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Ukraine: Amnesty International urges parliament to strengthen safeguards against torture in draft Criminal Procedural Code

Amnesty International welcomes the progress that has been made in Ukraine towards the adoption of a new Criminal Procedural Code, but calls on parliament to ensure that the new draft code includes stronger safeguards against torture and other ill-treatment. Reform of the criminal justice system in Ukraine is long overdue and essential if Ukraine is to comply with international human rights standards.

On 6 March the parliamentary committee on Legal Support for Law Enforcement will hold a hearing on a draft Criminal Procedural Code that was registered with parliament on 13 January. So far the committee has registered over 3,000 amendments and will be compiling a final version of the Criminal Procedural Code for presentation to parliament.

The new draft code includes many articles that will help to eliminate long standing problems in criminal procedure which have facilitated excessive pre-trial detention, torture and other ill-treatment and unfair trials, as documented in Amnesty International's recent report "*No Evidence of a Crime*": *Paying the price for police impunity in Ukraine* (AI Index: EUR 50/009/2011).

In particular the new code includes a set of measures that strengthen the protection of the right to liberty and are intended to reduce the number of people who are subject to pre trial detention. It attempts to strengthen the role of the defence in criminal cases, and increases safeguards for detainees by ensuring timely access to a lawyer and a doctor, and specifying that the judge who takes the decision on detention must react to allegations of torture and other ill-treatment.

However, a number of amendments have been proposed by members of the parliamentary committee which could further improve the draft. These amendments include many of the recommendations made by Council of Europe experts and Amnesty International:

ESTABLISHMENT OF A FULLY INDEPENDENT POLICE COMPLAINTS BODY

Article 216 of the draft code proposes an interdependent system for investigating crimes committed by the police and security service, whereby the police investigate crimes by the security service and the security service investigates crimes by the police. Such a system risks encouraging leniency by one institution in exchange for leniency by the other. Amnesty International has repeatedly expressed concern that investigations into crimes by law enforcement officers in Ukraine are not sufficiently impartial, and create a climate of impunity by failing to prosecute police officers for torture and other ill-treatment.

A number of amendments propose measures to increase the independence of investigations into violations by law enforcement officers: there are proposals for a National Investigation Bureau that will investigate allegations against officials, for a State Anti-Corruption Investigation Bureau, and for an independent police complaints body, entirely separate from the Ministry of Internal Affairs, and the Security Services.

Amnesty International stresses that in order to fulfil the requirements of prompt and impartial torture investigations, Ukraine must establish a fully resourced and genuinely independent agency to investigate all allegations of human rights violations by law enforcement officers including the police. Any independent body established must fulfil the following criteria:

- Comply with the five principles of independence, adequacy, promptness, public scrutiny and victim involvement, as elaborated by the European Court of Human Rights;
- Have no hierarchical or institutional links with the police and operate completely independently from the government, and the police;
- Be adequately resourced and staffed, including with its own body of independent expert investigators, and headed by individuals of acknowledged competence, expertise, independence, impartiality, and integrity;
- Be mandated to investigate all allegations of serious human rights violations by law enforcement officials, including deaths in custody, torture and other ill-treatment, and racial discrimination, including investigations on their own initiative in the absence of a specific complaint;
- Have all necessary powers, including that of immediate access to police premises or other relevant locations and the power to summon witnesses and to order the production of evidence and documents;
- Refer matters to the criminal prosecutor and/or to the police internal disciplinary body, as appropriate, and have the power to order the initiation of disciplinary proceedings and to require the disciplinary body to report back to it on the outcome of such proceedings;
- Recommend appropriate action in respect of the police system overall.

ACCESS TO A LAWYER

Under the current system, not all persons in police custody have access to a lawyer. The new draft code does not address this problem. A lawyer should always be present during police interrogations unless a detainee waives the right to a lawyer, and free legal aid should be available to those that need it. All interrogations should be recorded accurately, preferably with the use of video/audio equipment. The Council of Europe experts criticize Article 52 of the draft code because a lawyer is only mandatory in cases of especially grave crimes that entail a penalty of more than 10 years in prison. For less serious offences the defendant can waive their right to a lawyer.

Furthermore, free legal aid is also only available in such cases where a lawyer is mandatory. Amnesty International welcomes the amendment to revise Article 52 to ensure that a lawyer is mandatory in all cases and not only in cases of particularly grave crimes. Amnesty International further recommends that the legal aid system is reformed so that all those in genuine need can access free legal advice.

RIGHT TO LIBERTY AND SECURITY

Article 12 of the draft code, which sets out the conditions for pre-trial detention, does not make it clear enough that pre-trial detention should only be used as an exceptional measure. Amnesty International welcomes the proposed amendment to this article, which suggests that it should be rephrased in line with Council of Europe recommendations so as to state clearly that in accordance with the right to liberty and the presumption of innocence, people awaiting trial on criminal charges should not, as a general rule, be held in custody.

Amnesty International urges the Ukrainian Parliament to pass the New Criminal Procedural Code with an amendment which provides for an independent body to investigate human complaints against law enforcement officials, fulfilling the criteria listed above, and the aforementioned amendments to Articles 12 and 52.

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