Committee against Torture

Consideration of reports submitted by States parties under article 19 of the Convention

Follow-up information provided by Ukraine to the concluding observations of the Committee against Torture (CAT/C/UKR/CO/5)*

[14 February 2011]

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.
Information on the implementation by Ukraine of the recommendations of the Committee against Torture (CAT/C/UKR/CO/5) following consideration of the fifth periodic report of Ukraine on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT/C/81/Add.1)

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I. Insufficient safeguards governing initial period of detention

1. Ukrainian legislation provides specific standards for the treatment of detainees. They are provided with qualified legal aid and family members are informed of their arrest. It is not permitted to detain persons suspected of criminal offences under the guise of accusations for administrative offences, and no physical or psychological coercion may be used.

2. The law enforcement agencies are constantly taking measures to prevent persons under arrest from being coerced into waiving their right to counsel. Since law enforcement agencies have set up hotlines and other means of monitoring illegal actions by officers, the violations referred to in this article have now been reduced to a minimum.

3. The assignment of lawyers to those who cannot afford legal counsel is covered by Ukrainian law, which calls for legal assistance to be provided not only by the staff of the bar association, but also by specialized jurists with sufficient practice in the provision of legal aid in the various fields of law.

4. The Code of Criminal Procedure does not limit the length of interrogation or require breaks during interrogation sessions. Detainees are entitled to medical assistance, and such assistance is recorded in the medical assistance registry, along with the diagnosis, in accordance with a departmental order of the Ministry of Internal Affairs. Detainees may also personally (without review by the prison administration) or through their defenders file complaints with the procurator to request forensic medical examinations if physical force is used against them.

While in detention, detainees may document any bodily injury by recording an entry in the record of arrest.

5. Before being placed in special locations for persons awaiting trial, detainees must be examined by a physician, who notes in specific documents whether there are any bodily injuries, illnesses or other factors that would render detention possible or impossible.

6. To document bodily injuries received during detention, the detainee has the right to file an appeal with the person investigating the case and also to file complaints with the procurator or a court. Complaints from arrested and detained persons of violations of their rights and freedoms or of the use of torture are checked by the procurators, who must meet with the detainees.

7. The Code of Administrative Offences gives procurators the power to monitor observance and the proper enforcement of laws relating to administrative offences. Specifically, procurators may study case files and verify the legality of actions by agencies and officials handling cases; to take part in the consideration of cases; file petitions; issue conclusions on matters arising during consideration of cases; verify that the measures taken in response to administrative offences by agencies and officials are applied in accordance with the law; appeal against decisions handed down in response to complaints related to administrative offences; and suspend the implementation of decisions.

8. To ensure that the legal requirements of Order No. 3gn of 19 September 2005, Order No. 7gn of 26 December 2005 and Order No. 6gn of 19 September 2005 of the Procurator-General’s Office are properly met, organizational units and divisions have been set up to verify compliance with the law in proceedings involving administrative offences and to take the measures stipulated by the Procurator’s Office Act to stop violations, restore citizens’ rights and bring the guilty parties to justice, as specified by law. The orders call for systematic verification of the legal basis of citizens’ detention at internal affairs agencies and in cases involving administrative offences, as well as the verification that
persons arrested or detained are held in the facilities intended for them and in proper conditions. Individual interviews must be conducted and when there are complaints of actions by members of the militia, they must be checked.

9. Staff of the Procurator-General’s Office systematically verify the implementation of these legal requirements and orders issued by the Office at the provincial level procurator’s offices at the same time as the situation of detainees is checked at places of detention. Procurators at all levels also verify complaints of violations of the laws on administrative offences.

10. When an illegal detention is detected, a criminal case is opened and an investigation begun. In 2006 procurators’ offices opened five such criminal cases. For example, a militia officer, S., a neighbourhood officer in the Zaporizhzhya district internal affairs department in Zaporizhzhya province, arrested and jailed a citizen, Mr. D., at the district militia office without any legal basis or respect for procedure, and subsequently demanded that he confess to theft. Afterward, to cover up his illegal actions, the militia officer falsified documents, on the basis of which a court sentenced Mr. D. to administrative detention. A criminal case was initiated and investigated by the procurator’s office for Zaporizhzhya. S. was convicted by a court under article 365, part 1, and article 366, part 1, of the Criminal Code to 3 years of deprivation of liberty, and lost the right to be employed by internal affairs agencies for two years.

