

TREATY BODY MONITOR

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Information submitted to the Committee

Ukraine appeared before the Committee against Torture (the Committee) on 8-9 May 2007 to present its fifth periodic report.¹ The report covered the period from 2000 to 2003. Although it provided an overview of the measures relating to the implementation of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (the Convention)² by Ukraine, it was very descriptive and sometimes amounted to a justification by the country for implementing or not implementing the previous recommendations of the Committee with which it was not satisfied. It paid special attention to the inclusion of the definition of torture in the Criminal Code, and to prison conditions. On this latter issue, Ukraine declared that physical and technical standards could not be raised to international levels easily because of the difficult economic situation of the country. It added that the increased influx of illegal migrants from Central Asia was also having an effect. The Committee welcomed the report and appreciated the good will of the country to make changes. However, it stated that the Ukrainian legal regime was not sufficient and that social changes were needed. These should be carried out with the participation of non-governmental organisations (NGOs). The Committee congratulated the State party for the implementation of the Optional Protocol to the Convention (OPCAT) ratified in September 2005.

The Committee addressed a list of issues to Ukraine that was also discussed in the plenary. These included the definition of torture included in the new Penal Code and its effects; the measures taken to prevent hazing in the military; non-refoulement; prison and detention conditions and their monitoring. Ukraine provided a reply to this list of issues. However, it was only available in Russian at the time of writing.

¹ CAT /C/81/Add.1, 17 October 2006. Available at <http://www.ohchr.org/english/bodies/cat/cats38.htm>.

² The full text of the Convention is available at <http://www.ohchr.org/english/law/cat.htm>.

Three NGOs submitted reports regarding the human rights situation in Ukraine.³ They all dealt with the forcible return of the members of the Uzbek opposition to their country and qualified this as a violation of the principle of *non-refoulement* by Ukraine. Amnesty International and the Kharkiv Human Rights Protection Group were both concerned with impunity in cases of torture or ill-treatment. The Kharkiv Human Rights Protection Group identified the conflicting function of the Prosecutor's office as an impediment to effective investigations. Amnesty International and Human Rights Watch brought to the attention of the Committee ill-treatment by the police at the time of arrest and during the pre-detention phase. The report by the Kharkiv Human Rights Protection Group also raised the issues of the routine practices of violating the right to liberty and detainees' rights and the mass use of violence in correctional facilities. The briefing sent by Amnesty International focused on allegations of police ill-treatment and torture at the arrest and pre-trial detention stages, the lack of genuine investigation of these allegations, and prison conditions. Human Rights Watch also focused on the migration and asylum policy of Ukraine, denouncing the conditions of detention and the treatment of detained immigrants.

Themes and issues

Ukraine's delegation was headed by Ms Lutkovska, Deputy Minister of the Ministry of Justice. Also representing the delegation of Ukraine was the Deputy Minister of the Ministry of Health of Ukraine; the Deputy Prosecutor General of Ukraine, and representatives from the Legal Military Service; the State Department; the Ministry of Internal Affairs; the Ministry of Justice; the Permanent Mission of Ukraine to United Nations Office at Geneva and the Ukrainian Parliament Commissioner for Human Rights.

The Committee appreciated the presence of a representative of the Ombudsman. However, it was surprised to see him as part of the delegation and therefore expressed concern about the independence of the institution. On this, the head of the delegation specified that the Ombudsman was independent and was not really part of the delegation. Nevertheless, in its concluding observations, the Committee recommended the State to ensure that the Ukrainian Parliament Commissioner for Human Rights is an effective and independent institution, in accordance with the Paris Principles.

The delegation summarised the main content of its replies because they were only available in Russian when the session started. During the discussion, the delegation highlighted that the report was submitted in 2004, and that some changes had occurred since then.

Implementation of the Covenant

While summarising its replies to the list of issues, the delegation pointed out that the domestic definition of torture was now in line with Article 1 of the Convention. Indeed, the amendment to the Penal Code (that entered into force in January 2005) provides for a specific definition of torture, and law enforcement officials face greater liability for committing acts falling under this definition. However, the Committee was interested in receiving more detailed information on the compliance of the domestic definition with Article 1. It was concerned that psychological torture and discrimination were not referred to in the Penal Code, and that it seemed that it is only applicable to law-enforcement officials and not to other State agents. Furthermore, it enquired whether police acquiescence and complicity for acts of torture was covered.

The delegation explained that the current definition of torture in Ukrainian law is the intentional infliction of physical or psychological pain or suffering, by means of beating or other means of inflicting torment to force victims to do something against their will, such as obtaining information or a confession, or to intimidate

³ Available at <http://www.ohchr.org/english/bodies/cat/cats38.htm>.

them. It specified that the addition of discrimination as an element of the definition was being considered by the Parliament.

