



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

Distr.
GENERAL

CAT/C/SR.768
13 October 2008

ENGLISH
Original: FRENCH

COMMITTEE AGAINST TORTURE

Thirty-eighth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 768th MEETING

Held at the Palais Wilson, Geneva,
on Wednesday, 9 May 2007, at 3 p.m.

Chairperson: Mr. MAVROMMATIS

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The meeting was called to order at 3 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 19 OF THE CONVENTION (agenda item 5) (continued)

Fifth periodic report of Ukraine (continued) (CAT/C/81/Add.1; CAT/C/UKR/Q/5/Rev.1;
CAT/C/UKR/Q/5/ Rev.1/Add.1 (in Russian only); HRI/CORE/1/Add.63/Rev.1)

1. At the invitation of the Chairperson, the members of the delegation of Ukraine resumed their places at the Committee table.
2. Ms. LUTKOVSKA (Ukraine), referring to the incorporation of the definition of torture into domestic law, said that in January 2005, an Act amending article 127 of the Criminal Code had been passed, pursuant to which the term “torture” meant any act in which severe physical or mental pain or suffering was deliberately inflicted on a person by means of blows or other acts of violence for the purpose of forcing him to commit acts against his will, obtaining information or confessions from him or another person, punishing an act which he or another person had committed or was suspected of having committed, intimidating him or putting pressure on another person (see the written replies (CAT/C/UKR/Q/5/Rev.1/Add.1), paragraph 3); the perpetrator of such acts could be either a private individual or a civil servant. On 24 January 2007, a bill stipulating that the definition would include the concept of discrimination as a motive for acts of torture had been submitted to the Parliament, which was currently considering it and was expected to pass it shortly.
3. Pursuant to the Supreme Court ruling of 7 February 2003 on judicial practice in cases relating to violations of the right to life and physical integrity, torture was defined as any act which violated a person’s physical integrity and inflicted repeated abuse, by use of such means as fire, electricity, acid or radioactive or toxic substances, for the purpose of causing unbearable pain or provoking mental anguish (through humiliation, psychological abuse etc.) in the presence of members of the victim’s family.
4. Civil servants other than law enforcement officials who committed acts of torture could be prosecuted pursuant not only to the above-mentioned article 127 of the Criminal Code, but also to its article 365, which made abuse of authority an offence. In conformity with Ukrainian legislation, tacitly allowing a person to commit acts punishable under the Criminal Code, including torture, was tantamount to participating in those acts and was thus also punishable.
5. With regard to access to legal aid for non-nationals, the Constitution provided that foreigners and stateless persons had the same rights of defence as Ukrainians. Persons who needed a defence counsel could avail themselves of the services of a lawyer of the bar in the region (oblast) in which they were present, or else those of a lawyer from another region.
6. Pursuant to the instructions which officials in the services of the Ministry of Internal Affairs received, suspects must be able to inform their families of their detention; failure to meet that requirement could result in disciplinary and administrative proceedings being instituted against those responsible. Foreign suspects had the right to contact the consular services of their country in Ukraine and could receive a visit from a consular representative. If a suspect did not speak Russian or Ukrainian, an interpreter must be made available.

7. In accordance with the Code of Criminal Procedure, placement in police custody could only be ordered by a judge, and the Constitution stipulated that custody could last a maximum of 72 hours as from the time of the arrest. Suspects had the right to be assisted by a lawyer from the beginning of custody, but some time might elapse before they could actually exercise that right, since a lawyer might not be immediately available. Suspects could also request to see a physician from the outset of custody.

8. Aware of the problems persisting in Ukraine in connection with access to legal aid, the Government had elaborated a bill to ensure that suspects were provided with the services of a lawyer free of charge. For the moment, the bill was being implemented on an experimental basis. If the results were positive, it would be extended to the whole country.