11. Article 268 of the Code of Administrative Offences, establishes the right to defence of persons detained in connection with administrative offences. This includes the right to familiarize themselves with the case file, to give clarifications, to present evidence, to make petitions, to receive the legal aid from a lawyer or other specialist entitled to provide such assistance during consideration of their cases, to speak in their native language in court and to have the services of an interpreter, and to appeal against decisions relating to their cases.

12. Proceedings for administrative offences take place in the presence of the accused. In the absence of the accused, the case is heard only if it is known that the person was informed of the time and place of the hearing and if no request to delay the proceedings has been received.

13. At the request of bodies of the executive branch and the Supreme Court, the Procurator-General’s Office has often made proposals to extend the rights of persons accused of administrative offences and to improve the procedures related to administrative offences. By law, if a complaint is filed with a procurator by a person in custody, a detainee or a convicted person, it is not subject to review by the administration of the place of detention, and within one day it must be sent to the proper address. This makes it possible to have more thorough and objective information available on compliance with the law at a given place of detention.

14. In addition, when carrying out checks, procurators individually interview persons who have been arrested, detained or otherwise deprived of their liberty, and promptly take steps to restore their rights. Complaints, statements and letters containing information which, if disclosed, may interfere with the establishment of the truth in criminal cases are not sent to their addressees, but are instead forwarded for review by an individual or body dealing with the case; the person in custody is informed of this.

15. Appeals filed by persons under arrest, detainees and convicts containing sufficient indications that a crime has been committed, including cruel treatment or torture, are checked in accordance with article 97 of the Code of Criminal Procedure. If there is justification, a decision is taken within three days to initiate a criminal case, and if necessary, to carry out further inquiries, forensic medical or other investigations over the next 10 days. The rules of non-disclosure set out in the legislation on criminal procedure are observed.
16. As at 31 December 2008, Ukrainian procuratorial bodies were dealing with 771 criminal cases involving crimes committed by internal affairs staff. Their investigations led to 459 criminal cases being referred to the courts; pretrial proceedings were carried out in 188 cases. For example, on 17 March 2008 the procurator’s office for the Autonomous Republic of Crimea initiated a criminal case against 21 staff members of the railway militia serving in the Simferopol railway station’s militia administration on the Dnepr river railway, a unit reporting to the Ministry of Internal Affairs railway militia service. Among them were eight officers: the deputy chief, the section’s patrol chief, the company’s deputy commander, detectives from the criminal investigation department and patrol officers, who between January 2006 and March 2008 conspired to illegally detain people, physically abuse them and steal their property, including money, mobile telephones and other valuables. According to the investigation, these members of the militia were implicated in 19 crimes. The case has been referred to the courts.

17. In addition, on 22 March 2008 the Sumy province procurator’s office referred a criminal case to court under article 365, part 3, of the Criminal Code. The case involved a criminal investigations officer of the Ministry of Internal Affairs Akhtyr municipal militia station in Sumy province, who on 26 July 2007 acted outside his authority and used physical and psychological violence against a citizen in his custody with the aim of extracting a confession.

18. The Ministry of Internal Affairs national headquarters regularly checks on municipal and district departments in order to prevent and detect acts of illegal detention, detention beyond the authorized time limit and the use of physical force during preliminary investigations. In 2008 the Ministry received 2,669 complaints from citizens concerning the unlawful use of physical force by the militia and violations by members of the militia of other constitutional rights, thus accounting for 25.5 per cent of the 10,442 complaints filed with the Ministry. The investigations ascertained that 112 statements were borne out (or 4.1 per cent of the total). These included 71 cases of beatings, 25 cases of illegal detention, 9 illegal searches and the illegal initiation of 7 criminal proceedings.

