



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

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COMMITTEE AGAINST TORTURE
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**List of issues to be considered during the examination of the fifth periodic report of
UKRAINE (CAT/C/81/Add.1)¹**

Article 1

1. According to the report (§§ 19 and 22), the definition of torture of the new penal code (article 127), which entered into force in September 2001, is not in conformity with article 1 of the Convention because it does not define as offences the actions of law enforcement and other officials. Other provisions of the penal code cited in the report (articles 126, 365 and 373) also lack some elements of Convention's definition of torture. Please provide the exact legal definition of torture in domestic law. How is it compatible with article 1 of the Convention and how is it applicable to public officials or to persons acting in an official capacity?

2. In the absence of a definition of torture in domestic law in conformity with the Convention, please provide the relevant jurisprudence (§ 20 of the report) concerning assault and other violent acts committed by a public official to allow the Committee to assess whether they cover adequately the crime of torture.

¹ Footnotes are for Committee members' draft only and will not remain in the final version of the text sent to the State party.

Article 2

3. According to reports before the Committee from several sources², there is substantiated information that persons detained by the militia [police] are tortured and ill-treated, in particular during questioning [before they are able to notify relatives or obtain access to legal counsel or medical care]. Please provide an explanation on what seems to be a systematic behaviour by the militia during interrogation and what measures have been taken to prevent it.

4. According to information before the Committee³, the basic legal safeguards (access to lawyer and doctor and right to inform a relative) for detained persons, including foreigners, are often denied from the outset of their detention. What measures have been taken to ensure the full application of the Criminal Procedure Code? What are steps have been taken to bring articles 43 of the Criminal Procedure Code in line with article 106, therefore clarifying the exact moment when those rights can be exercised⁴? What concrete measures have been taken to ensure the notification of relatives in each instance as indicated in the report (§ 71)?

5. Please elaborate on the measures taken, if any, to prevent torture and ill-treatment of women in places of detention or confinement. Does the State party monitor sexual violence in the prisons or other places of detention or confinement, and if so, with what results? Please provide statistical data on the number of complaints received and investigated and the measures taken to discipline or prosecute offenders.

6. Please provide information on the measures (legal, administrative, and practical) taken, if any, to prevent hazing (*dedovshchina*) in the military (§ 98 of the report), as well as other torture and other cruel, inhuman or degrading treatment or punishment in the armed forces, conducted by or with the consent, acquiescence or approval of responsible personnel or officers, resulting in severe physical and/or mental harm to the victims. Are such acts criminalized? Has a “hotline” for victims been put in place? Do the armed forces ensure “prompt and impartial” investigation of all complaints of *dedovschina* as a preventive measure under the Convention? Please provide information on the complaints, investigation, prosecution, number of victims within the military, the crimes committed, location, and, any suicides resulting from such action, etc. What is the number of persons who have been held accountable, through disciplinary or criminal proceedings, for failing to stop such abuses in units subordinate to them?

7. Please provide information on the domestic law implementing §§ 2 and 3 of article 2 of the Convention. According to information before the Committee⁵, registration of detainees does not

² CPT, report on the visit to Ukraine, CPT/Inf (2004) 34, § 17; IHF, report on Ukraine (2006); AI Ukraine, Torture and ill-treatment in Police detention (2005); KHRPG, Human Rights in Ukraine (2005); HRW, Ukraine: on the margins (2005).

³ CPT, report on the visit to Ukraine, CPT/Inf (2004) 34, §§ 17 and 73.

⁴ CPT, report on the visit to Ukraine, CPT/Inf (2004) 34, § 29.

⁵ CPT, report on the visit to Ukraine, CPT/Inf (2004) 34, § 34.

always occur accurately. Please provide information regarding the registration of detainees and on the measures to ensure that all detainees, under any circumstances, are duly registered.

8. Please explain in detail, what are the differences between the legal regime applied to persons detained by militia and by other law enforcement personnel⁶? What is the purpose of those differences?

9. Regarding par. 124, point 5 of Ukraine's report, what is the law and practice regarding alternative forms of punishment in lieu of imprisonment, including labour in public works (i.e. under what circumstances, for what duration)? Under what government agency are public works organized and how are they supervised? How are conditions for detainees in public works monitored?

10. Regarding par. 31 in Ukraine's report, what law regulates the activities of the commission indicated and the official indicated in par. 32, and do they compile reports for review by supervisors? What specifically are the "measures and activities" indicated in par. 33 to analyze the conditions under which torture takes place, and prevent it?