In its concluding observations, the Committee regretted that the reference to discrimination was not contained in Article 127 of the Criminal Code in spite of amendments to bring the definition in line with Article 1 of the Convention. It recommended including discrimination as an element of the domestic definition of torture and ensuring that all public officials can be prosecuted under Article 127 of the Criminal Code.

Detention matters

Pretrial detention

The Committee expressed concern regarding the fact that a court warrant was needed for the deprivation of liberty but that this was often disregarded in practice. It was also concerned about the insufficiency of legal safeguards for detainees during the period they are detained but before they are presented to a judge. With respect to the right to legal counsel, the Committee sought more information on the moment the right to access to a lawyer was granted. It also enquired into allegations by NGOs that the payment lawyers receive from the Government to act as a free legal counsel is so low that no lawyers want to take those cases. It also raised the issue of the 72 hours maximum detention period before being presented to the judge. It was concerned that those who detainees were not brought to Court within this time-limit were often those who are alleged to have suffered from ill-treatment. It also required any data on the lapse of time before a detainee was brought before a judge.

On the issue of arrest warrants, the head of the delegation specified that they were only issued by the Court. Regarding the 72 hours detention limit, she declared that it was the maximum detention period set out in the Constitution. If after that time the detainee had not had a judicial hearing, he had to be released. She said that in general, a person was brought before a judge within 24 hours. On the right to legal counsel, the head of the delegation specified that it was granted from the beginning of the deprivation of liberty and that foreigners benefited from this right. As for free legal aid, she acknowledged that this was problematic. Indeed, lawyers usually earn a high salary and do not wish to take cases of legal aid because Government payments are low. The delegation admitted that the Ukrainian system needed to be improved and said that a new mechanism was under consideration.

The concluding observations of the Committee called on Ukraine to make sure that people are not subject to *de facto* unacknowledged detention and that the fundamental safeguards of the detainees such as the right to access a lawyer, an independent medical examination and the right to be presented to a judge within 72 hours are respected. They also asked the State party to provide an effective system of free legal aid for persons at risk or belonging to a vulnerable group. Such a system with adequate resources would enable all victims of torture to assert their rights under the Convention.

Conditions of detention

A member of the Committee requested information on the progress made on the conditions of detention of detainees, especially the prevention and treatment of those affected by HIV/AIDS and tuberculosis.

The delegation stated that it had set up programmes to improve conditions of detention and bring facilities in line with European norms. For instance, the size of a prison cell will be 4 square metres. With regard to health conditions, two programmes that follow recommendations of the World Health Organization have been established to combat HIV/AIDS and tuberculosis. For HIV/AIDS, this is through awareness programmes, education work and information. Detainees affected by AIDS are transferred to a hospital. For tuberculosis, there are specialised hospitals where infected detainees receive adequate medical assistance. The delegation highlighted that the level of persons affected by tuberculosis has dropped.

The Committee recommended effective measures to be adopted to improve the conditions in all detention facilities. It called on the reduction of the current overcrowding and the meeting of the needs of all persons deprived of liberty, especially regarding health care, in conformity with international standards.

Monitoring of detention facilities

The Committee acknowledged that ‘mobile groups’ were a positive step in the monitoring of detention facilities and the respect for human rights. It wanted to know if they would be given any formal legal status. It also brought up the issue of the training of persons dealing with detainees. It especially expressed concern that medical staff working in prisons did not receive specific training to detect signs of torture and ill-treatment.

The head of the delegation explained that ‘mobile groups’ are composed of staff from the Ministry of Interior and representatives of the civil society with the mandate to visit detention facilities, monitor the situation of detainees and prevent acts of torture. The director of the prison is warned 24 hours prior to the visit of the ‘mobile group’. On the question of legal status, the delegation replied that if there were changes it would be to enhance activities of the ‘mobile group’ and not to alter them.

On the question of training of persons dealing with detainees, the head of the delegation stated that the medical staff had the same kind of training as others working in regular hospitals. Inmates are treated in the same way as regular patients; otherwise this could be seen as discrimination. Concerning law enforcement agents, they receive training about case law of the European Court of Human Rights; texts of the international conventions; protection of freedoms and rights of persons and the rights of the detainees.