19. Ministry of Internal Affairs Order No. 60dsk of 20 January 2005 sets out the conditions in which suspects, detainees awaiting trial and convicts are detained at militia lock-ups. Additionally, Ministry of Internal Affairs Order No. 22033/Sn of 12 December 2008 obliges members of the militia to ensure that persons handed over to their custody at special militia detention facilities are given a medical examination, so that a medical opinion can be issued regarding their detention at such facilities. Specifically, prior to placement in cells, the detainees are questioned about their health status by medical officers, or if none are present, by the duty officer. They are then given a check-up. If the person in question complains of poor health, has clear symptoms of illness or shows signs of bodily harm, the medical officer or duty officer is obliged to immediately call for a physician from the treatment unit of a medical establishment to examine the detainee and to determine whether the person should be admitted to the lock-up.

20. If the medical staff determine that the detainee cannot be placed in the lock-up, the person is sent for medical attention. In such instances, suspects, detainees awaiting trial and convicts are sent to the health establishments for treatment.

21. The Ministry of Internal Affairs constantly works to remind investigators that priority should be given during the investigation of criminal cases to using preventive measures other than deprivation of liberty. Overall, in 2008 the internal affairs investigative agencies instituted criminal proceedings against 171,775 persons. Pretrial detention was selected as a preventive measure for 33,800 (20 per cent), including 25,967 persons accused of serious or especially serious crimes.
22. Since 2007 the Ministry of Internal Affairs, working with the International Renaissance Foundation, has been carrying out a pilot project providing legal assistance free of charge to detained persons in Kyiv, Kharkiv and Khmelnytskyi provinces.

23. The Committee has issued a conclusion stating that in Ukraine insufficient legal safeguards are provided to detainees. As this statement is not supported by concrete examples, it is difficult to comment on it or refute it. According to the Committee, reports of abuse during the period between arrest and the formal presentation of detainees to a judge are indicative of this problem. We should note that the contention that the legal safeguards are insufficient can only be supported by established facts of abuse, and not by reports of such abuse, which, what is more, are often filed by interested parties attempting to avoid criminal responsibility. As for the prompt adoption by the State of measures to ensure that no one is subjected to illegal detention while awaiting trial, that suspects in detention are afforded fundamental legal safeguards during detention, that relatives are informed of the detention and that detainees should be presented to a judge within 72 hours, all these provisions are contained in the current national legislation, in particular in articles 106, 107 and 115 of the Code of Criminal Procedure.

24. In accordance with article 106, part 5, of the Code of Criminal Procedure on the detention of persons suspected of committing criminal acts, bodies conducting initial inquiries or investigators (referred to in article 115 of the Code of Criminal Procedure) are responsible for informing family members of the detention. When it is ascertained that the legal requirement for the timely notification of the family has not been observed, the procurator must consider bringing the responsible officials to justice. As for compliance with the criminal procedure legislation relating to the right to defence, provisions such as those ensuring the right to an attorney or a defender and the right to have the law enforcement agencies notify the detainee’s family of the detention are fully respected, with the exception of cases in which detainees give false information on the whereabouts of their relatives who are to receive such notification.

25. According to the Ministry of Internal Affairs, procuratorial agencies have initiated 161 criminal cases (99 cases during the same period in 2007) against officials for the violation of citizens’ constitutional rights. This includes illegal detention and bodily harm (102 cases), illegal search and seizure of property (28), illegally charging citizens with criminal or administrative offences (21) and illegally taking them into custody for pretrial detention (10). In 2008, procuratorial agencies initiated four criminal cases on evidence from the Ministry of Internal Affairs under article 127 of the Criminal Code (Torture); three such cases were initiated in the same period in 2007. According to information from the Ministry, by December 2008 disciplinary measures had been taken against 2,090 members of internal affairs agencies for offences committed in the performance of their duties that were not criminal in nature (the corresponding figure for 2007 was 1,474), thus representing an increase of 41.7 per cent over the previous year. Such offences resulted in the internal affairs agencies’ dismissal of 104 employees; 144 received warnings for improper conduct; 191 received serious reprimands; 451 received reprimands; 315 received service notes; and 72 were the subject of other measures.