11. Regarding laws to create special subdivisions for training within the penitentiary system (Order No. 163 of 8 September 2003 and Order No. 167 of 10 October 2005). Are the trainees allowed access to the prisoners?

12. What specific measures for stabilization within prison colonies have been taken, given the unrest in 2005-2006?

13. With reference to par. 65 of Ukraine's report, what criteria are used to provide police career incentives? What monetary compensation or denial of bonuses do law-enforcement employees receive based on their work results or the absence of disciplinary measures?

14. Please provide updated information on the State party's legislation to prevent domestic violence against women adopted in 2001 (§ 188 *et seq.* of the report), and on specific measures taken by the State party to prevent domestic violence and to investigate reported cases. Statistical information regarding prosecution and conviction under this legislation would be appreciated. Please also provide information on measures taken to ensure effective implementation of legislation to combat trafficking in women and children for sexual exploitation and on the progress made to provide more effective protection for victims and ensure prosecution of traffickers, including more than 800 cases of trafficking in human beings reportedly being investigated.

Article 3

15. Please provide detailed information on the provisions implementing article 3 of the Convention in domestic law. Who are the competent authorities, what are the existing legal safeguards and the procedures of appeal, including whether these have suspensive effect, regarding

⁶ CPT, report on the visit to Ukraine, CPT/Inf (2004) 34, § 33.

the expulsion, return and extradition of persons to another state? Please comment on whether, in practice, such remedies exist. Please provide information on decisions taken on cases relevant to article 3 of the Convention as well as on the criteria for those decisions.

16. The time limit to submit an application for asylum is very short, three or five days, depending if the entry is unlawful or not⁷. Please explain such legal restriction, since it may lead to foreigners being expelled to a country where there are substantial grounds to believing that they would be in danger of being subjected to torture. What measures are considered by the State party to determine its non-refoulement obligations under the Convention? Please, provide detailed information on access to counsel and to interpreters by asylum seekers. Regarding par. 27 of the report, can statutes or directives be cited which guarantee the unimpeded access to lawyers by refugees or those seeking such status?

17. Which guarantees were enjoyed by the four Uzbekistan nationals facing deportation to their country mentioned in §§ 50 to 57? Were they able to appeal the deportation decision, and supply information about the risk of torture? Please explain how those extraditions were compatible with the State party's obligation under the Convention.

18. According to information before the Committee⁸, in February 2006, eleven Uzbek asylum seekers (some of them with refugee status) were not allowed to appeal the deportation order and were sent back to Uzbekistan, where there are substantial grounds for believing that they would be in danger of being subjected to torture. Please provide detailed information on this case and on how it is compatible with Ukraine's obligation under the Convention. Was this case investigated and, if so, what was the outcome? Why were the Uzbeks detained on charges of vagrancy, and not on charges appropriately related to the detention of asylum-seekers? Are state security agents authorized to detain persons on charges of vagrancy?

19. Regarding the expulsion of foreign citizens by the border control personnel (§§ 155, 156 and 161 of the report), what appeal measures foreign citizens have? Does a person who is the subject of an extradition request have the right to appeal the decision to a court or other body? Please provide data regarding those appeals and their outcome. Please provide statistical data on asylum seekers and on the outcome of their applications. What criteria does the Prosecutor General take into consideration in deciding to honour extradition requests? Are the criteria indicated in article 3, par. 2 of the Convention taken into account? Does a court or other official body have the right to halt extraditions until review of the case?

20. Please provide information on whether the State party has sought assurances before extraditing or returning persons to another state, with a breakdown, if relevant, by country. Please provide examples, if any, including information on whether any monitoring mechanisms are in place

⁷ CPT, report on the visit to Ukraine, CPT/Inf (2004) 34, § 74.

⁸ HRW report (treatment of migrants and asylum seekers in Ukraine, November 2005); HRW (Uzbek asylum seekers sent back to face abuse, February 2005); UNHCR briefing notes, February 2006; AI, public statement February 2006.

to assess if the assurances have been honoured? If not honoured, has the State taken any further measures to protect the individual(s) returned?

Article 4

21. Please provide detailed information on criminal provisions concerning offences such as attempted acts of torture, the commission of torture or the order to commit torture by a person in authority and the exact penalties imposed for any of these offences, including disciplinary measures. Information on the number and the nature of the cases in which those legal provisions were applied as well as on the penalties were imposed or the reasons for acquittal.

