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To all Committee Members
c/o Office of the High Commissioner for Human Rights
United Nations Office at Geneva
CH-1211 Geneva 10
Switzerland

April 2007

Briefing for the Committee against Torture on Ukraine

Dear Committee Members,

In view of the upcoming session of the Committee against Torture (the Committee), Amnesty International would like to take this opportunity to raise some of the organization's concerns in relation to the implementation of the Convention against Torture in Ukraine.

Despite some positive measures which have been taken in the past two years aimed at preventing torture and other ill-treatment, Amnesty International considers that many of the concerns expressed by the Committee following its examination of Ukraine's fourth report in 2001 are still pressing and some of the Committee's recommendations are yet to be implemented. In particular, there have been further deportations to Uzbekistan of members of the Uzbek opposition, who were at risk of torture; there continue to be allegations that police ill-treat and torture detainees with the aim of extracting confessions; the authorities fail to carry out prompt, impartial, independent and thorough investigations into allegations of torture and other ill-treatment; there is a lack of clarity about when a detained person can exercise his right to access to a lawyer, and as a result detainees are deprived of their right to legal counsel; overcrowding and a high incidence of tuberculosis in pre-trial detention centres continues to be a problem. Amnesty International is further concerned that individuals who have lodged complaints of torture or other ill-treatment have been subjected to reprisals including ill-treatment and intimidation by police in efforts to dissuade them from pursuing their complaints.

In September 2005, Amnesty International published a 40-page report on torture and ill-treatment in Ukraine entitled *Time for Action: Torture and Ill-treatment in Police Custody* (AI Index: EUR 50/004/2005, a copy of which is enclosed). The report focused on allegations of police ill-treatment and torture at the arrest and pre-trial detention stages, in police stations and temporary holding facilities (known as "ITTs", the acronym from the Ukrainian - ізолятор тимчасового тримання)¹ where the problem is most acute. In meetings and correspondence since the publication of

¹ On arrest suspects are held first in holding cells at local police stations. They are then transferred to temporary holding facilities (ITTs) run under the authority of the Ministry of Internal Affairs. All detainees shall be brought before a judge within 72 hours who will decide on further detention or release. According to the Criminal Procedural Code, all detainees should be transferred to a remand centre (SIZO) after the 72 hours have expired (acronym from the Ukrainian, слідчий ізолятор) run by the Department for the Enforcement of Punishments.

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the report, government representatives have readily agreed that torture and ill-treatment in police detention continues to be a problem. In a letter to Amnesty International dated 17 November 2005 the Ministry of Internal Affairs confirmed the continuing existence of torture and ill-treatment:

“We must recognize that despite a series of positive steps taken by the Ministry of Internal Affairs of Ukraine with the aim of eradicating the conditions and factors which cause ill-treatment and the use of torture by law enforcement officers, the practice still persists within the system and has not been completely eradicated.”

Some positive steps have been taken over the past two years by the Ukrainian government to improve laws and practice. During 2005, a pilot project was launched jointly by the Ministry of Internal Affairs, the National University of the Ministry of Internal Affairs and the Kharkiv Human Rights Group to monitor places of detention under the control of the Ministry of Internal Affairs in one region of the country. In July 2005, it was decided to expand this project to cover the whole of Ukraine. The Ministry of Internal Affairs took first steps aimed at a future increase in the use of bail measures in order to cut down on overcrowding in pre-trial detention centres. These steps have not yet alleviated the overcrowding. In mid-April 2006, measures were taken with the aim of ensuring that suspects are informed of their rights, but detailed instructions have not yet been issued to the police.

Article 3: Refoulement

Amnesty International is concerned by the failure of the Ukrainian authorities to observe the principle of *non-refoulement* and to provide full and fair individualized refugee status determination procedures. During the night of 14-15 February 2006, 10 asylum-seekers from Uzbekistan, who had been seeking international protection in Ukraine, were forcibly returned to Uzbekistan by the Ukrainian authorities. Amnesty International considered that these individuals risked torture or other ill-treatment and other serious human rights violations if returned. The Uzbekistani authorities had issued extradition warrants for 11 asylum-seekers in Ukraine on the grounds that they had allegedly participated in the Andizhan events in Uzbekistan on 13 May 2005. Ten of them were forcibly returned, but one asylum-seeker was reportedly allowed to stay as he has relatives in Ukraine. The fate of the deported-asylum seekers remains unknown (for more information, see *Ukraine: Ten asylum-seekers forcibly returned to Uzbekistan*, AI Index: EUR 50/001/2006 enclosed). Amnesty International wrote to President Yushchenko on 2 March 2006 asking for assurances that Ukraine would not return individuals to places where they face a real risk of torture or other ill-treatment or other serious human rights violations, in violation of international human rights standards, in the future. As of 30 March 2007, the organization had not received a substantive reply.