9. In certain cases defined in article 165 of the Code of Criminal Procedure, the duration of custody could be extended by a judge for a maximum of 15 days if the requirements of the investigation so warranted. The person in police custody could appeal the court's decision. On the other hand, Ukrainian legislation did not set a minimum duration for custody. According to recent information provided by the Kiev Office of the Prosecutor General, 15 per cent of cases were settled within 24 hours. If the time limit for police custody was not respected, the suspect must be immediately released and brought before a judge, who checked whether the suspect had been subjected to illegal interrogation methods. If the judge concluded that the suspect had been abused, he took it into account for the continuance of the proceedings.

10. In certain cases, for example when it was necessary for establishing the facts, the Criminal Code provided that officials in charge of an investigation could request a judge to order the transfer of a suspect from police custody to a pre-trial detention cell of the Ministry of Internal Affairs, where he was then held for the duration of the investigation.

11. The name of the special services in Ukraine was "Berkut" and not "OMON", which was the name of the Russian special services. The Berkut services did not take any decision on arrests and merely enforced court orders. In 2006, it had arrested 13,128 persons suspected of various offences. Persons arrested by the Berkut services were not treated differently from those arrested by other law enforcement authorities.

12. Prison physicians had the same training as hospital physicians; they did not receive special training. Senior police officials were schooled at the institutions of higher learning of the Ministry of Internal Affairs. They took compulsory courses in law and also had in-service training. Interrogation methods were strictly defined in the Code of Criminal Procedure and were the subject of a special course that was part of training for senior police officers.

13. As to the attitude of law enforcement officers during public gatherings, she said that the manner in which the police had handled the political demonstrations of March 2003 and November 2004, at which no serious incidents had occurred, had been encouraging. The rules which the Ukrainian police must follow were the same as those in other countries: as long as the crowd was peaceful, the police were not to use force, whereas if there were disturbances and the situation was in danger of degenerating, they could, but must exercise the greatest possible restraint. Persons who asserted that the police had made disproportionate use of force could lodge a complaint, and the prosecutor would then order an expert medical examination. If the measures taken proved to have been excessive, those responsible were subject to prosecution.

14. With regard to the problem of hazing in the military, she said that the practice as such was not defined in the Criminal Code, but perpetrators could be prosecuted under the provisions of chapter XIX of the Criminal Code, on offences committed in the armed forces, and in particular article 406 (violation of rules governing relations between soldiers of the same rank) and article 424 (abuse of authority by a superior resulting from the illegal use of force).

15. In 2006, 73 cases of hazing had been reported or 12 per cent fewer than in 2005 and 58 per cent fewer than in 2004. No case of hazing-related suicide had been recorded. The Ministry of Defence had set up an emergency telephone hotline so that victims of hazing and their families could lodge complaints. To cite one example, in 2007 the mother of a soldier had called the hotline to report that her son, who should have been in a military hospital, had been placed in a civilian hospital, his commander having tried to conceal the fact that the serious injuries which the victim had sustained had been the result of abuse. An investigation had confirmed that the injuries had been due to abuse, and disciplinary proceedings had been instituted against the commander in question. In another case, which had arisen in late 2006, a soldier had used the hotline to report to the territorial administration of the Crimea that he had been beaten by other soldiers. The investigation had concluded that the allegations were true, and a court had sentenced the two soldiers concerned to two months' imprisonment.

16. With regard to sexual violence against women in prison, she stressed that prisoners had an unlimited right to lodge complaints, i.e. there were no restrictions on the number of complaints that they could submit or their frequency. However, the prison administration had not received any complaints of sexual violence since 2004.

17. The special units of the State Penal Correction Department had been set up to maintain order in places of detention and to combat the creation of criminal bands in prisons. It could conduct searches in prisons and ensure the safe transfer of inmates between prisons and other locations. Most recently, one such special unit had had to intervene at a prison camp in the region of Vinnitsa, where a mutiny had broken out. Once order had been restored, all the inmates had been examined by a physician and had been able to meet with the prosecutor responsible for the camp's supervision. Those who had so wished had been able to lodge a complaint, which two inmates had done, but the investigation had concluded that there had not been any serious violations of the rights of the complainants.