22. Regarding par. 5 of Ukraine's report, specifically what new aspects of the revised Criminal Code by contrast with the 1960 Criminal Code constitute a prohibition on torture? Have the amendments noted in par. 84 of the report been in fact incorporated?

23. Regarding pars. 19-20 of the report, how many government employees have been sentenced under article 127 for use of torture while performing their official duties for the period of 2001-2006? Does the definition of the crime of torture contain all the elements stipulated by article 1 of the Convention? Are there other articles of the Criminal Code that contain these elements of the crime of torture?

Article 5

24. Please indicate any legislative or other measures taken to implement each provision of article 5 of the Convention and whether acts of torture are considered universal crimes under national law wherever they occur and whatever the nationality of the perpetrator or victim.

Articles 6, 7, 8 and 9

25. Please provide information on the procedure to ensure that a person suspected of acts of torture is held for the time necessary to start criminal or extradition proceedings.

26. How are criminal cases handled when Ukraine refuses to extradite to another country a person suspected of actions falling under the definition of Art. 1 of the Convention? Which agency reviews such cases, under what law? Have there been any such cases in the practice of Ukrainian law-enforcement agencies?

Article 10

27. According to the report (§ 10), the judiciary continues to make more use of pre-trial detention rather than alternative measures to prison. Please provide information on the training provided to the judiciary.

28. Please provide detailed information on training programmes for persons charged with the different functions enumerated in article 10 of the Convention, and in particular on the training of

forensic doctors and medical personnel dealing with persons under arrest and persons in detention, or with asylum seekers and refugees, to detect physical and psychological sequelae of torture.

29. Please provide further detailed information on the measures taken to provide adequate training and education to law enforcement personnel. Regarding the prevention of torture and ill-treatment, what specific training has been provided to the militia⁹? Is there gender-sensitive training?

30. What measures are being taken to address issues of selecting appropriate persons for positions of law-enforcement to improve the level of qualifications, and also to improve conditions for work for these personnel? Please clarify whether and in what ways the re-attestation process for law enforcement officials has been modified to reinforce the prohibition against torture? Please also provide information that clarifies the number of persons serving in the militia and other areas of law enforcement by gender, nationality or ethnicity, and age.

Article 11

31. Please provide information regarding the interrogation rules, instructions and methods as well as on the inspection of prisons and other places of detention, the authority which is competent to receive complaints from inmates in prisons and the procedures to deal with such complaints.

32. In reference to par. 30 of the report, what practical measures have been taken to prevent unlawful actions with regard to detainees, i.e. their unlawful detention under the guise of administrative offences; refusal to provide them with qualified legal and medical assistance; informing their relatives of their detention; or the use of physical force or psychological coercion?

33. Regarding pars. 77 and 79 of the report, what measures have been taken to prevent pressure on detainees to decline the services of a lawyer; what measures have been taken to provide legal aid for the indigent, and what means are available to provide lawyers in regions where there are no law associations? Is there a procedure to assign a lawyer to a case if he is not a member of a law association? Is there any legal restriction over the duration of an interrogation, or any requirements for breaks during interrogations?

34. With reference to par. 82 of Ukraine's report, is a person accused of an administrative offence punishable by 15 days of detention guaranteed a fair judicial procedure, including the right to counsel, the right to summon and question witnesses, and the right to sufficient time and means for preparation of a defence?

35. What means does a detainee have to document any bodily injuries suffered while in detention? What measures are taken to ensure access to medical care, and what guarantees are provided that medical personnel and institutions within prisons are impartial and able to assist persons claiming torture in the verification of their complaints?

⁹ CPT, report on the visit to Ukraine, CPT/Inf (2004) 34, § 28 to 32.

36. Regarding par. 126, are there any plans to ban the acceptance at investigative isolation units or prison colonies of detainees or convicts in the event that the facility cannot provide the appropriate conditions for detention?

37. With reference to par. 136, what criteria are there for placement of minors in holding cells? Under which agency's authority are such persons placed in holding cells? Do they have the right to initiate an adversarial judicial procedure to contest the issue of the lawfulness of their detention in these facilities?

38. Regarding par. 146, at which point in practice does the duration of the period of detention (72 hours) begin, which was established by article 29 of the Constitution? Does this time period contain sufficient time for preparation of defence for a judicial proceeding regarding detention or release, the convening of the court, and the delivery of a decision?