II. Lack of effective investigation into reports of torture and the role of the Procurator-General’s Office

26. Procuratorial agencies do not keep separate statistics for criminal acts and for torture. In addition, section 5 of report form P on the work of the procurator (entitled “Supervision of compliance with the law in the execution of criminal sentences and of other coercive measures limiting citizens’ personal freedom”) includes indices on the number of criminal cases and the number of persons (for example staff members of institutions)
against whom such criminal cases have been initiated. Section 6 of this form is for information on complaints relating to compliance with the penal enforcement legislation, including complaints that the administrations of institutions make use of illicit treatment during the enforcement of coercive measures. The information is processed quarterly (four times a year) by the Procurator-General’s Office.

27. The procuratorial services at all levels, guided by the Constitution, the Procurator’s Office Act and the orders issued by the Procurator-General’s Office, systematically verify compliance with the legislation governing the enforcement of criminal sentences and other coercive measures limiting personal freedom. During verification, particular attention is paid to the observance of citizens’ constitutional rights. Procuratorial bodies carry out thorough verifications of compliance with the law, including at the following:

(a) Militia lock-ups, holding cells at internal affairs bodies, special holding centres for persons under administrative arrest and temporary holding centres run by the border guards, every 10 days;

(b) Holding and processing facilities for vagrants and for children, and temporary holding centres for foreigners and stateless persons illegally in the country, monthly;

(c) Remand centres, monthly; and also at a number of other institutions.

28. On the basis of the above requirements, procurators verify compliance with the law at such establishments. Special attention is paid to whether there is a legal basis for custody, to the everyday material, medical and nutritional conditions of the persons being held and to the health and epidemiological situation at these facilities.

29. To ensure constant oversight of remand centres and correctional colonies, every month detainees are interviewed on personal matters and procedures are conducted to verify the lawfulness of decisions taken by the administration in respect of applications and complaints, of reports of the commission of offences and of the confinement of detainees in special cells, in solitary confinement, in disciplinary units or in punishment cells. The experience gained from procuratorial oversight of compliance with the law at facilities where persons serve court-ordered punitive measures, together with experience in solving the problems signaled by persons in such circumstances, is compiled and analysed so that it can be used in the day-to-day work of the relevant bodies and so that the causes and conditions underlying violations of the rights and lawful interests of citizens can be duly addressed.

30. If during such verifications violations of the law come to the attention of the procuratorial officials, they respond by taking action to halt them and to restore the citizens’ rights that have been violated. They also consider bringing charges against the guilty officials.

III. Monitoring detention facilities

31. In January 2008 the Ministry of Internal Affairs established a Human Rights Monitoring Department for internal affairs agencies, with representatives in every province of Ukraine. The Department is responsible specifically for preventing torture, inhuman or degrading treatment of persons at special detention facilities run by the militia.

32. The Ministry of Internal Affairs has a plan of action to implement the recommendations made by the Commissioner for Human Rights of the Council of Europe, Mr. Thomas Hammarberg. One of the recommendations calls for a video surveillance system to be installed at all internal affairs agency units, which should provide additional guarantees against illegal violent or arbitrary acts committed by the militia. The internal
affairs staff who are included in the mobile human rights monitoring teams constantly check on the implementation of the Ministry’s plan of operational measures for ensuring citizens’ constitutional rights and freedoms. Order No. 389 of 11 August 2008 extended the powers of the mobile teams; they are authorized to conduct visits to militia lock-ups without notice, and at night. The mobile teams’ working methods have thus been brought as closely as possible into line with those of the teams working for the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). The Ministry of Justice is currently working on legislation concerning a national committee against torture; the bill would provide the mobile teams with an official and independent status.

IV. Violence against members of minorities and others

33. Violation of the equal rights of citizens on grounds of race or ethnicity is a criminal offence under article 161 of the Criminal Code. The number of criminal cases brought against Ukrainian citizens for crimes covered by this article is currently very low. Various international organizations, including Amnesty International, regularly raised this question with the Procurator-General’s Office. Therefore, in December 2008 the regional procurators were instructed to review all criminal cases in which the victims were foreigners in order to ascertain whether the elements of the crime described under article 161 were present.

34. As for the theory regarding the expanded recruitment into law enforcement of persons belonging to ethnic and national minorities, we cannot agree with the Committee’s recommendation, as it would violate the principle of equality of citizens. Candidates for work in law enforcement, as in other State services, must be selected on the basis of their professional and personal qualities, not because they belong to racial or ethnic groups.

