three policemen while leaving a bar in the town of Pochayev, Ternopil Region. They drove him to a nearby forest and demanded money, then started to kick him when they found he had no hard currency on him. He was subsequently taken to a local hospital, but according to another report he did not receive immediate treatment on the grounds that he was drunk. He was eventually operated on there and twice more in Ternopil hospital, but subsequently died. Other sources claimed the Ukrainian authorities had informed the Polish Embassy that Mikołaj Szpakowicz injured himself while drunk and was taken to hospital by police officers who found him groaning.

In April 1995 the Ternopil Regional Prosecutor's Office informed Amnesty International of the results of a criminal investigation into the death. According to this investigation on 7 September Mikołaj Szpakowicz left a bar in Pochayev at around 6pm after drinking heavily, fell over and was unable to walk. He was detained by police for public drunkenness but did not wish

to get in their vehicle, whereupon one officer (whom they named) struck him in the abdomen with his knee. Mikołaj Szpakowicz sustained a ruptured bladder, as a result of which he died in hospital 10 days later. The police officer stood trial on 14 March 1995 in Ternopil, and was sentenced to eight years' imprisonment for exceeding his authority (Article 166 part two of the Criminal Code) and intentionally inflicting serious bodily injury (Article 101 part three). No other police officer was found to be involved, and a forensic-medical commission found no evidence of criminal negligence by medical staff.

## **2. Legislation facilitating torture (Article 2 of the Convention against Torture)**

Ukraine is a party to the Convention against Torture, as well as the UN International Covenant on Civil and Political Rights (ICCPR). Both these treaties prohibit the use of torture and other cruel, inhuman or degrading treatment or punishment. The 1996 new Ukrainian Constitution provides in Article 2 that "no person may be tortured or subjected to harsh, inhumane, or degrading treatment or punishment" and that "no person may be subjected, without his or her consent, to medical, scientific or other experiments."

Nevertheless, in the absence of new legislation, the provisions of the old Soviet-era Criminal Code and the Code on Criminal Procedure, although heavily amended, often allow for violations of the rights of detainees and thus facilitate the practice of torture and ill-treatment in custody. The law provides that the authorities may detain a person suspected of a crime for up to three days without a warrant. The new Constitution provides that only the courts may issue arrest warrants, but under its "transitional provisions" the Office of the Procurator retains the authority to issue arrest and search warrants for five more years. An arrest order must be issued if the period of detention exceeds three days. The maximum period of detention after charges have been filed is 18 months, but the law does not limit the aggregate time of detention before and during the trial. In addition, the law permits citizens to contest the grounds of their arrest in court or appeal to the Office of the Procurator.

By law a trial must begin no later than three weeks after the defendant is indicted. This requirement is frequently not met by the overburdened court system, and months may pass before a defendant is finally brought to trial.

The law provides that a defence counsel be provided to the detainee from the moment of detention or the filing of charges. However, it has been reported that individuals held under detention frequently have been denied timely access to counsel. In addition there are insufficient numbers of defence lawyers to protect suspects from unlawful, lengthy imprisonment in overcrowded prison conditions. Although the concept of providing attorneys from the state system remains enforced, public attorneys often refuse to defend detainees for the minimal fee provided by the government. Once a suspect is taken into detention, he or she may talk to a lawyer only in the presence of a prison official or an investigator. Often defendants lack

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knowledge about their legal rights and rarely use the procedure for contesting in court the legality of their arrest nor the system for submitting a complaint of acts of torture and ill-treatment by law enforcement officials.

### **3. Failure to make all acts of torture offences with appropriate penalties (Article 4 of the Convention)**

Under the Convention against Torture, Ukraine is legally bound to make all acts of torture and ill-treatment offences under national law. The Convention also requires that punishments for torture should reflect “their grave nature” (Article 4). However, Ukrainian law fails to meet these requirements.

Neither the new Constitution of Ukraine nor legislation provide a definition of the term “torture.” Although a considerable change of the old legal and judicial system has taken place in Ukraine since 1992, and a number of laws governing the protection of human rights have been passed by the Parliament, drafts of the new Criminal Code and a Code on Criminal Procedure have not yet been adopted. Article 8 of the Ukrainian Constitution provides for a direct applicability of constitutional norms and guarantees: “The norms of the Constitution of Ukraine are norms of direct action. Appeals to the courts in defence of the constitutional rights and freedoms of the individual and citizen, based directly on the Constitution of Ukraine, are guaranteed”.