Article 12

39. Please indicate if the data provided on prosecution under article 127 of the penal code refer to persons acting in an official capacity (§ 20 of the report). How many criminal proceedings against law enforcement officials were initiated under articles 126 and 127 of the Criminal Code¹⁰? Please provide information on how many *ex officio* cases the prosecution has brought before the courts¹¹.

40. What measures are taken to address the issue of a conflict of interest, given that the prosecutor's office itself is the agency which reviews the lawfulness of investigations undertaken by its own office, which may lead to findings which will serve as the basis for charging its own employees? Are there instructions or regulations for how personnel are to act if they receive allegations of torture?

41. According to information before the Committee¹², hooded prison staff have carried out searches in prisons, beating detainees and confiscating documents concerning legal proceedings in SIZO n° 21 (pre-trial prison). Please provide information on this allegation and on the investigation carried out.

42. Has a criminal investigation been undertaken to establish the facts about responsibility for the use of force during special training exercises on 30 May 2001 and 29 January 2002 in Zamkovaya Colony No. 58? Please provide relevant details.

43. Please provide statistical information regarding investigation, prosecution and sentencing of persons acting in an official capacity, under articles 365 and 373 of the Penal Code (§§ 22 and 23 of the report). Please also provide information or statistical data regarding complaints, investigations, prosecutions and/or convictions of abuses during criminal investigations as mentioned in § 69 *et seq.* of the report, disaggregated by sex, location, and alleged crime.

¹⁰ CPT, report on the visit to Ukraine, CPT/Inf (2004) 34, § 23.

¹¹ CPT, report on the visit to Ukraine, CPT/Inf (2004) 34, § 23 and 24.

¹² CPT, report on the visit to Ukraine, CPT/Inf (2004) 34, § 90.

44. Please provide detailed information on the investigation, prosecution and conviction regarding the cases of trafficking in human beings as well as on the global programme adopted in June 2002 and its results (§§ 167 *et seq.*).

45. Please explain if criminal sanctions were imposed in respect to the perpetrators in relation to the cases mentioned in §§ 46 and 47 of the report, or only administrative sanctions, particularly in the very serious case where a detainee died following abuses. May the conditions mentioned in § 34 of the report constitute any kind of mitigating circumstances when determining the punishment of the perpetrators of acts of torture?

46. What measures are taken to preserve the confidentiality of complaints containing allegations of torture made to authorities, and to ensure that such complaints are addressed promptly? Regarding pars. 115 and 116 of Ukraine's report, under which procedure are complaints of allegations of torture made, Art. 97 of the Code of Criminal Procedure or under the law on Appeals by Citizens?

47. Can you provide additional information about the existing requirement for doctors who find signs of torture which occurred in pre-trial investigation to file notices to the police, rather than to the prosecutor's office, which is responsible for oversight of police?

48. Does the Prosecutor's Office provide reports on its oversight of its own agency, the police, and places of detention, to whom are these reports made public, and is there any public access by independent representatives of civil society to these reports?

Article 13

49. Please explain why there are no methods to obtain statistical data regarding complaints and investigations of abuses in detention centres and prisons (§§ 36 to 39 of the report). Please provide an explanation for considering abuses of detainees by law enforcement officials as mere "arbitrary acts".

50. Please provide detailed information on the programmes, activities, resources and results of the Office of the Ombudsman¹³. Can you supply any information about complaints of torture filed with this office by citizens, as to number, crime, location, and age, sex and nationality/ethnicity of complainant, etc.? Regarding par. 202 of Ukraine's report, has legislation been introduced to enable persons in the military to file confidential complaints with the Ombudsman?

51. Please provide detailed information on the internal procedure mentioned in §§ 31 and 32 of the report and its result.

¹³ National Institutions Unit (OHCHR), briefing note (June 2006).

52. Please provide an explanation as to why a complaint, in respect of abuses committed (§ 107 of the report), needs to be submitted within 24 hours, and how this limitation is compatible with article 13 of the Convention.

Article 14

53. The Committee notes the existence of over 1.400 complaints that have been lodged since 2002 by detainees (§§ 40 *et seq.* of the report), yet there have been no penal convictions so far and, therefore, no compensation has been made available to the victims. Please clarify the reasons for this.

54. Please provide information on the procedures in place to obtain rehabilitation and compensation for victims of torture and their families and if those procedures are also available to non-nationals. What rehabilitation programmes exists for victims of torture?