35. Officials of the Internal Affairs Ministry have checked on the municipal and district departments to prevent and detect any use of violence against ethnic minorities and foreigners. In 2008 there were 34 cases brought to the attention of the Ministry by foreign citizens (as against 39 in 2007). The facts were substantiated in two cases: one involving a citizen of the Russian Federation suspected of a crime who was illegally detained and searched by criminal investigation officers, and another case involving the beating of citizens of Azerbaijan. As a result of the departmental investigation, disciplinary measures were taken against the responsible militia members.

36. Neighbourhood militia officers regularly hold meetings with pupils and students in order to shape their world view on the basis of ethnic and religious tolerance and to make it clear that those who violate the law will be held to account. The same kind of work is conducted at young people’s residences, such as at student dormitories. During meetings with foreign citizens, booklets are distributed outlining their rights and obligations during their stay in Ukraine and also explaining how foreign citizens can file complaints with Ukrainian internal affairs agencies when illegal acts are committed against them.

37. Since the adoption by the Ministry of Internal Affairs of the Plan of Action to Combat Racism up to 2009, meetings have been held regularly with the diplomatic representatives of other countries and with representatives of international organizations and foreign communities and associations in Ukraine. Officials of internal affairs agencies and units in all regions of the country have attended classes organized jointly with Amnesty International.

38. To make the measures taken against xenophobia more effective the Ministry of Internal Affairs has also held a series of working meetings and consultations with the following: the High Commissioner on National Minorities of the Organization for Security
and Co-operation in Europe (OSCE), the Ombudsman of the French Republic, representatives of the Warsaw Office of OSCE, the Canadian consulate, the United Nations Development Programme (UNDP), the International Organization for Migration (IOM), the International Renaissance Foundation, the East European Development Institute and the head office of Amnesty International.

39. On 10 May 2008 the Ministry of Internal Affairs, together with the Kharkiv Institute of Social Studies and the Police and Human Rights Programme of the Council of Europe, held a training course on the subject of how to respect the rights of national minorities, foreigners and asylum-seekers when internal affairs bodies conduct investigations. A separate seminar entitled “Social tolerance in Crimea: A look from the point of view of national security” considered questions of observance of the rights of national minorities and the specificities of the State’s ethnic and cultural policy. That event was held at the Ministry on 29 May 2008, with the participation of experts from the Centre for Middle East Research, for high-level specialists from the Ministry’s public safety, human resources and criminal investigation departments, from the Ministry’s management academy, and the Kyiv National University of Internal Affairs, and for other staff of the Ministry.

40. In May 2008 a plan of urgent measures was drawn up to combat crime committed against foreigners, including crime based on racism or xenophobia. The plan was approved on 21 May 2008 by the Minister of Internal Affairs. The number of crimes committed against foreign nationals fell from the previous year by 10.5 per cent, from 1,178 to 1,054. In 543 cases (51.5 per cent), the perpetrators were arrested (in 2007, the figures were 556 cases, or 47.2 per cent). The Ministry of Internal Affairs, taking into consideration the work done by the OSCE Office for Democratic Institutions and Human Rights to combat racism and xenophobia, has been working with the Ministry of Foreign Affairs of Ukraine to negotiate a memorandum aimed at holding special training courses for law enforcement agencies on how to combat hate crimes.