The failure to include any definition of torture in the Ukrainian Constitution or national legislation has hampered the courts in their efforts to apply the Constitutional provisions directly in cases of human rights violations, including cases of torture and ill-treatment, because they have not been able to rely on Article 1 of the Convention against Torture.

Under Article 9 of the Constitution, treaties “which have been ratified as binding by the Supreme Council of the Ukraine, are part of the national legislation of Ukraine.” Only when such treaties contravene the Constitution must amendments be made to the Constitution for them to have effect as law in Ukraine. Therefore, since the Convention against Torture cannot be seen as contrary to the Constitution, courts should apply the provisions of the Convention. However, the failure to define torture in the current Ukrainian legislation has made it difficult for courts to apply the Convention against Torture in cases of alleged torture and ill-treatment.

### **4. Prison conditions amounting to cruel, inhuman or degrading treatment**

Conditions in pre-trial detention in Ukraine have not changed significantly since independence in 1991. Vasiliy Belousenko, Chairman of the Ukrainian Council of Judges, reportedly admitted in August 1995 that “our pre-trial detention centres are overcrowded, and judges violate the terms of considering cases in the period provided by law. We have been proposing for a long

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time to use the release on bail, similarly to the practice in other countries". Reports of ill-treatment of prisoners by prison officials have continued.

In April 1994 Amnesty International approached the Ukrainian authorities about allegations that medical and dental care had been withheld from a group of prisoners held in the regional hospital unit of Donetsk prison (institution YuYe 312/196) because they were HIV-positive. Responding in June the Ministry of Internal Affairs reported that a specialized 10-bed section had been set up at the prison hospital and that medical assistance, including dental care, would be afforded.

However, Amnesty International again approached the authorities on this issue during the period under review after press reports in December 1994 repeated claims of inadequate medical care. HIV-positive prisoners were said to be held in individual wards or cells, and only rarely taken out for exercise. They were not allowed to use the bathhouse facilities, having to wash in their cells, and the medical treatment was alleged to consist only of analgesic tablets and vitamin injections. Replying in May 1995, the Interior Minister wrote that he shared the organization's concern over conditions of detention and medical care for HIV-positive prisoners, and regretted that these conditions were in many respects dictated by the country's current economic situation. He reported that there was currently a therapeutic ward in the Donetsk prison which contained five HIV-positive prisoners, whose condition was relatively satisfactory. Medical services were provided by specially assigned doctors, nurses and junior medical personnel, and there was a daily medical round of the patients. Specialized medical care was provided when necessary by two outside specialists - a doctor specializing in AIDS from the Donetsk Regional Centre for Fighting AIDS and a dentist, and prisoners in the unit had been seen by the dentist on 28 April. The Minister explained that HIV-positive prisoners bathe separately from others in line with a Ukrainian law of 12 December 1991, "On prevention of AIDS and the social defence of the population", in accordance with which infection with HIV is regarded as belonging to the category of especially dangerous infections. The Minister also stated that HIV-positive prisoners are granted short meetings with relatives, and a daily exercise period of up to two hours.

## **5. Lack of training and knowledge regarding prohibition of torture (Article 10 of the Convention against Torture )**

Amnesty International continued to urge the Government of Ukraine to provide training to law enforcement officials concerning the prohibition of torture and ill-treatment, including rape, of people in detention. Reports suggested that law enforcement officials were not properly informed and trained regarding the prohibition of torture. The practice of torture and ill-treatment of suspects in police custody and in prisons continued, sometimes resulting in the death of the detainee (See discussion of the case of Mikołaj Szpakowicz in section 1 and that of Yury Mozola on section 7).