18. The practice of extradition in Ukraine was governed by the European Convention on Human Rights and by the International Covenant on Civil and Political Rights, which required States parties to respect the principle of non-refoulement. When Ukraine received an extradition request, the Office of the Prosecutor General and the Ministry of Justice asked the authorities of the requesting State for assurances that the fundamental rights of the person whose extradition was requested would be respected, and extradition took place only if those assurances were received. Anyone who was the subject of an extradition request could enter an appeal, which had a suspensory effect on implementation of the extradition decision.

19. The Committee had asked about the effectiveness of investigations, notably with regard to a case submitted to the European Court of Human Rights (*Afanassiev v. Ukraine*). The Government's official response was the following: criminal proceedings had in fact been instituted following a complaint lodged by Mr. Afanassiev concerning abuse of power by a member of the Directorate of Internal Affairs of the region of Kharkov. The case had been

examined by several prosecutors, the investigation having been interrupted several times. Discouraged, Mr. Afanassiev had applied to the European Court of Human Rights, which had concluded that torture had taken place that the State had violated its obligations under article 3 of the European Convention on Human Rights and that effective remedies had been lacking. In May 2006, a new investigation had been instituted, but had been discontinued because no evidence had been found of an offence (art. 6 of the Code of Criminal Procedure). In July 2006, that decision had been overruled by the Kharkov Prosecutor's Office, which had reopened the investigation. However, the investigation had been suspended, because it had not been possible to identify the guilty party. That was where the matter stood, and in the Prosecutor General's opinion, there was no reason to go back on that decision.

20. Ukraine attached great importance to the Istanbul Protocol. Anyone who had suffered bodily harm, for example as a result of a domestic dispute or acts committed by a member of the police, could apply to the prosecutor for an expert medical examination. The relevant medical examinations were in conformity with the Istanbul Protocol. The physician responsible for the medical examination, who was chosen from a list of medical examiners certified with the courts, was totally independent of the police and the prosecutor's office. The physician conducted the examination and produced a report, on the basis of which the prosecutor decided whether or not to institute criminal proceedings. Only the prosecutor or the court could instruct a medical examiner to conduct such an examination.

21. The situation was more complicated if the alleged victim was in prison. In such cases, either the prison physician reported the presence of injuries noted during a routine examination, or the prisoner asked to be examined by the physician. The physician must record any injuries observed in the appropriate register and must notify the prison director, who could open an investigation and call in the prosecutor, who could in turn submit the case to a medical examiner for an opinion and a report, in the light of which the prosecutor would decide whether or not to institute proceedings.

22. In 2004, the State Penal Correction Department had set up a monitoring commission to operate within the Department but also in the regions. The commission was made up of prominent personalities, including representatives of non-governmental organizations (NGOs) and human rights defence bodies, as well as of the Orthodox Church, the armed forces, the Psychiatrists Association, academics and the Ukrainian Children's Defence Committee. Its regional offices were required to include human rights activists, because when it worked on confidential cases, the Department was concerned to demonstrate the greatest possible transparency so as not to leave itself open to criticism or raise doubts.

23. The mobile monitoring units of the Ministry of Internal Affairs had been set up several years previously on the initiative of Kharkov human rights defenders and academics with a view to involving civil society more closely in the democratization of the Ministry's services and ensuring respect for constitutional rights and freedoms in order to promote Ukraine's participation in the European integration process. A decree of the Ministry of Internal Affairs regulated the activities of the mobile units, which was composed of human rights defenders but also civil servants in the Ministry of Internal Affairs; by making sure that the Ministry's staff enforced the law, the mobile units played the role of "the police of the police". In 2005 and 2006, the mobile units had visited more than 90 pre-trial detention centres, or one in six. By the end of 2006, some 120 members of the mobile units had received training, norms had been established

for preparing reports, a code of ethics had been produced, and the mobile units had been provided with human rights monitoring body modelled on the work of the Human Rights Department of Kharkov University. Prior to any visit to a detention centre, the mobile unit notified the Ministry or the director of the facility in question. The members of the units visited the cells, examined the prison register, verified the duration of detention etc. They could enquire about the quality of the food and the access of detainees to a physician, a lawyer and their families. Their role was not to punish, but to monitor. Thus, it was not possible to indicate how many persons had been disciplined on the basis of their activities: their aim was not to denounce State policy, but to modify it.

