UKRAINE: DON’T STOP HALFWAY
GOVERNMENT MUST USE NEW CRIMINAL PROCEDURE CODE TO END TORTURE
**INTRODUCTION**

For the past decade the widespread use of torture and other ill-treatment by law enforcement officers in Ukraine has been a concern to Amnesty International. The problem continues unabated today. This briefing uses a selection of new cases to highlight how police officers in Ukraine continue to escape investigation and punishment for their involvement in appalling crimes.

Out of 114,474 complaints made to prosecutors about police treatment in 2012, only 1,790 were investigated, leading to only 320 prosecution cases being opened against 438 police officers.

Successive rulings by the European Court of Human Rights (ECtHR) have criticized the conduct of investigations into torture and other ill-treatment in Ukraine and recommend the establishment of a new system for investigating human rights violations by police.

The introduction of a new Criminal Procedure Code last November has the potential to do this. Among other improvements outlined below, the new Code includes a provision for the establishment of a State Investigation Bureau to investigate crimes by law enforcement officers and high-ranking officials.

Amnesty International believes it is crucial that this State Investigation Bureau is urgently created as a genuinely independent, impartial and effective institution and used to investigate allegations of human rights abuses by law enforcement officers. The role of the Prosecutor’s office in ordinary law enforcement prevents it from ever being able to investigate such allegations impartially, and it has demonstrated in case after case that it is the wrong tool for this job.

**RECENT DEVELOPMENTS**


Dozens of cases documented by Amnesty International show how police have used torture to extract confessions, extort money, or because of the ethnic origin or sexual identity of the victim. The organisation drew attention to the failure of the Prosecutor’s office to conduct prompt, thorough and impartial investigations into allegations of torture and other ill-treatment, and recommended the establishment of a fully resourced independent agency to investigate all allegations of human rights violations by law enforcement officers.

During the past year Ukraine has taken some important steps toward combating torture and other ill-treatment. In April 2012 parliament introduced a new Criminal Procedure Code, which came into force on 20 November. Drafted by the government but guided by expertise from the Council of Europe, Amnesty International considers the new Code a significant improvement on the old one, for reasons set out below.

Also in November 2012, Ukraine established a National Preventive Mechanism, under which the Parliamentary Commissioner for Human Rights (Ombudsperson’s office) and accompanying non-governmental organisations (NGOs) make visits to places of detention and report evidence of abuses to ministers and the prosecutor’s office.

However, the introduction of new legislation and preventive monitoring alone will not be enough to end the widespread use of torture and other ill-treatment. The challenge the authorities face now is to properly implement and enforce the new Criminal Procedure Code. Amnesty International welcomes these measures as a positive step towards overcoming torture and other ill-treatment but because it reduces the length of time suspects are vulnerable to abuse or pressure from law enforcement officers.

Amnesty International also notes that, under the new Code, confessions made to police in custody outside the court are no longer admissible in court – reducing one incentive for police to torture suspects.

However, these new measures will not be enough to prevent torture and other ill-treatment unless police officers are given a clear message from the highest level that all offences - from minor offences to torture and other ill-treatment - will be met with appropriate sanctions.

For this reason, the Ukrainian authorities must set up an independent police accountability mechanism. The establishment of a State Investigation Bureau, provided for in Article 216 of the new Criminal Procedure Code, is the right opportunity to do so, which should be seized as soon as possible.

According to the new Code, the State Investigation Bureau should investigate crimes committed by judges, law enforcement officers and certain high-level officials. However, the way in which it is designed, resourced and appointed has yet to be decided, and, according to the new Code, it does not have to be established for up to five years.

Despite the improvements, the idea promoted by some government officials that torture will cease now that confessions to police are no longer admissible as evidence is erroneous. Extracting a confession is not the only reason that officers abuse suspects.

Amnesty International continues to document cases where police have tortured individuals to punish them without going to court, in retaliation for a complaint against officials, or in order to extort money.

Abuse by officials can only be prevented when they know they will be effectively held to account for their actions. As well as removing the incentives for torture, there must be a strong deterrent – a strong likelihood of disciplinary or criminal punishment.

The current system, even with most parts of the new Criminal Procedure Code in force, does not yet ensure this. Amnesty International continues to receive reports of torture and other ill-treatment that have occurred since the introduction of the new Criminal Procedural Code that are not being investigated according to international standards. Consequently the victims are denied protection from torture and other ill-treatment, as well as effective reparation, including compensation and redress.
Two young construction workers, Vitaliy Levchenko and Andrei Melnichenko, had been working on a site in the city of Ladyzhyn, southern Ukraine, without pay for three months. They had made repeated calls to their employer who eventually agreed to meet them on 20 November 2012.

