



**Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

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**Committee against Torture**  
**Fifty-third session**

**Summary record of the 1254th meeting**

Held at the Palais Wilson, Geneva, on Wednesday, 5 November 2014, at 10 a.m.

*Chairperson:* Mr. Grossman

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*The meeting was called order at 10.05 a.m.*

**Consideration of reports submitted by States parties under article 19 of the Convention** *(continued)*

*Sixth periodic report of Ukraine (CAT/C/UKR/6; CAT/C/UKR/Q/6)*

1. *At the invitation of the Chairperson, the delegation of Ukraine took places at the Committee table.*
2. **Ms. Sevostianova** (Ukraine) said that she would focus on the most significant developments in her country's legal system since the submission of its report. Much had changed. Ukraine was a strong country with an active civil society that proudly upheld its right to choose its future for itself. The newly elected parliament and President worked together with the single aim of integrating Ukraine with the European Union. To that end, many reforms were required, especially in the sphere of human rights protection.
3. In 2012, parliament had adopted a new Code of Criminal Procedure, replacing the one which had been in place since the 1960s. The Code stipulated the use of preventive measures. It provided all parties with an equal right to protection and to defence and established clear criteria for the admissibility of evidence in trials, the adversarial process and the availability of a judicial review of human rights at every stage of proceedings. The reforms had already borne fruit: the vicious circle of punishment had been broken and, in 2014 to date, 235 cases had ended in acquittal, which was eight times more than in any previous year. In 40 cases, the prosecutor had dropped the charges.
4. The adoption of the new Code had, however, been only the first step in reforming the criminal justice system. In March 2014, the Government had adopted the programme of activities of the Cabinet of Ministers, which aimed to secure the protection of human rights on the basis of the rule of law by ensuring the effectiveness of justice, reforming the law enforcement agencies and carrying out a full investigation of offences relating to the mass protests that had been held from November 2013 to February 2014. The programme provided for the adoption of legislation on reform of the judicial system and the status of judges, the public prosecution service, advocacy and legal practice, the police, the State Penitentiary Service and the relations between the State and the churches. The advocacy bill was currently before the Venice Commission of the Council of Europe.
5. In 2011, Ukraine had adopted the Legal Aid Act, which entitled Ukrainian nationals, foreigners and stateless persons to receive free primary legal aid and, in the case of some categories of persons, free secondary legal aid. In conjunction with the new Code of Criminal Procedure and the Code of Administrative Offences, the Act had, since 1 January 2013, significantly expanded the category of persons entitled to free secondary legal aid, introduced quality standards for the provision of such aid and regularly monitored compliance. Advocates were appointed in such a way as to minimize the risk of undue influence.
6. A bill amending the Organization of the Courts and Status of Judges Act in conformity with European standards would shortly be submitted to the Venice Commission. The bill provided for improvements to the procedure for the selection of judges and the provision of a guaranteed right of access to justice. It also sought to optimize the organization of courts of general jurisdiction, establish an effective system of judicial self-government and determine conditions for the rational use of State funds for the maintenance of the judicial system.
7. A presidential decree of 16 October 2014 had established the Council for Judicial Reform, an advisory body involved in the Ukraine – 2020 Strategy for Sustainable Development, which aimed to achieve European standards in the area of judicial reform

and human rights and to establish an effective mechanism for interaction between State bodies and civil society institutions in implementing reform. An important step towards restoring public confidence in the national courts had been the adoption on 8 April 2014 of the Act on the Recovery of Confidence in the Judiciary in Ukraine, which set out a legal and organizational framework for conducting a special audit of judges in courts of general jurisdiction.

8. On 16 October 2014, parliament had adopted the amended Procurator's Office Act, which removed oversight and supervision functions from procurators and transferred investigative functions to the National Bureau of Investigation. The Act also guaranteed the independence of prosecutors and established self-governing bodies for them. The reforms thus fulfilled her country's obligation to change the functions of the Procurator's Office in line with Council of Europe standards. The right of the Procurator's Office to conduct pretrial investigations would terminate in November 2017, five years after the entry into force of the Code of Criminal Procedure.

9. The State Penal Service had been reformed under a presidential decree of 8 November 2012, which aimed to bring the execution of criminal penalties into line with national legislation and international standards. In April 2014, the Ministry of Justice had established a commission to review public policy on the enforcement of criminal penalties, the length of detention of persons in custody and an improved regulatory framework. The commission had five mobile units that carried out inspections of prisons. A presidential decree of 15 October 2014 had established a national human rights strategy, which would be developed with the involvement of public authorities, civil society and leading national and international experts. It would seek to produce a single catalogue of all the commitments made by Ukraine in the field of human rights.