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## **6. Systematic reviews of rules and practices: internal instructions and orders (Article 11 of the Convention against Torture)**

According to information from Ukrainian human rights groups, special instructions of the Ministry of Internal Affairs (MVD) allow training of the special purpose detachments of MVD on the premises of the correctional labour colonies. The instruction reportedly allowed MVD officials to perfect their skills on prisoners in order to prepare them to react in situations of emergency and civil disobedience. A number of reports were received about torture and ill-treatment of detainees during such actions. It was reported in 1996 that such actions took place in about 20 colonies in different parts of Ukraine. In September 1996, for example, such "training" was reportedly conducted in the Zaporozhiye Region when a number of prisoners were allegedly severely ill-treated. According to the prisoners, they were forced to lie down on the ground and were beaten, as well as being subjected to a strong stream of water from a hose. Reports in 1996 suggested that in only one colony, in the town of Berdichev in Zhitomir Region, did the prisoners file a complaint with the Office of the Procurator after a similar training action. A criminal investigation was reportedly opened into this case.

## **7. Inadequate investigations of reports of torture (Article 12 and Article 13 of the Convention against Torture)**

The provisions of Article 12 of the Convention against Torture for a "prompt and impartial investigation" whenever there is reasonable ground to believe that torture and ill-treatment may have occurred, even if there has been no formal complaint, are inadequately implemented in the Ukrainian law and practice. Nevertheless, there are serious shortcomings in the investigations by police, prosecutors, judges and ombudspersons of torture and ill-treatment.

The judiciary is overburdened and lacks sufficient funding and staff. Long delays in trials are a problem. While progress has been made toward ensuring the independence of the judiciary, political interference continues to affect the judicial process. The new 1996 Constitution provides safeguards for human rights and strengthens the courts by establishing the principle of judicial review. It establishes a Constitutional Court with the power to determine the constitutionality of acts and decisions by all branches of government. The new Constitution also provides for a human rights ombudsman, to be appointed by Parliament, who is to be responsible for assisting citizens in defending their rights, including review of complaints of torture and ill-treatment. The efficacy of the new Constitution, however, largely depends on enabling legislation, most of which has not yet been passed by Parliament.

According to reports, there is no effective mechanism for registering complaints about mistreatment or for obtaining redress, although the human rights ombudsman required by the new Constitution may provide such a mechanism. It was reported in 1996 that with the single exception of a police officer charged for torturing detainees, the government made no known

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efforts to end the practice of torture in detention or to prosecute officials who committed such abuses.

It was officially reported that during the first seven months of 1995, 313 MVD officers were arrested and 202 were convicted. Among those found guilty, 75 were police officers, 24 officials from investigative agencies and six penitentiary workers. According to reports, 865 criminal cases were opened against 1,094 MVD officers. Among the crimes of which they were charged were: abuse of power, negligence and bribery and violent crimes, such as murder, grave bodily injury and rape. However, the authorities did not give any official information on the number of officials charged and prosecuted for acts of torture and ill-treatment. In October 1995, the Ukrainian Minister of Internal Affairs, Yury Kravchenko, reportedly stated that the police had higher crime rate than the general population. The head of the Crimea Department of Internal Affairs, Mikhail Kornilenko, reportedly stated in December 1995: "I was horrified to learn of the illegal activity of the police officers".

In August 1996 Amnesty International approached the government concerning the case of Yury Mozola, aged 26. According to reports, on 27 March 1996 Yury Mozola was arrested by officers of the Lviv Regional Directorate of the Security Services on suspicion of multiple murder. He was detained in the investigation isolation prison of the Directorate where, according to information provided to Amnesty International, he was allegedly tortured to death by officials whilst being interrogated about the crime. Yury Mozola was said to have died four days after his arrest.

Amnesty International learned that an investigation into the actions of the law enforcement officials allegedly involved in Yury Mozola's death was opened by the Office of the Military Procurator of Western Ukraine. In a press release in August, the Directorate of the Ukrainian Security Service in the Lviv Region claimed that it had not been involved in Yury Mozola's arrest. The press release stated that the arrest of Yury Mozola as a criminal suspect was made by law enforcement officials on the grounds of a warrant issued by the Lviv Regional Office of the Procurator.

The press release further claimed that, "the leadership of the Directorate of the Ukrainian Security Service in Lviv Region will provide all necessary assistance to the investigation with the aim of establishing the definitive circumstances of this tragic event and determining the level of possible guilt of employees, who were responsible for looking after Yu.I. Mozola in custody."