On 20 November at around 7pm the two young construction workers went to the construction site with three other workers. On arrival, they were told the manager had already left. The group of workers refused to leave without payment. Security guards arrived and called the police, at which point the other three workers left the site, but stayed on a hill overlooking the site to watch what happened to Vitaliy and Andrei.

According to Vitaliy and Andrei’s lawyer, all three witnesses say that at this point three police officers arrived, seized the pair, dragged them out of the cabin and started beating them, unprovoked, with batons. Police handcuffed Vitaliy and Andrei and took them to Ladyzhyn police station, at which point the three workers asked Vitaliy and Andrei’s parents.

According to Andrei, the three officers continued striking Vitaliy with batons and kicking him while he was handcuffed on the floor in the station corridor. He lost consciousness. When Andrei shouted at the police to leave Vitaliy, they attacked him, although he was also handcuffed. One police officer told him he was going to urinate on him, dragged him into the bathroom and tried to force his head into the toilet bowl. Andrei said that he managed to stand up, so instead the officer stood on his head and spat in his face, before returning him to the corridor.

Vitaliy says that at this point he woke up in another room in a pool of water, which three officers had poured on him to wake him up. Although he had his hands cuffed behind his back, he says an officer stood on his arms, breaking both of them.

At this point the pair’s parents arrived and intervened with the help of Andrei’s sister, who works in law enforcement. Police agreed to release the pair after they signed some protocols and took an alcohol breath test. According to the case records, the test was conducted using a test that only tests fitness to drive, had passed its expiry date, and after a police officer had first blown into the test.

Vitaliy and his father went to Ladyzhyn hospital to have his injuries treated and recorded. Both state the doctor refused to record Vitaliy’s injuries, explaining that he had received a telephone call from the police who instructed him not to document the injuries. Instead, the doctor wrote a report stating that Vitaliy was drunk, based not on a test, but solely ‘the smell of alcohol’.

Both Vitaliy and Andrei say they had not been drinking at all, and the three construction workers who had accompanied them to the site say they did not smell alcohol at all.

Later that day police officers registered a criminal case against the pair for ‘resisting police officers’ and ‘inflicting bodily injury’ on an officer who had a bruise on his leg, another who had a bruised finger and a third who had a bruise on his neck. According to the police statement Andrei had injured his head by falling over while handcuffed and trying to kick the officer, and Vitaliy had broken his arms by banging on a station door while in handcuffs. They face up to five years in prison if convicted.

On 22 November Andrei and Vitaliy filed a complaint against the police with the Ladyzhyn City Prosecutor’s office under the new Criminal Procedure Code. A medical examination carried out that day at Ladyzhyn hospital established that both of Vitaliy’s arms were broken and recorded multiple bruises on his body. It also recorded heavy bruising across Andrei’s body, damage to his ear and right eye.

However, the case had been publicised in the regional media by the NGO Vinnitsya Human Rights Group, and on 6 December 2012 the Deputy Prosecutor of Vinnitsya decided to re-open the case and sent it to Trostyanets District Prosecutor’s office.

On 20 February 2013 the Trostyanets Prosecutor closed the case stating that there was no evidence of a crime, accepting the police explanation for Andrei and Vitaliy’s injuries. The testimonies of Vitaliy’s father and Andrei’s mother were not included in the Prosecutor’s rationale. And Vitaly and Andre’s testimonies were discounted on the basis that they were allegedly drunk.

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TORTURE FIRST, ASK QUESTIONS LATER

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The prosecutor’s office did not respond, so on 7 November Oleksiy Shapovalov complained to the Donetsk regional prosecutor. Again he received no response, so Sergei and Oleksiy’s wife agreed to meet the deputy head of Mariupol police to find out what he had to say.

Sergei told Amnesty International that he was puzzled that the meeting seemed to have no purpose, but after it had finished Shapovalov met Sergei outside and offered him between 2,000 and 3,000 UAH (US$245-368) if he and his brother withdrew their complaint.

Shapovalov refused, and shortly after that Oleksiy gave an interview to Inter TV channel explaining what had happened and stressing the lack of an investigation.

On 17 November the interview was aired on national television, and the following week a criminal case was registered under the new Criminal Procedure Code, on 21 November. However, the case was closed as an investigation into ‘abuse of power with violence’, rather than torture.

After the case was closed Shapovalov again called Sergei and his wife, angry and abusive to them for complaining and therefore forcing him to testify. Shapovalov told Sergei’s wife: “I am the law and I will do whatever I want.”

In statements given to the investigating prosecutor, Olexander claim that they met Oleksiy outside a café at an unspecified time and took him to Illichivskiy police station for questioning, where he was registered and interrogated, then happened to meet Shapovalov.

In their testimony they do not explain why, as detectives from Mariupol police station, they decided to take Olexander to Illichivskiy police station for questioning. Shapovalov also does not explain why, as a uniformed police officer from Mariupol police station, he had to go to Illichivskiy police station at this time. No explanation is given for Oleksiy’s injuries, and the closed circuit TV system at Mariupol police station on the day of his arrest was apparently broken.