10. The occupation of the territory of the Autonomous Republic of Crimea by the Russian Federation and that country's actions in relation to the annexation of part of Ukrainian territory constituted not only an unprecedented case of gross violation of international law but a global challenge. Persons residing in Crimea or serving a sentence in its territory had been placed under intolerable pressure and suffered from systematic violations of their rights and freedoms. They were coerced into changing their nationality by the use of threats or physical force and punished for resistance. Ukrainian schools were being forcibly closed, the right of the Crimean Tatar people to use their mother tongue had been violated on numerous occasions and there had been restrictions on freedom of religion, freedom of movement and journalists' rights. The occupation of the territory of Crimea made it impossible for Ukraine to guarantee the human rights and freedoms of prisoners, who were thus deprived of their rights to food, medical care and communication with their families.

11. Unidentified persons belonging to the so-called "Donetsk People's Republic" and the "People's Republic of Luhansk" had carried out attacks on prison staff in that area with the intention of seizing weapons or obtaining the release of prisoners. Staff had been subjected to violence, torture, death threats and xenophobia. Numerous deaths had occurred. The Government was taking all possible steps to protect the rights of all residents of those areas and was conducting an investigation into all reported incidents of ill-treatment, torture, abduction or death. The Government had lodged three cases against the Russian Federation with the European Court of Human Rights.

12. Her Government wished to cooperate with the Committee, whose recommendations had always served as a road map for Ukraine in finding new ways of guaranteeing human rights. As soon as the aggression by the Russian Federation had come to an end, Ukraine would be able to proceed effectively and rapidly with all its reforms.

13. **The Chairperson** (Country Rapporteur), speaking also on behalf of Mr. Tugushi, the other Country Rapporteur, said that Ukrainian legislation seemed to refer to “violent acts” rather than torture, and he wondered whether any jurisprudence was available in that regard. He asked how the State party defined discrimination, in view of the fact that the Convention prohibited torture for any reason, and whether discrimination could be directed against a person because of his or her sexual orientation. The Convention also called for the criminalization of acquiescence in torture or acts of omission by State officials and stipulated that a State was also responsible for private acts of torture if it was aware of them. He noted that the punishment for violent acts was 2 to 5 years’ imprisonment, which did not accord with the requirement under the Convention that a penalty should be commensurate with the gravity of the act concerned. He asked how often such a sentence had been imposed and questioned whether 2 years was sufficient for what was a heinous act. He also asked whether there had been convictions for conspiracy to commit torture.

14. The current situation in Ukraine was clearly difficult, but the State party must adopt measures to investigate cases of torture and provide redress and rehabilitation for victims under article 14 of the Convention. It must also document all cases of disappeared or abducted persons. Amnesty International had claimed that there had been 500 instances of torture between April and June 2014, and he asked what the Government was doing for victims and their families and for displaced persons. He wondered whether a special fund had been opened for reparation. Moreover, the Committee had received information from numerous NGOs claiming that various provisions of the Criminal Code were not being implemented. People were being detained but their detention was not being registered immediately but formalized retroactively. He asked whether Ukraine had a uniform national register, which recorded the location and other circumstances of a detention. He wondered whether the legal aid services were provided with sufficient resources and how such resources were distributed geographically. He also asked whether the deadline of 48 hours for access to a lawyer — which, in any case, was too long — was being met, and how many cases there had been of complaints about delays.

15. He would appreciate additional information on the pretrial detention regime. In particular, he wished to know whether there were effective independent complaint mechanisms that were accessible to individuals who were held beyond the 72-hour limit. He asked how the State party ensured that adequately trained interpreters were available so that all detainees enjoyed the right to be informed of the charges against them in a language they understood. It would be useful to know how quickly detainees’ families were informed of the detention.

16. He would welcome information on the legal regime governing solitary confinement and the degree to which the law was respected in that regard. It would be useful to know whether any complaints had been upheld concerning solitary confinement, including detainees’ access to a doctor.

17. He asked whether a task force had been set up to address tuberculosis in prisons. The Committee would appreciate the delegation’s comments on reports of an increase in the number of deaths and suicides in prison. It would be useful to learn whether the national preventive mechanism was taking part in efforts to prevent deaths in prisons. The Committee would welcome updated information on the steps being taken to implement the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, particularly concerning the use of video surveillance in prison cells. He asked whether any compensation had been awarded in the cases of Mamuka Samushia, Tamaz Kardava and Aleksandr Vasilyevich Melnik, who had all been denied adequate medical care while in prison.