Amnesty International is not aware of any information regarding the outcome of the investigations into this case.

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The inadequacy of investigations of complaints of torture and ill-treatment and the lack of a consistent legal framework in the absence of a new Criminal Code and a Code on Criminal Procedure, have prevented the implementation of proper procedures for bringing the perpetrators of torture to justice. However, the Procurator's office is still based on the old Soviet model, and continues to have conflicting responsibilities: on the one hand, it has a supervisory function over the local executive and legislative organs in ensuring that legality is observed (for example by investigating alleged police abuses), and, on the other, it is the public prosecution service, working with the police in sanctioning arrest, presiding over criminal investigations, which are usually conducted by the MVD, and representing the state against the individual in court.

Loyalty to colleagues, the importance of local connections, political pressure from local officials and the "back door justice" practices in Ukraine are factors which often influence whether investigations into torture allegations are carried out, and when they are, with what result. The Procurator's office often refuses to open a criminal case and an investigation into allegations of torture and ill-treatment in custody. In the rare cases when those accused of torture or ill-treatment are convicted, punishment is light. Moreover, in the cases where investigations of complaints of torture or ill-treatment have occurred, the investigations have not been prompt, impartial or thorough. One example of this practice is the case of alleged rape of a Roma woman by police officers in 1996.

It is universally accepted that the rape of a woman detainee by a state official is torture. The UN Special Rapporteur on torture, the UN Special Rapporteur on violence against women, the European Commission of Human Rights, and the Inter-American Commission on Human Rights, have reached the same conclusion. Professor Nigel Rodley, UN Special Rapporteur on torture, has concluded that rape is "an especially traumatic form of torture". In the context of Amnesty International's continuing concern about allegations that people in the custody of law enforcement officials in Ukraine have been subjected to torture and ill-treatment, in December the organization approached the Government of Ukraine concerning the case of a Roma woman allegedly raped and further ill-treated in the street by two police officers in Mukachevo, in the Transcarpathian region of Ukraine, in March 1996.

According to reports brought to the attention of Amnesty International, three police officers, who were apparently searching for a Roma man in connection with the theft of a bicycle, broke into a house where a 19-year-old woman identified only as Anna D. lived with her family. According to witnesses, the three police officers, all of whom were drunk, entered the house and beat Anna D.'s father-in-law. Later, two of the police officers reportedly attempted to rape Anna D., but she managed to escape and suffered only a beating. Her husband, who was hidden in the room, was a witness to the incident.

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The two police officers then reportedly left the house and came upon a Roma couple and their two children, walking in a street in front of the Roma settlement (*tabor*). It was reported that the two officers beat and raped the 28-year-old woman identified only as Eva H., while shouting that this was revenge for being rejected by Anna D.

Two non-Roma living outside the *tabor* allegedly witnessed the rape, and one of them narrowly escaped being beaten himself when he attempted to intervene. According to these witnesses, a police car and an ambulance arrived and Eva H. was taken to a hospital. The medical personnel reportedly admitted her to the hospital, sutured a wound on the left side of her mouth resulting from the attack, and released her. She was reportedly found in the morning, unconscious, in the street. She was later readmitted to a hospital (the family were said to have had difficulties finding one willing to accept her as a patient). Eva H. reportedly claimed that while in the hospital she was visited by officers of the police department who offered her money to stop mentioning the incident publicly, which she refused. It was reported that Eva H. Subsequently approached the hospital several times and requested a medical report on her injuries, which was not provided.

It was also reported that the father-in-law of Anna D. was summoned to the police department, where it was suggested to him that he should not make a written complaint about the incident, and as a result he did not file a complaint. Eva H. and a city deputy allegedly attempted to file complaints about the alleged torture with Mukachevo's police department, but the department refused to register the complaints officially.

Amnesty International urged the Government of Ukraine to initiate without delay a prompt, impartial and comprehensive investigation into this and any other allegations of rape and other ill-treatment of women by police officers, with the results made public and anyone found responsible brought to justice.