On 13 March 2013 the investigating prosecutor closed the case on the basis that the police officers’ testimonies contradicted the testimony of Oleksiy, his wife and brother.

Amnesty International calls on the Ukrainian authorities to ensure there is a new independent, impartial and effective investigation into Oleksiy’s complaint.
ON 18 April 2012 Artem Gerasymych-Magalays was detained in Simferopol, Crimea, for failing to answer a court summons relating to a stolen drill and two mobile phones. The summons had been sent to the wrong address.

Artem said he was punched by a police officer during his arrest before being taken to Zheleznyoshiv District police station. The police did not register his detention until the following day in violation of the Criminal Procedural Code. At the police station, Artem reported that one of the officers continued beating him in the presence of two others, demanding that he confess to a range of crimes. He says that this officer took a metal hook and used it to tear his nose when he refused to confess.

According to Artem, at this stage he lost consciousness and his next memory was waking up in hospital a week later, on 26 April. However, he was registered as being transferred to a Simferopol pre-trial detention facility on 21 April, to a cell with a detainee who suffers from severe manic depression.

Police and guards at the pre-trial detention facility say on 24 April the mentally-ill detainee attacked Artem with a metal pipe, although do not explain how this was allowed to happen while both were being held in custody, or how the other detainee was in possession of a large and heavy metal pipe while in his cell. Artem does not remember being in the pre-trial detention facility at all, and the mental illness of the other detainee is so severe as to render him incapable of giving testimony.

The police initiated a criminal case against the detainee, but did not take fingerprints from the metal pipe or provide the court or the prosecutor records of those from the police station and detention centre as potential evidence. On 18 April 2012 Artem Gerasymych-Magalays was detained in Simferopol, Crimea, for failing to answer a court summons relating to a stolen drill and two mobile phones. The summons had been sent to the wrong address.

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Amnesty International therefore calls on the Ukrainian authorities to ensure there is a new, independent, impartial and effective investigation into the assault on Artem.
Role of the General Prosecutor’s Office

Even a thorough and effective new State Investigation Bureau will not be able to provide an effective accountability mechanism if the Prosecutors they present cases to continue to be influenced by their relationships with law enforcement officers. The establishment of the State Investigation Bureau will therefore also call for corresponding reforms within the General Prosecutor’s Office.

The architects of this reform will need to consider how to separate prosecutors working on ordinary crimes from those specialist prosecutors working on crimes by police, and how to ensure these prosecutors are not bound by the current links between local prosecutors and local law enforcement established by studying, training and working together in the same oblast.

RECOMMENDATIONS

In 2012 Ukraine took some important steps toward combating torture and other ill-treatment. A modern and improved Criminal Procedure Code was introduced, and the National Preventive Mechanism was established.

However, Amnesty International continues to document cases where police have tortured individuals to punish them without going to court, in retaliation for a complaint against officials, or in order to extort money.

The introduction of new legislation and preventive monitoring alone will not be enough to end the widespread use of torture and other ill-treatment. The challenge the authorities face now is to properly implement and enforce the new Criminal Procedure Code, and by doing so usher in a new era for Ukraine’s criminal justice system – an era in which the rights of detainees are respected and officials are held to account for unlawful actions.

Abuse by officials can only be prevented when they know they will be effectively held to account for their actions. As well as removing the incentive for torture, there must be a strong deterrent – a strong likelihood of disciplinary or criminal punishment.

In November 2012 President Yanukovych stated that “Corruption, office abuse, ill-treatment and torture on the part of law enforcement bodies must stay in the past”.

We urge them to:

- Urgently establish the State Investigation Bureau outlined in the new Criminal Procedure Code as a genuinely independent institution that effectively and promptly investigates all allegations of torture by law enforcement officers, while ensuring public scrutiny and victim involvement;
- Promptly prosecute any law enforcement official reasonably suspected of torture or other ill-treatment;
- Ensure that full investigations are immediately carried out into the allegations of police torture and ill-treatment in the cases of Yakov Strogan, Mikhail Belikov, Firdovsi Safarov, Svitlana Pomilyaiko, Vitaliy Levchenko and Andriy Melnychenko, Oleksandr Popov, and Artem Geraymovych-Megalyas.

However, corruption, office abuse, ill-treatment and torture by law enforcement is still very much part of the present.

Amnesty International is calling on the executive, legislative and law enforcement bodies of Ukraine to work together to ensure that torture really does become a thing of the past.

Amnesty International is a global movement of more than 3 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights.

Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

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Amnesty International

International Secretariat

Peter Benenson House

I Easton Street

London WC1X 0DW

United Kingdom

amnesty.org