18. He requested additional information on the cases of Vitaliy Levchenko and Andrei Melnichenko, two construction workers who, in 2012, had allegedly been beaten by the

police when they had complained about not being paid. He requested details of any investigations into acts of violence against lawyers. Was the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) used in the training of doctors and lawyers in the State party?

19. He asked whether the State party planned to change the law according to which it was possible to hold individuals in administrative detention for up to 30 days for vagrancy. It would be useful to know what criteria had to be met for a court to issue an administrative detention order and whether such orders were subject to appeal.

20. He asked what steps the State party took to ensure that measures such as Operation Migrant did not result in the stigmatization of migrants. He also wished to know whether the law had been followed to the letter in Operation Migrant 2009, particularly given that over 176,300 checks had been made in premises where foreign nationals might have been staying. He asked what systems were in place to ensure that migrants could challenge their detention. How many migrants had successfully challenged their detention to date, and how many had been in detention for the maximum period of six months? Had there been any investigation into claims that Somali and Eritrean asylum seekers and migrants had been ill-treated at the migrant accommodation centre in Zhuravichi, western Ukraine, in early 2012. How effective were efforts to ensure that all asylum seekers and migrants received information on their rights in a language they understood? The Committee would appreciate additional information on the procedures followed in determining refugee and asylum status, and an update on efforts to eliminate the backlog of unprocessed asylum claims from 2009 and 2010. He asked for more details on the dormitories the State party had set up for undocumented migrant children, in particular how they differed from detention facilities and to what degree civil society was involved in running them. He asked whether the State party had requested or given diplomatic assurances to any other State. It would be useful to know whether victims of trafficking were granted legal status in the State party in return for providing information on perpetrators of human trafficking.

21. The Committee would appreciate statistics on offences based on racial, religious or ethnic intolerance. It would be useful to hear the delegation's comments on reports that some offences motivated by racial discrimination were reclassified as hooliganism. It would be interesting to know whether there had been any recent cases in which victims of racial discrimination had received compensation or perpetrators had been punished. He asked whether the State party planned to take steps to ensure that racial and ethnic minorities, and women, were adequately represented in the law enforcement agencies. He also asked how many members of ethnic minorities and women worked in the Supreme Court and the upper echelons of the judiciary, and whether the State party planned to take steps to increase those numbers.

22. He requested additional information on the "Stop violence!" campaign designed to reduce the disturbingly high incidence of domestic violence in the State party. Given that current reporting methods used by the procuratorial agencies did not record cases or allegations of torture and cruel treatment separately, he asked whether the State party planned to amend that practice and provide adequate training for those responsible for recording such cases.

23. He asked whether there had been any cases in which confessions obtained through torture had been declared inadmissible by the courts. He requested an update on action being taken to implement the recommendations of the parliamentary human rights commissioner concerning military hazing. The Committee would appreciate information on efforts to provide training in humanitarian law to those who were taking part in actions intended to protect the territorial integrity of the State party. He asked what steps were being taken to protect and assist the lesbian, gay, bisexual, transgender and intersex persons

who were reportedly being forced to flee their homes in eastern Ukraine. The Committee would appreciate data on homophobic attacks and the investigations into such attacks.

24. **Mr. Bruni** requested details on the outcome of the cases and the penalties handed down to the law enforcement officials found guilty in the cases referred to in paragraphs 75 and 76 of the periodic report, and in the 16 cases of violence by militia officers resulting in the death of the victim referred to in paragraph 186 of the report. It would be interesting to learn why criminal proceedings had not been brought in the other 24 cases mentioned in paragraph 186. He would welcome updated information on any developments in the case of the death in detention of Yuriy Illarionovich Shchokin, which had been caused by acts of torture perpetrated by other inmates, with the possible involvement of a prison officer. He asked whether any prison staff or other officials had been prosecuted in that case and whether any steps had been taken to prevent similar incidents in the future.

25. **Mr. Domah** asked how the State party had reconciled the inquisitorial and accusatorial systems in its recent reform of the legal and judicial system. It would be useful to hear whether the new system had been put in place effectively or whether the old system was continuing in practice, particularly given that investigating judges continued to be part of the new system. He asked whether the term “judicial self-government” in the delegation’s introductory remarks had been used in the technical sense, or as a somewhat inaccurate translation of the independence and impartiality of the judicial system, and whether it encompassed security of tenure of judges. He wished to know whether international treaties were automatically applicable in domestic legislation when they were ratified by the State party or whether it had to legislate in order to render them applicable.

