UKRAINE: DON’T STOP HALFWAY

GOVERNMENT MUST USE NEW CRIMINAL PROCEDURE CODE TO END TORTURE

AMNESTY INTERNATIONAL
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 1,750 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.

HOW DOES THE NEW CODE PROVIDE BETTER PROTECTION AGAINST TORTURE?

The new Criminal Procedure Code makes clear that detention starts from the moment of apprehension by police and that detainees have the right to a lawyer and an independent medical expert from that moment.

It clearly states that pre-trial detention should only be used in exceptional and justifiable circumstances, and provides for a range of alternative measures to ensure attendance at trial hearings, including bail and home arrest. It also stipulates that in cases where people are remanded in custody there is an automatic review of the reason for continued pre-trial detention at two-monthly intervals.

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.

WHAT STILL NEEDS TO BE DONE?

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 the law 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 Procedure 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.
Torture first, ask questions later

I am the law and I will do whatever I want.

Police Officer Volodya Shapoval, November 2012

Amnesty International calls on the Ukrainian authorities to ensure there is a new independent, impartial and effective investigation into Andrei and Vitaliy’s complaint.

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Amnesty International calls on the Ukrainian authorities to ensure there is a new independent, impartial and effective investigation into Olexander’s complaint.

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A HIGH PRICE TO PAY FOR MESSING UP A SUMMONS

On 18 April 2012 Artem Gerasymovych-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 Zheleznodorozhnyi 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 Simferopol pre-trial detention facility on 21 April, to a cell with a detainee suffering 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 detainees, but did not take fingerprints from the metal pipe or provide the court or the prosecutor with closed-circuit TV records from the police station and detention centre as potential evidence.

On 12 December 2012 Artem was transferred to Simferopol’s police station, where he remained in hospital until June, medics treated several injuries to his brain, fractures to his skull, and attempted to repair his face. The forensic evidence shows no defensive wounds on his hands or arms despite all the injuries being on the front side of his head, suggesting he was restrained or already unconscious during the attack.

In June, Artem returned home to discover that his family had not been informed of his detention or hospitalization. On 1 November Artem submitted a complaint to the Prosecutor’s office under the old Criminal Procedure Code accusing the police of torture.

Despite the fact that his injuries had been extensively documented and the fact that he was brought to hospital while in police custody, on 15 November the Prosecutor’s office responded to the complaint that there was ‘no evidence of a crime’.

On 7 December 2012 Artem’s family complained under the new Criminal Code, but received no answer at all from the Prosecutor’s office. His family then complained on 14 January 2013 to the Crimea Prosecutors’ office. They received no response, so on 23 January they re-submitted the complaint to the Simferopol Prosecutor’s office.

On 25 January they submitted an appeal directly to the court, which held a hearing on 28 January. During the hearing it was established that the Prosecutor’s office had registered the parent’s 7 December 2012 complaint as an enquiry, and had ignored altogether their 14 January 2013 complaint. The court did not question the Prosecutor’s decision not to investigate.

On 14 March 2013 Artem re-submitted his complaint about torture by police and received a response refusing to register the crime on the basis of the 15 November 2012 decision under the old Code.

Artem is permanently disfigured and suffers from depression as a result of the damage to his brain and post-traumatic stress as a result of his experience. He is currently in hospital and unable to speak properly. He says that he would be able to identify the police he says tortured him, but has not been given the opportunity to do so.

Even if he cannot, the explanation for his injuries given by police and guards at the detention centre suggests officers at the pre-trial detention facility were negligent by placing him in a cell with a mentally unstable individual, allowing that individual to possess a weapon, and allowing the assault to take place.

Amnesty International therefore calls on the Ukrainian authorities to ensure there is a new, independent, impartial and effective investigation into the assault on Artem.

THE PROSECUTOR’S OFFICE – THE WRONG TOOL FOR THE JOB

Under the current system, the General Prosecutor’s Office is responsible for investigating criminal allegations against police officers. However, in accordance with the Criminal Procedural Code, the prosecutors responsible for investigating the allegations have not done so thoroughly, and each time have disregarded witness testimony and medical evidence in favour of police accounts, even where the police account does not appear credible.