41. On 3 April 2008 Ukrinform, the national news agency of Ukraine, held a round table on racism and xenophobia with the participation of representatives of the Ministry of Foreign Affairs, the National Security Service, the Ministry of Internal Affairs, other State agencies and international organizations and community associations. On 17 and 18 April 2008 the Ministry of Internal Affairs, together with representatives of the Police and Human Rights Programme of the Council of Europe, held a training course on tolerance in militia activities for criminal investigation staff of all the regions of Ukraine. On 5 August 2008 staff of the Ministry of Internal Affairs took part in a session of a working group preparing an international conference entitled “Decade of Roma Inclusion 2005–2015”. On 7 August 2008 a meeting was held with Mr. Stephan Muller and Ms. Zola Kondur, consultants from the Council of Europe, on the introduction of the national plan of action for the Roma (as part of the “Dosta” campaign). In August 2008 meetings were held with representatives of the Roma communities of Kirovohrad and Poltava provinces focusing on problems encountered in ensuring their basic rights and freedoms. On 24 September 2008 a working meeting was held between officials of the Ministry of Internal Affairs and representatives of the African Centre in Ukraine to discuss issues related to personal security and the rights and freedoms of foreign citizens. In October 2008 an international film festival called Human Rights Documentary Days was held at the local units of the internal affairs bodies; it included movies against racism and xenophobia. In 2008 staff of the Ministry of Internal Affairs took part in four sessions of an interdepartmental working group set up by the State Committee on Ethnic and Religious Affairs to combat racism and xenophobia and also in the drafting of a national plan of action for information collection and analysis in this field. On 16 October 2008 a round table was held with the participation of the Deputy Minister of Internal Affairs at the Zakarpattia association of Roma community organizations, Egripe, in Uzhhorod, as part of a project run by the Rom Som Zakarpattia Roma cultural association. The round table was entitled “Medical and Social
Assistance for Roma victims of the Great Famine of 1932–1933 in Ukraine (Holodomor) in Uzhhorod and the Uzhhorod district”. The project was implemented with support from the EVZ Remembrance, Responsibility and Future Foundation of Germany and the consulate of the United States of America in Ukraine.

42. The Ministry of Internal Affairs has developed the following organizational and practical measures for use against the illegal activities of radical neo-Nazi youth groups in the context of worsening crime against foreigners:

(a) A special unit has been established in the Ministry for the prevention of crime against foreigners;

(b) An order has been prepared instructing the heads of the provincial departments to meet personally with representatives of diplomatic and consular missions and the leaders of associations of foreigners so that they can provide them with objective information on incidents involving foreign citizens, the circumstances of crimes committed against them and measures taken to find out about such crimes;

(c) Cooperation has been established with the media to ensure thorough and accurate coverage of incidents involving foreign citizens and representatives of ethnic minorities;

(d) Militia patrol routes in cities have been modified so that they are as close as possible to places where foreigners congregate (schools, student residences and places of leisure);

(e) A series of preventive measures are systematically being taken to detect situations of conflict involving foreign citizens and potential wrongdoers who may commit crimes against foreigners, including racially motivated crimes.

43. Regarding the opportunities for foreign detainees to assert their right to a defence (in particular the right to have access to counsel and to a doctor), under article 26, part 1, of the Constitution, foreigners and stateless persons legally in Ukraine have the same rights and freedoms, and also the same obligations, as Ukrainian citizens, except in cases set out by the Constitution, laws or international agreements of Ukraine.

44. The legal status and fundamental rights, freedoms and obligations of foreigners and stateless persons residing or temporarily staying in Ukraine are set out in the Legal Status of Foreign Nationals and Stateless Persons Act of 4 February 1994.

45. Further to the constitutional standard according to which every person who is detained or arrested must have the right to the assistance of a defender (art. 29.5 of the Constitution), the Act establishes that foreigners and stateless persons, as participants in court proceedings, have the same procedural rights as Ukrainian citizens (art. 22.2 of the Act). The Constitution guarantees the right of all people to health, medical assistance and medical insurance (art 49.1 of the Act). Under article 10 of the Act, foreigners and stateless people permanently residing in Ukraine and those who have received refugee status are entitled to the same medical assistance as citizens.

V. Harassment and violence against members of civil society

46. In accordance with orders issued by the Ministry of Internal Affairs, information is updated daily on crimes committed against members of the media. Information on such crimes is presented to the Ministry’s directorate by telephone within 30 minutes, and in writing within three hours.
47. Crimes committed against members of the media amount on average to 0.023 per cent of the total number of crimes registered. In addition, the number of such crimes has tended to decrease over the past seven years. Specifically, the figures have been as follows: 64 reports of offences committed against members of the media in 2000; 154 in 2001; 77 in 2002; 169 in 2003; 129 in 2004; 87 in 2005; 68 in 2006 and 63 in 2008.