In its concluding observations, the Committee recommended that the State party set up a formal status for the ‘mobile groups’, provide them with a strong mandate, guarantee their independence and provide them with adequate resources. It also asked Ukraine to reinforce its training programmes for all law enforcement and military personnel, members of the judiciary and Prosecutors. It insisted that the State should ensure adequate training of all medical personnel involved with detainees so as to ensure that they could identify signs of torture and ill-treatment in accordance with international standards, such as those identified in the Istanbul Protocol.

Allegations of torture and their prosecution

The Committee expressed disappointment at the written reply of Ukraine concerning the number of complaints of torture and their follow-up. It also explained the need for an appropriate normative framework to fight impunity. It also raised the issue of the twofold role of the Prosecutor. The Committee expressed concern at the fact that it is both responsible for investigating and prosecuting ordinary criminal cases, as well as deciding whether a case will be opened against a law enforcement official and then overseeing the police investigation.

The delegation declared that Ukraine met the requirement laid down in the Istanbul Protocol.⁴ Persons who have received bodily harm from a member of the Ministry of the Interior have the possibility to lodge a complaint with the Prosecutor for a medical report. The medical examination is carried out by an independent medical practitioner. The conclusions will act as a basis for the Prosecutor to carry out the case before the Court. The procedure is slightly different for persons deprived of their liberty. The prisoner has to file a

⁴ This is a manual providing for international guidelines for the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment. Document available at <http://www.ohchr.org/english/about/publications/docs/8rev1.pdf>.

complaint to the doctor of the prison. This is communicated to the director of the prison, which leads to an investigation and the passing of a report to the Prosecutor.

The head of the delegation acknowledged that the promise made to the Council of Europe to bring the Prosecutor's Office in line with European standards had not been fulfilled. However, it declared that the Prosecutor no longer has the right to protest a decision taken in a civil or criminal case.

The concluding observations of the Committee recommended a reform of the General Prosecutor's Office in order to ensure its independence and impartiality and to separate the functions of criminal prosecution from the function of supervision of investigations of allegations of torture and ill-treatment. It recommended the establishment of an effective and independent oversight mechanism to ensure prompt, impartial and effective investigation into all allegations of torture and ill-treatment during criminal investigations. It also encouraged Ukraine to provide disaggregated statistical data on the work of the Office of the Prosecutor.

Hazing in the armed forces

The Committee congratulated Ukraine for the efforts achieved in the area of hazing in the armed forces⁵ (*dedovshchina*), resulting in the decrease of the number of complaints in this area. However, the Committee was concerned that there still remained a substantial number of complaints that needed to be investigated. It requested more information on the 73 incidents that occurred in 2006, as mentioned by the delegation in its response, and the reason why there had been no trials.

On the question of hazing, the Ukrainian delegation replied that this was not defined under domestic law but that some related crimes such as beatings and ill-treatments covered military personnel, and that three sections of the Criminal Code dealt with it. It gave examples of the measures put in place to fight against this phenomenon such as the confidential Ministry of Defence hotlines. As requested by the Committee, the head of the delegation clarified that the 73 cases identified were crimes of abuse of authority but not suicides. She pointed out that it was 12% lower than the number brought in 2005 and 58% lower than for 2004. However, no comments were made on whether or not individuals who committed those acts have been brought to trial.

The Committee asked Ukraine to take effective measures to eradicate the prevalent problem of *dedovshchina* and to reinforce prevention measures. The concluding observations also called on the State party to ensure prompt, impartial and effective investigation, prosecution and conviction of the perpetrators of such abuses, and report publicly on the results of such prosecutions.

Migration issues

Asylum seekers

The Committee asked the Ukrainian delegation to clarify the fact that it was impossible to appeal decisions of extradition. It also enquired whether persons coming from "countries with a risk of migration" would be automatically returned to a third country following an agreement with a third country. Finally, it asked for more information on the conditions of detention of asylum seekers and if there were any plans to open new reception centres.

Replies by the delegation were brief and did not focus on all the questions. On the appeal of extradition decisions, Ukraine said that no special provisions for extradition orders existed but that appeals were possible under regular law. It added that following the May 2005 amendments to the law on asylum, it is possible for

⁵ "Hazing" is defined by the American Heritage Dictionary as: "1. To persecute or harass with meaningless, difficult, or humiliating tasks; 2. To initiate, as into a college fraternity, by exacting humiliating performances from or playing rough practical jokes upon."

legal temporary migrants to make a special request for asylum before the expiration of their permit. The expulsion order can be appealed in Courts and has a suspensive effect. On the expulsion of foreign citizens by border-control personnel, the delegation declared that a person could appeal the extradition and send a letter to the Ombudsman. The Ministry of Justice decides whether a person is to be extradited. If the person has refugee status, she cannot be extradited.