Article 11: Interrogation rules, practices and conditions of detention

Access to legal defence

Amnesty International is concerned that persons suspected of crimes are frequently not permitted access to a lawyer during questioning. The right to legal defence is set out in Ukrainian legislation, but Amnesty International is concerned that the law is not clear enough about when a person should be granted access to a lawyer. Article 21 of the Criminal Procedural Code of Ukraine states that detainees have the right to legal defence; it requires investigators, prosecutors and judges to make suspects *aware* of this right *before the first interrogation*.² The Law on the Police states that detainees are entitled to a lawyer *from the moment of arrest*. However, there is wide disagreement as to when

Until May 2006 the Department for the Enforcement of Punishments was a separate and independent body not subordinated to any ministry. It has now been put under the authority of the Ministry of Justice.

² **Criminal Procedural Code, Article 21. Ensuring suspects, accused and those on trial the right to defence** Suspects, the accused and those on trial have the right to legal defence. Those carrying out the investigation, the investigator, procurator, judges and court are obliged to explain to the suspect, accused and person on trial that he has the right to legal defence and to write a report to this effect [...]

arrest actually occurs – when a suspect is apprehended by police or when the arrest is registered in the police station. The Criminal Procedural Code lists exceptional circumstances when the presence of a lawyer is required such as for children, and disabled persons deprived of their liberty, but otherwise access to a lawyer is expressly required only when specifically requested by the detainee.

Also, Amnesty International is concerned about the lack of availability of legal aid throughout the country for persons who cannot afford to hire their own counsel. Ukrainian legislation only provides for lawyers' associations to arrange legal services including legal aid and does not envisage the involvement of private legal practices in the provision of legal services for detainees. Yet in the majority of regions in Ukraine there are no lawyers' associations. This means that investigators are themselves responsible for ensuring that detainees have the right to legal counsel, and there are no mechanisms for safeguarding this right. In its recently adopted resolution the Parliamentary Assembly of the Council of Europe (PACE) has also called on Ukraine to guarantee prompt access to lawyers and to ensure legal aid.³

Overcrowding

In the letter to Amnesty International of 17 November 2005, the Ministry of Internal Affairs admitted that overcrowding in facilities where people are held prior to trial is a problem and stated that it was taking measures to increase the use of alternative measures. It has prepared recommendations for investigators concerning the use of Article 154 of the Criminal Procedural Code which refers to the use of bail deposits. The Head of the Department of International Legal Cooperation of the Supreme Court informed Amnesty International that legal mechanisms for the use of alternative measures were being developed. In addition, some changes to the criminal procedure code of Ukraine concerning the use of non-custodial sentences were reportedly being submitted to the Ukrainian parliament. Amnesty International is concerned that until these measures are implemented, many people will continue to be detained rather than being released on bail; and thus many will continue to be exposed to the risk of torture and ill-treatment in ITTs and police stations. In some facilities they are also at risk of contracting communicable diseases.

Conditions in Detention

In the letter to Amnesty International of 17 November 2005, the Deputy Minister of Internal Affairs admitted that conditions in ITTs were not in line with international standards: 13 per cent of pre-trial detention centres were not equipped with water and sewage facilities, one in four had insufficient natural lighting and lacked individual sleeping places, only one in five had an exercise yard and each detainee has only 2.5 square metres living space. A programme of reconstruction has begun and the government has allocated 30 million Hryvnya (4,840 million Euros) to refurbish and build new pre-trial detention centres. However the Ministry of Interior informed Amnesty International in their letter that this amount is inadequate. Amnesty International is concerned that many detainees continue to be held in very poor conditions, which amounted to cruel and inhuman treatment.