48. The majority of the crimes committed against members of the media are unrelated to their professional activities. This is borne out by the actual circumstances of such crimes. Since 2000 just four crimes covered by article 171 of the Criminal Code (obstruction of the legitimate professional activity of a journalist) have been investigated by procuratorial bodies. In 2008 internal affairs agencies initiated criminal proceedings in response to 36 crimes committed against members of the media, including a killing, 9 robberies, 17 thefts, a beating, a case of fraud, 2 cases of premeditated destruction of or prejudice to property, an illegal seizure of a vehicle and 4 cases of hooliganism. In 2008 the procuratorial bodies initiated four criminal cases in response to obstruction of the professional activities of members of the media. Of these, one case was referred to a court, one was suspended by a court because the statute of limitations had expired and two were in the pretrial investigation phase.

49. For example, on 30 May 2008 the Kyiv district procurator’s office in Donetsk initiated a criminal case under article 365, part 2, of the Criminal Code against an official of the Grifon special protection unit of the court militia service who had injured a reporter from the newspaper Ostrov, Mr. I.V. Nezhurko, in the Kyiv district court room in Donetsk. On 16 May 2008 at approximately 5 p.m. Mr. Nezhurko had arrived in the court room to take part in a hearing. While in the hearing room he began to film the proceedings conducted under the chairmanship of Judge O.A. Burlachenko, using a video camera. Judge Burlachenko, who considered that Mr. Nezhurko was disrupting the court’s work, orally instructed the officer of the Grifon unit (under the Central Department of the Ministry of Internal Affairs in Donetsk province) who was present at the scene to remove him from the room. The officer, on his own initiative, used physical force and ejected him from the court room. Mr. Nezhurko was clubbed twice with a nightstick and sustained light injuries. On 11 September 2008 the case, with an indictment, was referred to a court.

VI. Risk of return to torture

50. Article 28 of the Constitution establishes that no one may be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Ukraine has ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. An Act of 12 January 2005 amended article 127 of the Criminal Code, inter alia increasing the liability for such acts when carried out by law enforcement officers. Under this article, torture is defined as beating, tormenting or carrying out any other violent act by which severe physical pain or physical or mental suffering is intentionally inflicted for such purposes as forcing the victim or another person to commit acts contrary to his or her will, including obtaining from the person or another person information, testimony or a confession, punishing the person for an act he or she has committed or is suspected of committing, or intimidating the person or another person.

51. Regarding the return by the State party of persons to States where there is reason to believe they may be tortured, in particular Uzbek citizens returned to Uzbekistan, we should like to state the following. The procurator’s office of the Autonomous Republic of Crimea has looked into this matter and has established that in the course of its regular activities to combat illegal immigration and terrorism, the Central Department of the National Security Service in Crimea learned of the existence of six persons from Uzbekistan (Mr. Ilkhom Gulyamovich Khasanov, born 1973; Mr. Bakhrom Adilovich...
Raufov, born 1968; Mr. Bakhtiyar Niyazovich Ilyasov, born 1962; Mr. Khaet Khamrailievich Khamzaev, born 1976; Mr. Makhmud Mekhmanovich Melikuziev, born 1968; and Mr. Erkim Tursunovich Gafurov, born 1972) who promoted “radical Islamic” propaganda and attempted to recruit Ukrainians — Crimean Tatar youths — into the Islamic Movement of Uzbekistan international terrorist organization and the Akromiya extremist religious movement (the national branch of the Hizb ut-Tahrir). The persons in question also stated that they were in hiding from law enforcement agencies because they had committed crimes in their country. In addition, they were residing in Ukraine illegally and had not properly registered with the authorities.

52. Mr. Khasanov was wanted by the law enforcement agencies of Uzbekistan in connection with his involvement in extremist religious and terrorist activities and for having committed a series of serious crimes in Uzbekistan. Additionally, Mr. Gafurov was the subject of an international search warrant for committing a series of serious crimes in Uzbekistan (including terrorism, sabotage and premeditated murder).