26. **Ms. Belmir** asked whether the reform of the judicial system in Ukraine was really putting an end to problems relating to judicial appointments and careers, the pressure exerted on judges, confessions extracted under torture, the failure to keep proper records of detentions, the reliance on administrative detention and other such irregularities. The State party had been urged to make investments in training the police and making them aware of their responsibilities. A response to reports that, in some prisons, some groups of prisoners were used to mistreat other groups of prisoners would be welcome. She also asked for additional information on the current debate concerning articles 364 and 365 of the Criminal Code, which were apparently being used to criminalize normally reached political decisions, on the cases of asylum seekers who had been detained for unduly long periods and the number of such cases pending before the courts, and on violence against children and the absence of a system of juvenile justice that could ensure better ways of dealing with the problem.

27. **Mr. Modvig** noted that mortality had nearly doubled in Ukrainian prisons in the past 10 years, in large part as a result of HIV/AIDS. He therefore asked whether medical examinations of newly arrived prisoners included HIV testing or whether prisoners themselves had to request such testing. He would also welcome information on the proportion of those entering prison who were actually tested for HIV, on the availability of antiretroviral treatment in the prison system and on the financial resources allocated to treatment. Lastly, he asked whether prison doctors were aware that they had a duty to report possible cases of torture or injury, and requested information on the number of such cases that had been reported and the number of inmates who had been examined by specialists.

28. **Ms. Gaer** asked whether the delegation could provide the Committee with a list of the towns that were under government control, those that were not and those that were theatres of counter-terrorism operations. It was not entirely clear whether such places as Donetsk and its airport, Mariupol and Debaltsevo were contested or under the control of the Ukrainian authorities. In that connection, she requested information on the authorities’ ability to document events taking place in so-called self-governing areas and to investigate

and sanction any breaches of the Convention there. That information would make it easier to understand reports that had been submitted by NGOs and other organizations.

29. She requested information on the status of a number of key investigations, including the investigations into the sniper killings in Kyiv and the Odessa fire, and enquired whether an investigation had been opened into the Mariupol shootings of May 2014. Information on reports of armed provocateurs firing on Ukrainian troops, the return of prisoners of war to the Russian Federation and the possible transfer of responsibility for the Aidar and Azov Battalions from the Ministry of Internal Affairs to the Ministry of Defence would also be welcome. She wished to know what steps were being taken to ensure that any abuses were investigated, what authority could carry out the investigation, whether the cause of death of those whose bodies had been found in mass graves had been established, whether they had been tortured, and whether armed groups were continuing to terrorize the inhabitants of eastern Ukraine, as had been noted in a report of the Office of the United Nations High Commissioner for Human Rights dated 28 July 2014. She wondered whether any investigations into the abductions perpetrated as part of that campaign of intimidation had been carried out and whether the authorities had any information on the whereabouts of persons who had been abducted. Several Crimean Tatars had been reported missing; in other cases, people had been abducted and sent to fight on the front line. Were such cases monitored and documented?

30. In the current crisis other problems had become more acute as well. There had been an apparent increase in domestic violence, for example. Relevant statistics would be welcome. She invited the delegation to comment on reports that rebels had been using civilians as human shields and asked whether any corroborating documentation of those reports was available. Lastly, she asked whether the Government still maintained that bringing more persons belonging to ethnic and national minorities into law enforcement would violate the principle of equality and requested clarification of the State party's assertion that separate statistics for criminal acts and for torture were not kept.

31. **Mr. Gaye** asked what recourse lawyers had when they were prevented by the police from communicating with a person deprived of liberty. Since the State party's report offered seemingly contradictory information, he wished to know for exactly how long a person arrested without a warrant issued by a judge could be held and exactly which officials were authorized to make such arrests. He also asked whether the forcible return of 11 Tamil asylum seekers to Sri Lanka had been the outcome of an expulsion procedure and how the authorities reconciled the refusal to extradite a person suspected of having committed acts of torture and the obligation to try the person. Lastly, he requested information on any cases in which compensation had been obtained following a complaint of torture and on whether the State took any action against any public officials responsible for torture.

32. **The Chairperson** requested additional information on possible reforms of the regime governing involuntary hospitalization and psychiatric treatment and on the status of an investigation of a case involving forcible treatment not ordered by a court. In addition, he wished to know how the authorities were responding to reports of abuse of minors in correctional facilities. Other issues on which information would be welcome included the Government's efforts to ensure access to high-quality education for Roma children and alleged attacks on journalists or others working in the media.

33. **Ms. Belmir** asked whether the State party, in view of the crisis it was experiencing, was not in a de facto state of emergency.

34. **Mr. Zhang Kening** asked who had been acquitted by the courts in the 235 cases mentioned in the delegation's opening statement and for what reason.

*The meeting rose at noon.*