In its concluding observations, the Committee expressed concern that asylum seekers faced discrimination on grounds of nationality and that there was no proper asylum procedures, leading to the *refoulement* of some asylum seekers. Therefore, it recommended that Ukraine adopt the draft laws on *Refugees, Persons Eligible for Complementary and Temporary Protection* and on *Introduction of Amendments to the Law of Ukraine on the Legal Status of Foreign and Stateless Persons*. It also added that the Ukrainian asylum procedures should comply with international standards, that conditions of detention should be improved, and that alternative measures should be considered.

The specific case of the Uzbek asylum seekers

Following a peaceful protest on 13 May 2005 in Andijan, Uzbekistan, the Government forces killed persons participating in this rally and denied responsibility on the grounds that they were 'Islamic extremists' who initiated 'disturbances' in the city. 11 persons who took part in this peaceful protest fled Uzbekistan for Ukraine because they feared torture. The Committee enquired into the forcible return of these 11 Uzbek nationals in February 2006. It was concerned because several NGOs raised allegations of mistreatment upon their return.

The delegation did not hide that the case of the Uzbek asylum seekers was an unpleasant matter for them to comment on. It specified that no extradition request had been made towards these people. It declared that they were living in Ukraine without being registered and that they were accused of being terrorists. This is why they could not be granted refugee status and that there was no grounds to believe that they would be persecuted upon return. They had been informed of their situation and agreed not to appeal their expulsion. The head of the delegation acknowledged that there has not been a violation of domestic law but that it did not mean that there was no violation of international law. She stated her willingness not to repeat this and to change domestic law in this regard. She specified that a bill on this issue was being drafted.

On this issue, the concluding observations of the Committee recommended that Ukraine examine thoroughly the merits of each individual case, ensure that judicial review mechanisms for the decision of expulsion are established, as well as the availability of sufficient legal defence for every person subject to extradition. It also insisted on the necessity of having effective post-return monitoring arrangements.

Other issues

Among other issues that were discussed, the Committee thanked the delegation for its helpful written reply on domestic violence. However, it regretted that only a few cases of domestic violence were brought to justice, and noticed that according to the International Organization for Migration, 80 per cent of women were victims of domestic violence before being trafficked. Ukraine disagreed and asked for more clarification as the figure appeared to the delegation to not to be in line with reality.

The Committee recommended that Ukraine strengthen measures to prevent and fight against trafficking and domestic violence and to provide the victims with protection and rehabilitative services.

Conclusions and next steps

As the session ended, the Committee thanked the delegation for the complete replies it presented, and noted the complex situation of the country as it is in a transitional phase. It congratulated the State for ratifying OPCAT and pointed out that it was particularly impressed by the material provided on the issue of trafficking.

Previously, other treaty bodies made recommendations on issues dealt with by the Committee during its review of the report of Ukraine. On prison conditions, the Human Rights Committee recommended that the right of detainees to be treated humanely and with respect for their dignity be guaranteed, particularly by relieving overcrowding, providing hygienic facilities, and assuring access to health care and adequate food. It also recommended reducing the prison population by using alternative sanctions.⁶ This Committee also recommended that Ukraine establish a more effective system of monitoring treatment of all detainees to ensure the full protection of their rights under Articles 7 and 10 of the *International Covenant on Civil and Political Rights* (ICCPR); ensure that allegations of torture are effectively investigated by an independent authority, that perpetrators are prosecuted, and that victims receive adequate compensation.⁷ This Committee recommended that the State ensure that all persons held in custody by police receive proper treatment. This includes measures necessary to guarantee freedom from torture and from cruel, inhuman or degrading treatment, and that they are provided with legal counsel and doctors in practice, immediately after arrest and during all stages of detention. It also suggested that the Government consider the establishment of an independent police complaints mechanism as well as an independent body to inspect detention facilities, with authority to interview any inmates in private.⁸ On the issue of hazing in the armed forces, the Human Rights Committee asked the State party to ensure the end of this practice, including by facilitating the intervention of the Ombudsman and the adoption of disciplinary measures.⁹ Finally, the Human Rights Committee and the Committee on Economic, Social and Cultural Rights called on Ukraine to intensify efforts to combat domestic violence, and ensure that social and medical centres for rehabilitation are available to all victims, regardless of their age and gender.

⁶ CCPR/C/UKR/CO/6, para.11 (HRC, 2006).

⁷ CCPR/CO/73/UKR, para. 15 (HRC, 2001).

⁸ CCPR/C/UKR/CO/6, para.7 (HRC, 2006).

⁹ CCPR/C/UKR/CO/6, para.6 (HRC, 2006).

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