In a letter to Amnesty International of 21 January 1997, L. V. Borodich, first Deputy Minister of Internal Affairs of Ukraine, claimed the following: "An official investigation was carried out, and as a result it was determined that the staff members of the Mukachevo City Department of the Ukrainian Ministry of Internal Affairs in the Transcarpathian Region, V. E. Odintsov and Yu. Yu. Gleba carried out illegal actions on 18 March 1996, during which they caused bodily harm to the persons of Gypsy nationality, B. J. Fets and E. Yu. Gorvat. Information regarding rape of Eva H. by the above members of staff was not confirmed."

Amnesty International was informed that the Office of the City Procurator of Mukachevo refused, on 6 April 1996, to press criminal charges against V. E. Odintsov and Yu. Yu. Gleba in connection with the case in accordance with Article 6, paragraph 2 of the Ukrainian Code of Criminal Procedure (lack of crime content). In addition, for the discrediting of the name as a member of the Ministry of Internal Affairs, V. E. Odintsov and Yu. Yu. Gleba

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were dismissed. The letter stated that administrative preventive measures were undertaken against other staff members of the Mukachevo City Department of Internal Affairs.

### **8. Redress and compensation for victims of torture is rarely provided (Article 14 of the Convention against Torture)**

Under Article 14 of the Convention against Torture, all states parties are required to ensure that in their legal systems a victim of torture is able to obtain redress and that he or she has an enforceable right to fair and adequate compensation, including the means for as full a rehabilitation as possible. The Ukrainian Constitution incorporates only some aspects of this obligation. It provides for full compensation for damage inflicted by the state<sup>1</sup>, but there is no specific mention of torture as a form of damage inflicted, nor of a requirement of rehabilitation. Amnesty International is not aware of any cases where compensation to victims of torture and ill-treatment has been provided by the authorities.

### **9. Confessions extracted under torture are used as evidence (Article 15 of the Convention against Torture)**

Amnesty International has continued to receive reports that confessions extracted under torture or ill-treatment were used as evidence, in some cases leading to the death penalty.

The relatives of Sergey Tekuchev, executed in October 1996, claimed that he was innocent and that his confession was obtained under duress. There were claims that the emergency services were called six times in October 1994 to treat Sergey Tekuchev for injuries resulting from beatings in custody and that the prison authorities refused to pass medication from his relatives to him.

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<sup>1</sup> Article 52 of the Constitution states: "The rights of victims of crimes and of abuses of office shall be protected by law. The state shall provide the victims with access to justice and compensation for damage sustained." Article 53 of the Constitution provides that "everyone shall have the right to state compensation for damage caused by unlawful actions (or inaction) of state government bodies or their officials."

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## Recommendations

Torture and ill-treatment of persons under any circumstances are expressly prohibited under international agreements to which Ukraine is party, such as the Convention against Torture, and the ICCPR. Amnesty International recognizes the problems that may exist within the prison system, for example those caused by lack of funding for professional staff, training and infrastructure. The organization also recognizes the problems which exist concerning the growing level of crime in the society, and the need to protect citizens' well-being. However, these problems can never be used as an excuse for torture and deliberate ill-treatment. Amnesty International believes that it is clearly within the power of the Ukrainian authorities to take immediate measures to eliminate these illegal practices within its detention and prison system.

### **Amnesty International recommends that the authorities as a matter of priority:**

- C inform all detainees of their rights, including the right to complain to the authorities against ill-treatment;
- C ensure that detainees under interrogation are informed promptly of the charge or charges against them, and that they are allowed prompt and regular access to a lawyer of their own choice, as well as to relatives and an independent medical practitioner;
- C implement prompt, thorough and impartial investigations of all complaints of torture or ill-treatment of detainees, as well as when there are reasonable grounds to believe that torture or ill-treatment may have occurred even if no complaint has been made;
- C as part of such investigations, ensure prompt, independent, impartial and professional medical examinations of persons alleging torture or who may have been tortured;
- C bring those responsible for torture or ill-treatment of detainees to justice in the courts;
- C ensure that every victim of torture has access to the means of obtaining redress and an enforceable right to fair and adequate compensation, including the means for as full a rehabilitation as possible;
- C ensure that information regarding the absolute prohibition against the use of torture and ill-treatment is fully included in the training of law enforcement 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;
- C establish an effective system of independent inspection of all places of detention.