24. Officials at the Ministry of Internal Affairs did not have the right to have objects in their possession that might be used for the purpose of torture. In 2004, the Ministry had published instructions in that regard, and a special committee had been mandated to visit all the services and to confiscate any objects, such as clubs or handcuffs, which might be employed for torture. Civil servants could not order certain items unless they were essential for their work and were for an authorized use. Needless to say, the situation was not perfect. All police officers in contact with the population had handcuffs, which were a necessary part of their equipment. The real solution was to work to change behavioural patterns. She presented some data concerning convictions of members of the police between 2001 and 2006, from which it emerged that some 180 members of the Ministry of Internal Affairs had been prosecuted in 2001 for abuse of power, forgery, corruption and other offences, as against 146 in 2005 and 179 in 2006. Cases of prosecution for murder, robbery, torture and rape had totalled 63 in 2001 and 39 in 2006. On the whole, the number of criminal proceedings instituted against members of the Ministry of Internal Affairs for abuse of power or acts of violence had increased noticeably between 2001 and 2006.

25. Clarification had been sought with regard to an allegation that a State official had been sentenced by a court to a punishment that was less than the minimum mandatory penalty for acts of torture. As the judiciary was independent, the Government could not comment on the decision of a court. The members of the Committee had also enquired about the activities and independence of the Ombudsman. Ukrainian legislation did in fact confer upon the Ombudsman total independence. His sole link with the authorities was the obligation to report once a year on the human rights situation in the country. He had vast powers for protecting human rights and had access to all prisons, pre-trial detention centres, and the services of the Ministry of Internal Affairs and the State Penal Correction Department. The Ombudsman could refer a matter to the prosecutor's office, the courts and the Constitutional Court. To cite one example among many, a Ukrainian citizen working for the Lvov security service had been beaten to death by its members, who had wanted to force him to confess to a murder. His family had not received any explanation from the security service or any compensation until the case had been brought before the Ombudsman; the court had then decided to pay compensation to the family and punish the perpetrators of the crime.

26. Ms. GAER (Country Rapporteur) said that the case of the 11 Uzbek asylum-seekers who had been returned to Uzbekistan showed that there were major structural shortcomings in the judicial system. She was particularly concerned that the prosecuting authorities did not seem to be subject to any oversight. She reminded the delegation that upon joining the Council of Europe in 1995, Ukraine had undertaken to reform the role of the public prosecutor's office in order to ensure conformity with European norms and that in 2005, the Council of Europe's Parliamentary Assembly had concluded in a resolution that nothing had been done to that end. It would be

interesting to hear the position of the current Government on that subject and to find out whether any measures had been recommended to submit the activities of the prosecuting authorities to any form of oversight. Information on the potential role of the Parliament in that regard would be useful, in particular in the context of such controversial cases as the disappearance of the journalist Georgiy Gongadze. Information would also be welcome on the special units of the Ministry of Internal Affairs, their composition and the scope of their activities.

27. She reiterated her request for information on the nature of the acts of violence that had led to the deaths of 73 soldiers in 2006 and the reasons why legal action had not been taken on any of those incidents. She noted also that, according to the written replies, persons held in pre-trial detention centres and in prison camps could submit complaints once a month calling for a review of certain decisions concerning their treatment, for example their placement in solitary confinement, whereas in its replies before the Committee, the delegation had referred to a more frequent interval. Which figure was correct?