53. In the light of the above, on 7 and 8 February 2006, 11 persons such as those mentioned above were arrested in application of article 6, part 1, and article 7, part 7, of the Counterintelligence Act and article 30 of the Legal Status of Foreign Nationals and Stateless Persons Act, as they were illegally in the country. A decision by the Central Department of the National Security Service in Crimea, confirmed by the deputy procurator for the Autonomous Republic of Crimea, authorized their placement at the holding centre of the Central Department of the Ministry of Internal Affairs in Crimea. In addition to those named above, the following too were detained: Mr. Takhir Saidulaevich Dzhuraev, born 1968; Mr. Arif Tursunovich Abdurakhimov, born 1965; Mr. Shukhratbek Iuldashevich Khuzhaev, born 1967; Mr. Ikrom Ilkhomovich Akhmedov, born 1981; and Mr. Dilmurod Tokhiroovich Iskandiyarov, born 1976.

54. The Central Department of the National Security Service of Ukraine in Crimea reported the detention of the Uzbek citizens on 7 February 2006 to the consulate of Uzbekistan in Ukraine, and on 8 February 2006 informed the director of the consular services department of the Ukrainian Ministry of Foreign Affairs. In addition it was established that between 1 and 6 February 2006, 9 of the 11 detainees had applied for refugee status with the migration service of the State Committee for Nationalities and Migration in Crimea. However, the migration service administration refused to receive documentation in support of their applications. On 13 February 2006 the migration service administration, in accordance with article 12, part 7, of the Refugees Act, informed them in writing of the refusal to receive their documentation for asylum applications. The same day, the detainees filed written statements with the Chairman of the State Committee for Nationalities and Migration stating that they had opted not to appeal against the decision of the migration service. Under the legislation in force and UNHCR Executive Committee Conclusion No. 8 (XXVIII) on the determination of refugee status adopted in 1977, the foreign citizens in question were given the right to appeal to the courts; they declined to do so in writing.

55. In the light of the above, on 14 February 2006 the Kyiv district court of Simferopol adopted a decision on the deportation of the 11 citizens of Uzbekistan, Mr. Khasanov, Mr. Raufov, Mr. Ilyasov, Mr. Khamzaev, Mr. Melikuziev, Mr. Gafurov, Mr. Dzhuraev, Mr. Abdurakhimov, Mr. Khuzhaev, Mr. Akhmedov and Mr. Iskandiyarov, for illegally staying in the country, on the basis of article 32 of the Legal Status of Foreign Nationals and Stateless Persons Act, article 24 of the Code of Administrative Offences and articles 158–170 of the Code of Administrative Procedure. The decision was implemented the same day by the State Border Service’s administration for the Sea of Azov and Black Sea region. The persons in question were deported to Uzbekistan on an Uzbek airline flight.
56. According to the procurator’s office responsible for the Autonomous Republic of Crimea, upon verification it was determined that no violations of the legislation in force were committed by the officials of the Central Department of the National Security Service in Crimea when they arrested and deported the Uzbek citizens from Ukraine. Under article 10, part 3, of the Criminal Code, foreigners and stateless persons not permanently residing in Ukraine who have committed crimes beyond its borders and are located in Ukrainian territory may be extradited to a foreign State to be prosecuted and brought to trial or transferred to serve a sentence, if such extradition or transfer is provided for in international agreements to which Ukraine has acceded. When taking decisions about the extradition to another State of a person arrested for breaking the law, the Procurator-General’s Office follows the national law currently in effect and the international treaties to which Ukraine has acceded, including the European Convention on Extradition of 1957, the Convention on Judicial Assistance and Legal Relations in Civil, Family and Criminal Matters of 1993, and multilateral special agreements on combating various forms of crime (for example the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, ratified by Decision No. 1000-XII of the parliament (Verkhovna Rada) on 25 April 1991).

57. When a request for extradition by a competent body of another State is deemed to be acceptable in substance, a verification is carried out to determine whether there are any obstacles to extradition. Specifically, such obstacles may include suspicion that in the event of extradition to the other State the extradited person’s rights will be violated. In such cases the Procurator-General’s Office requests further information and guarantees (art. 3.2 of the Convention) from the competent authorities of the requesting State, in particular guarantees that torture, inhuman or degrading treatment or punishment will not be used. If information is later received that the extradited person’s rights have been violated, the Procurator-General’s Office requests the competent authorities of the requesting State to carry out the appropriate verifications and to halt any violations that are detected.