Article 15

55. How is the provision in article 15 of the Convention prohibiting the use of any statement obtained as a result of torture as evidence in any proceedings, except against the alleged torturer, implemented by the State party? Please provide examples of any judicial cases where the courts have declared statements inadmissible on the ground that they were obtained coercively. Can you provide explanation for the large number of confessions of guilt and incriminating statements obtained in the pre-arraignment phase and pre-trial investigation which form the basis for charges and conviction?

Article 16

56. According to information before the Committee¹⁴, the material conditions of detention in the Ministry of Internal Affairs district police stations are very bad (*e.g.* very small cells, no ventilation, no light, no outside activities or exercise) and no food is provided, all of which amount to cruel, inhuman or degrading treatment. Please provide information on the measures taken to improve this situation, including the financial resources allocated, and describe the current conditions in those premises, including the number of meters per prisoner used in practice in these facilities.

57. According to information before the Committee¹⁵, most of the Ministry of Internal Affairs district police stations are overcrowded. Please indicate what measures have been taken to improve this situation and provide updated data regarding the current effective occupancy rate of those premises. Please provide the same data for remand facilities and those under the authority of the Department for the Execution of Sentences.

¹⁴ CPT, report on the visit to Ukraine, CPT/Inf (2004) 34, §§ 9 and 36.

¹⁵ CPT, report on the visit to Ukraine, CPT/Inf (2004) 34, § 12.

58. According to allegations before the Committee¹⁶, foreign nationals detained under legislation on aliens are often ill-treated when apprehended by border guards or on arrival at the detention centres, in some cases reportedly to extort money or valuables. Please comment.

59. Rules of Internal Procedure in certain establishments¹⁷ allow certain detainees to be entrusted with tasks related to the maintenance of good order and control. What steps have been taken to repeal those rules?

60. Life-sentenced prisoners are reportedly subject to unnecessary stigmatization and harsh measures in prison¹⁸, such as cells with 24 hour light, no opportunity to work, etc. Have measures been taken to bring this regime in line with that of other detainees?

61. Remand detainees and detainees awaiting final sentencing are subject to a blanket restrictive regime¹⁹ irrespective of the individual case. Please clarify the justification of such a regime. Which measures has the State party put in place to prevent cases (§ 72 of the report) where relatives and lawyers are informed of one's detention only after he or she has been transferred from police custody to a pre-trial detention facility (which can be as long as two weeks).

62. Please provide detailed statistical information regarding the length of pre-trial detention and the purpose of administrative detention and detention of "vagrants" (§ 81 of the report). What measures are envisaged to shorten the current 72-hour police custody period during which detainees may be held in isolation cells prior to being brought before a judge (§ 145 of the report)?

63. Please, provide statistical data and detailed information on the prevention and treatment of tuberculosis and HIV/AIDS in detention facilities, and the results obtained.

Other issues

64. Has the State party taken any steps to set up or designate a national mechanism that would conduct periodic visits to places of deprivation of liberty in order to prevent torture or other cruel, inhuman or degrading treatment or punishment, as requested by the Optional Protocol to the Convention? Are their members of non-government organizations included in the monitors' councils attached to the State Department on Corrections?

65. Please indicate whether and in what way the State party's legislation prevents and prohibits the production, trade, import, export and use of equipment specifically designed to inflict torture or other cruel, inhuman or degrading treatment. Please indicate whether the adoption of such legislation is being actively considered.

¹⁶ CPT, report on the visit to Ukraine, CPT/Inf (2004) 34, § 186.

¹⁷ CPT, report on the visit to Ukraine, CPT/Inf (2004) 34, § 92.

¹⁸ CPT, report on the visit to Ukraine, CPT/Inf (2004) 34, § 100.

¹⁹ CPT, report on the visit to Ukraine, CPT/Inf (2004) 34, § 106.

66. Please provide information on the legislative, administrative and other measures the State party has taken to respond to the threat of terrorist acts, and please describe if, and how, these measures have affected human rights safeguards in law and practice.

67. In this respect, the Committee would like to recall United Nations Security Council Resolutions 1456 (2003), 1535 (2004), 1566 (2004), and 1624 (2005) all of which reiterate that States must “ensure that any measure taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular international human rights, refugee and humanitarian law.” Please describe the relevant training given to law enforcement officers, the number and types of convictions under such legislation, the legal remedies available to persons subjected to anti-terrorist measures, whether there are complaints of non-observance of international standards, and the outcome of these complaints