The European Committee for the Prevention of Torture (CPT) reported after their 2002 visit that four people were held for up to 72 hours in Kyivskii district police station in Odessa in a cell measuring 5.8m², and that between 16 and 32 persons were held in three similarly-sized cells. In addition to violating Article 10 of the ICCPR, such conditions, according to the CPT, "could easily be qualified as inhuman and degrading treatment."⁴

Case example

Edit Shmelina was detained in February 2005 on a charge of possession of narcotics and was held in the Yevpatoriia ITT in Crimea. The cell had sleeping places for four people, but held from six

³ PACE Resolution 1466(2005), Honouring of obligations and commitments by Ukraine, paragraphs 13.12 and 13.13 (<http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta05/ERES1466.htm>).

⁴ CPT Report p.17, para.18 (<http://www.cpt.coe.int/en/states/ukr.htm>).

to 10 women, which meant that they were forced to sleep in shifts. The one window was covered with a perforated metal screen which allowed very little air or light to enter, and the ventilation system was inadequate. As most of the other inmates were smokers, Edit Shmelina found it very difficult to breathe. The women were able to wash at the one tap in the cell by using plastic water bottles.

Tuberculosis

According to the World Health Organization, Ukraine has an estimated tuberculosis (TB) case rate of 95 cases per year per 100,000 people which is the eighth highest in Europe and Eurasia. In a country with a very high rate of TB, overcrowding and poor conditions in pre-trial detention have led to a high rate of infection among detainees. In January 2006 the Sevastopol Human Rights Group reported to Amnesty International that there were 30 – 40 TB infected detainees in the Sevastopol ITT in the Crimea. These people are detained for the full period of their pre-trial detention in the ITT, in violation of the Criminal Procedural Code, because of a long-standing practice that the nearest SIZO in Simferopol will not accept detainees infected with TB. In January 2006, 20 TB infected detainees were held in a cell designed for six people. They are provided with drugs, but reportedly they do not receive special food or the vitamins needed to counteract the effects of the drugs.

In Resolution 1466 (2005) on Honouring of obligations and commitments by Ukraine the PACE called for improvements in “conditions of detention and medical treatment in the penitentiary establishments and detention facilities in line with CPT standards”.⁵

Article 13: Prompt and impartial investigations of alleged torture or other ill-treatment and the duty to protect complainants and witnesses

As highlighted in its 2005 report on torture and other ill-treatment in Ukraine, Amnesty International’s research indicates that perpetrators of torture or ill-treatment enjoy effective impunity. When investigations are carried out they do not meet international standards of promptness, thoroughness, independence and impartiality. Flawed investigations result in few prosecutions of law enforcement officers; and in the few cases where an official is convicted, often minimal sentences are imposed. The Prosecutor plays a central role, not only in the prosecution of cases, but also in the investigation of torture allegations. By its very nature, however, the institution is not independent or impartial. Through their work on criminal investigations prosecutors have very close personal links with the police officers they work with, and as a result are often reluctant to pursue complaints.

Prosecutions of police officers

Acts of torture or ill-treatment by police officers, when prosecuted, are prosecuted under two articles of the Criminal Code. Article 127 which criminalizes torture was added to the Ukrainian Criminal Code in 2001. In January 2005 the law was amended so that it expressly criminalized such conduct when committed by state officials. Until these amendments were adopted, this provision of the law only criminalized torture by private individuals. The definition of torture in the article is now in line with the definition of torture in Article 1 of the Convention against Torture. Police officers can also be prosecuted for exceeding authority or official powers under Article 365 of the Criminal Code.⁶ However, despite these legal provisions there are problems within the criminal justice system which make it difficult for victims to lodge complaints,⁷ to get those complaints investigated promptly,

⁵ Para , 13.7 Available at: <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta05/ERES1466.htm>

⁶ Article 365 of the Criminal Code: “Exceeding authority or official powers” (Перевищення влади або службових повноважень).

⁷ For more information on the difficulty individuals face when lodging complaints, please see *Ukraine Time for Action: Torture and Ill-treatment in Police Custody*, AI Index: EUR 50/004/2005, p. 30-31.

independently and impartially, and to obtain justice through those responsible being disciplined or prosecuted.

Case examples:

When 16-year-old Maksim Kalinin was subjected to police violence in June 2005 in Kerch, his parents immediately reported the ill-treatment to the Public Prosecutor in Kerch, but when they requested a forensic examination they were refused without reason. Only when they demanded to know the name of the official who refused them, and threatened to complain to the regional Prosecutor were they given permission to consult a forensic expert.