28. The mobile monitoring units were a very positive initiative which should be encouraged. She asked whether the Government had the intention of making the practice permanent, for example by incorporating it into the national prevention mechanism which must be put into place in conformity with the Optional Protocol to the Convention. With regard to access to a lawyer, the delegation had indicated that legal aid was guaranteed by the State. However, according to some sources, court-appointed lawyers frequently refused cases submitted to them because they were not sufficiently remunerated. Had any measures, including of a financial nature, been taken to address that situation? As indicators of the efficiency of the judicial system, it would be useful to have statistics on the number of persons in detention awaiting trial, the number of persons tried and the number of persons convicted.

29. The reports of the European Committee for the Prevention of Torture and a number of NGOs had denounced police inaction in cases of racist violence, in particular against Roma, which had usually resulted in the complaints of the victims being dismissed. There again, that was a problem which revealed serious gaps in the functioning of the prosecuting authorities. With regard to detention conditions, it would be useful to have more information on concrete measures taken to address overcrowding and to prevent and treat tuberculosis and AIDS in detention centres. Statistics on the number of cases of tuberculosis and persons infected with HIV/AIDS would also be welcome.

30. Mr. KOVALEV (Alternate Country Rapporteur) noted that, according to Ukrainian legislation, acts of torture were acts which inflicted serious injuries. He would like to know exactly what that covered, although it was clear that the notion was too restrictive to be in conformity with the definition enunciated in article 1 of the Convention. Concerning crowd control, it was absolutely essential for police officers involved in such operations to receive special training which focused on communications techniques and riot prevention. Medical personnel in prisons should also receive special training so that they could watch for and recognize signs of torture, which were not always readily visible.

31. Ms. BELMIR stressed that the strict limitation of police custody to 72 hours did not constitute a guarantee that the person in custody would not be subjected to acts of torture. Several NGO reports had referred to cases in which confessions had been extorted under torture during police custody. With regard to the role of the prosecuting authorities, she was pleased to

note that a draft reform to bring their methods into line with international legal norms was currently being examined. She hoped that the reform would strengthen the powers of the judiciary so that judges could discharge their duties in full.

32. Mr. MARIÑO MENÉNDEZ said that the State party had referred in its report (para. 156) to a category of countries that represented a so-called migration risk in the context of the deportation of foreigners who had broken Ukrainian law. He pointed out that, in the context of the implementation of the Convention, countries were usually categorized according to the degree of risk which they represented regarding the practice of torture. The Committee would like to know whether the deportation procedure was automatic when someone came from a country that represented a migration risk; if that was the case, it would be a violation of article 3. It would also be useful to learn whether the State party sometimes asked for diplomatic assurances before deporting foreigners to another country.

33. Ms. SVEAASS, returning to the situation of asylum-seekers, said that that was a vast issue, the consideration of which should not be confined to its legal aspects. She enquired whether the Government planned to introduce a comprehensive programme of action to guarantee that asylum-seekers and their families had access to the requisite legal counselling, social assistance and medical care, notably through appropriate reception facilities and greater cooperation between the various relevant authorities.

34. Ms. LUTKOVSKA (Ukraine), referring to the expulsion of 11 Uzbek asylum-seekers to their country of origin on 14 February 2007, said that they had been illegally present in Ukrainian territory upon their arrest by the police. An investigation conducted by the competent authorities of the Ministry of Internal Affairs had established that they had been linked to an international terrorist organization. Accordingly, they had been refused the status of refugee, and expulsion measures had been taken. Those decisions had clearly been legal under domestic law, but that did not mean that they were in conformity with international law, and in particular article 3 of the Convention against Torture. That recognition had led Ukraine to take action to bring its legislation into line with the relevant rules of international law and to avoid in the future that persons were expelled to a country in which there were serious reasons to believe that they were at risk of being tortured.