In reports published in 2005 and 2011 Amnesty International has drawn attention to the conflict of interest inherent in the role of prosecutors in Ukraine. Prosecutors work with police officers on a daily basis to solve ordinary crimes. They are often in close contact and form personal relationships. For this reason, conclusion is often required to investigate and prosecute their colleagues in the police force. Furthermore, exposing the torture or ill-treatment of a suspect in a criminal case may undermine the prosecution’s case against that suspect.

In Amnesty International’s October 2011 report No Evidence of a Crime: Paying the Price for Police Impunity in Ukraine, the organisation highlighted several cases in which the prosecution failed to investigate credible evidence of torture in police custody. In some cases even collaborating with police officers to retaliate against individuals who reported being tortured. As a result, police officers feel confident that they can torture or otherwise ill-treat people without being punished, and continue to do so.

One of the key recommendations Amnesty International has therefore been making to the government is to establish a new and independent institution able to promptly, effectively and impartially investigate allegations of human rights abuses by police.

Ukraine needs to do this in order to carry out its international obligations under the European Convention of Human Rights and in order to comply with rulings of the European Court of Human Rights.

Amnesty International believes that unless investigations into crimes by police are carried out by an independent investigative body, with no functional links to law enforcement agencies investigating ordinary crimes, the investigations will not be conducted promptly, effectively and impartially.

Effectiveness/Adequacy

In order to be effective Amnesty International believes the State Investigation Bureau will need to be adequately resourced and empowered.

The State Investigation Bureau will need to have immediate access to police premises and other relevant locations such as crime scenes, and the power to order the production of evidence and documents. It will need a mandate to interview victims, witnesses and accused parties. It will need to be able to refer matters to the criminal prosecutor and/or to the internal security department of the Ministry of Internal Affairs.

The institutional budget of the new State Investigation Bureau must be large enough for it to function effectively on a national scale and salaries must be on a scale to discourage corruption.

Promptness

International human rights standards call for the investigations of torture allegations to be prompt and effective. In many of the cases documented by Amnesty International and one of the key reasons why they were not investigated promptly and vital evidence was lost. The State Investigation Bureau must ensure that its investigators are able to start work as soon as possible after a crime has been committed.

Independence

It is especially important to safeguard the independence of the State Investigation Bureau as it will be investigating people in positions of power and influence. For this reason it should have no hierarchical or institutional links with the Ministry of Internal Affairs or the General Prosecutor’s office. This should include independent funding.

The State Investigation Bureau should be headed by individuals of acknowledged competence, expertise, independence, impartiality and integrity.

Although the State Investigation Bureau will no doubt need to recruit some forensic and investigative expertise from former police officers or prosecutors during the initial stages, they should try to recruit as many staff as possible from other state and state-related bodies to avoid undue influence from law enforcement agencies. One way to ensure independence is to establish a system of civilian oversight over investigators. Ideally, resources should be allocated to establish an in-house training programme for future investigators. Employees should also be subjected to thorough background checks.

Key principles

As recommended by the former Commissioner for Human Rights of the Council of Europe, any agency investigating allegations of human rights violations by law enforcement officers should comply with the five principles of independence, effectiveness, promptness, promptness, public scrutiny and victim involvement. Based on this knowledge of international practice, Amnesty International calls on the Ukrainian authorities to consider the following principles in setting up the State Investigation Bureau:

- Independence
- Effectiveness
- Adequacy
- Promptness
- Accountability
- Public Scrutiny

If the State Investigation Bureau is to be effective in overcoming impunity it must be open and public scrutiny of the investigations and their results. It must keep publicly available records of all complaints received and the actions taken and must have adequate internal disciplinary mechanisms. Information about how to make a complaint must be widely available publicly and clear enough for all to understand. To ensure public trust in the system, victims and families should be kept fully informed of progress of investigations. While taking care not to prejudice the interests of the official who has been complained against, the complainant should be consulted and kept informed of developments throughout the determination of his or her complaint.
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”.

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.

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.

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. We are independent of any government, political ideology, economic interest or religion and are funded mainly by your membership and public donations.