When Gennadii and Valerii Vladimirov complained to the Zheleznodorozhnyi district court in the Crimea about the fact that they had been arbitrarily detained and ill-treated by police officers of the Simferopol district department of the Ministry of Internal Affairs in 2004, the court did not accept their complaints. They also complained to the Public Prosecutor and the Ministry of the Interior of the Autonomous Republic of Crimea, but the Public Prosecutor declined to open a criminal case and the Ministry of the Interior replied that there had been no violations. They both appealed against these decisions with no result. Tatiana Doroshenko and Tatiana Vorobeva, who had been ill-treated in connection with the same investigation, complained to the Public Prosecutor of Simferopol region, but no action was taken. Yuri Barsiuk also complained to the Public Prosecutor and no action was taken. Only after Amnesty International raised this case in a letter to the Minister of Justice was an investigation carried out, but no reason to open a criminal case was found.

In November 2005 the Ministry of the Interior informed Amnesty International that from January to November 2005, 757 police officers had been found guilty of unlawful behaviour, and “violating the constitutional rights of citizens”. The main acts underlying these convictions were inflicting bodily harm, carrying out unauthorized searches and inspections, illegal detention and detention on administrative premises. During 2005, 496 criminal cases were opened against serving police officers: of them, 47 for exceeding authority, nine for abuse of power or office, four for torture.

Of the six cases of alleged torture or other ill-treatment that featured in Amnesty International’s September 2005 report, only two cases have resulted in the prosecution of some of the police officers alleged to have been responsible. Aleksei Zakharkin was allegedly tortured by police officers in Ivano-Frankivsk in May 2003. A case was opened against two of the police officers concerned in November 2003. The trial is currently ongoing of the officers who have been charged under Article 365 for exceeding official duties, misuse of official position and illegal detention. Sixteen-year-old Maksim Kalinin was subjected to police violence in June 2005 in Kerch. The two police officers involved have been sentenced, following conviction under Article 365 of the Criminal Code to four and three years’ imprisonment.

In December 2005, Amnesty International wrote to the General Prosecutor (with a copy to the Ministry of the Interior) to raise concern about four further cases of alleged torture or other ill-treatment. In its reply to our letter, dated 9 February 2006, the Ministry of the Interior concluded that, in all four cases, the detainees had falsely accused police officers of ill-treatment in order to avoid conviction for the crimes they had committed. However, the reply did not give any details of the investigations that had been carried out or how the Ministry came to this conclusion.

The Role of the Public Prosecutor

Amnesty International considers that impunity (as a result of the lack of independent, impartial and effective investigations and prosecutions of law enforcement officers in connection with allegations of torture and ill-treatment) is partly rooted in the role of the Public Prosecutor in Ukraine. As well as being the body that is responsible for investigation and prosecution of ordinary criminal cases, it is the prosecutors who decide whether a case will be opened against a public official and then oversee the police investigation. In 2001, in his general report to the UN Commission on Human Rights, the UN Special Rapporteur on torture drew attention to “the conflict of interest inherent in having the same

institutions responsible for the investigation and prosecution of ordinary law-breaking being also responsible for the same functions in respect of law-breaking by members of those very institutions”. The Rapporteur went on to say that: “Independent entities are essential for investigating and prosecuting crimes committed by those responsible for law enforcement.”⁸ In Ukraine the lack of independence of the investigating body means that cases against law enforcement officers are inadequately investigated, delayed or stalled, or are not opened at all.

In its report on its visit to Ukraine in 2002, the CPT called for prosecutors to adopt “a significantly more proactive approach in the fight against ill-treatment”. They also underscored that action by prosecutors should not necessarily depend upon a formal complaint; rather they should take appropriate action in every case when it comes to their attention that a person may have sustained injuries while in the custody of law enforcement officials.

When Ukraine applied to join the Council of Europe in 1995 one of the reforms Ukraine committed itself to implementing was to change the role and functions of the Prosecutor's Office in order to bring this institution into line with Council of Europe standards.⁹ Ukraine has not yet fulfilled this commitment and in 2005 the PACE called again for the Prosecutor's office to be reformed.¹⁰

The Role of judges

In many of the cases that Amnesty International has received, judges have also failed to react to allegations of torture by conducting an independent investigation and ensuring that statements elicited as a result of torture or other ill-treatment are excluded as evidence in proceedings against all but the suspected perpetrators of such treatment.