35. With regard to the special operations units of the Ministry of Internal Affairs, it should be pointed out that they were an elite body, most of whose members had received special training for peacekeeping operations in Kosovo. Their task was to intervene in particularly serious situations; they were under the jurisdiction of the Office of the Prosecutor General.

36. As for complaints of acts of torture committed against detainees, she recalled that pursuant to article 22 of the Penal Correction Act, article 44 of the Office of the Prosecution Act and article 22 of the Pre-trial Detention Act, the Prosecutor General and his deputies must visit prisons at least once a month to hear complaints from detainees. The complaints were recorded in writing and forwarded to the competent authorities, namely the Office of the Prosecutor General or the Human Rights Ombudsman.

37. Concerning the mobile monitoring units, which were made up of representatives of organizations for the protection of human rights and various ministries, their legal status would not be modified, and they would retain all their current flexibility for visiting places of detention. It was true that, being informed in advance of the visit of a mobile unit, prison authorities might

be tempted to transfer to another prison any detainee who had been subjected to acts of torture or cruel, inhuman or degrading treatment. However, the mobile monitoring units could consult the prison registers, in which the prison authorities must record all transfers.

38. On the question of access to the services of a lawyer, she said that Ukraine had spared no effort to introduce a system of free legal aid, but the authorities had encountered a number of difficulties in that regard. It was true that the poor remuneration of court-appointed lawyers compared to the fees which they charged for their regular activities had perhaps led some of them to refuse to take on certain cases. In that connection, it had been decided that in the future, any lawyer who refused to take on a case submitted by the legal aid service could be disbarred.

39. Ukraine was making considerable efforts to modify the powers of the Office of the Prosecutor General, which currently were too far-reaching. An important step in that direction had been taken with the establishment of a national commission composed of NGOs and jurists and mandated to formulate recommendations on guidelines for reform. Admittedly, the fact that the Office of the Prosecutor General had a dual mandate (instituting criminal proceedings, and ensuring the smooth functioning of investigations) posed many problems in connection with Ukraine's international and regional obligations.

40. As to the improvement of detention conditions, she referred to two programmes which had been adopted, one on prison renovation and another on the construction of new detention centres. Legislation relating to the treatment of detainees had been amended to bring it into line with the relevant international instruments, including the Standard Minimum Rules for the Treatment of Prisoners. Measures had also been taken to encourage the courts to impose non-custodial sentences so as to reduce prison overcrowding. Ukraine would like to move ahead faster with the improvement of detention conditions, but unfortunately that was not possible due to the lack of resources. It should also be pointed out that Ukraine was doing everything possible to train the police on methods of crowd control. International assistance in that area would be most valuable.

41. Mr. KHANIUKOV (Ukraine), referring to measures taken to prevent AIDS and to treat persons who had contracted the illness in places of detention, said that the State Penal Correction Department of the Ministry of Justice was implementing HIV-prevention programmes in prison facilities. An information and awareness-raising campaign was being conducted with prison staff and inmates. HIV-positive prisoners served their sentences in the same way as other inmates, but if their state of health deteriorated, they were transferred to hospital centres for detainees. Today, 4,700 inmates were HIV-positive.

42. Measures had also been introduced to prevent and treat tuberculosis in places of detention. All persons deprived of their liberty had to undergo mandatory screening for the illness. Persons who had contracted tuberculosis were cared for at ten special treatment centres for detainees. The measures taken by the Government had resulted in a decline in the number of cases by 2.7 per cent. It was also worth noting that, following a visit to Ukraine in 2005, the European Committee for the Prevention of Torture had concluded that health conditions in Ukrainian prisons had improved considerably over the previous five years.

43. The CHAIRPERSON said that the Committee thanked the delegation for replying to the questions and would forward its conclusions and recommendations to it at a later date.

44. Ms. LUTKOVSKA welcomed the dialogue that had been held. Ukraine would send the Committee additional information in writing at a future time.

The public part of the meeting rose at 5.30 p.m.