Case example

Andrei Mazurovich was convicted of murder in December 2002 on the basis of a “confession” that police had tried to extract through the use of torture and ill-treatment. He had reportedly been tortured and ill-treated by police officers to force him to “confess” to the murder, but only confessed when he was told that his partner, Yuriy Mikhievsky, had proved more talkative and had given evidence against him. Yuriy Mikhievsky later stated in court that he had been under physical and psychological pressure by law enforcement officers and for that reason had signed statements incriminating himself and Andrei Mazurovich. Another witness also stated in court that he had only written his statement because of physical force to which he had been subjected. The Court however, did not initiate an investigation into the allegations of torture or other ill-treatment. Andrei Mazurovich was convicted on the basis of his “confession” and other testimony that had allegedly been extracted through the use of torture or other ill-treatment. Furthermore, according to the information available to Amnesty International, to date, no investigation has been carried out into these allegations of torture or other ill-treatment and no person has been brought to justice for such conduct in connection with these allegations.

Reprisals against complainants

⁸ Report to 2001 session of the UN Commission on Human Rights E/CN.4/2001/66, para 1310 (<http://daccessdds.un.org/doc/UNDOC/GEN/G01/106/82/PDF/G0110682.pdf?OpenElement>).

⁹ Parliamentary Assembly of the Council of Europe (PACE), Opinion No.190 (1995) “On the application by Ukraine for membership of the Council of Europe”, adopted 26 September 1995

(<http://assembly.coe.int/Main.asp?link=http://assembly.coe.int/Documents/AdoptedText/TA95/EOPI190.htm>).

¹⁰ PACE, Resolution 1466(2005), adopted on 5 October 2005, paragraph 13.4

(<http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta05/ERES1466.htm>).

Four of the individuals who featured in Amnesty International's 2005 report have faced reprisals from police aimed at dissuading them from pursuing their complaints. Three of the individuals have been forced to leave Ukraine and seek asylum in other countries as a result.

Case examples

1. Aleksei Zakharkin was allegedly tortured by police officers in Ivano-Frankivsk in May 2003. A case was opened against two of the police officers concerned in November 2003. During 2005, on four separate occasions, the police gained a search warrant and searched the family home allegedly for stolen property. On each occasion they removed items which were never returned, but failed to present a list of the items seized by the police. In April 2005, police officers allegedly invited Aleksei Zakharkin to a meeting by giving him the impression that he was to meet an acquaintance. He was then reportedly driven to a lake out of town and beaten up. He summoned his parents by mobile phone and they recognized the police officers concerned. When they reported the attack they were told that one police officer was on holiday and the other was on a business trip at the time and no further action was taken. In May 2005 Aleksei Zakharkin was beaten up outside his house by two unknown assailants who broke his leg. The police refused to accept a report of the attack. Aleksei Zakharkin is currently applying for asylum in an EU country.

2. Mikhailo Koval, his wife Ganna Koval and their son Dmitrii Brik (Koval) were allegedly subjected to ill-treatment and torture in August 2001 by three police officers from Chernihiv city police station to force them to hand over a Bosch drill and a gas pistol. In this case police officers appeared to be acting for a criminal purpose – to make them surrender “voluntarily” an item, not as evidence, but allegedly for gain. Since making a complaint about this treatment Mikhailo Koval has been subjected to intimidation and ill-treatment by the police officers concerned. Three months after lodging his complaint, on 29 November 2001, Mikhailo Koval was threatened in front of a witness by one of the police officers who had ill-treated him and his son. On 26 March 2002, Mikhailo Koval was beaten up by a stranger in the market place in Chernihiv, but he suspects that the attack was linked to his attempts to have the three police officers brought to justice. He continues to be subjected to threatening anonymous phone calls.

We sincerely hope that the information contained in this letter will be useful to the Committee in its consideration of Ukraine's fifth periodic report. We look forward to the publication of the concluding observations and to following up on the recommendations made by the Committee.

Yours sincerely,

Halya Gowan
Deputy Programme Director

Enclosed documents:

Ukraine: Time for Action: Torture and Ill-treatment in Police Custody, AI Index: EUR 50/004/2005
Ukraine: Ten asylum-seekers forcibly returned to Uzbekistan, AI Index: EUR 50/001/2006