

amnesty international

Ukraine

Briefing to the UN Human Rights Committee

June 2006

November 2006

AI Index: EUR 50/003/2006

Introduction

Amnesty International submits this summary of concerns for the consideration of the Human Rights Committee (HRC) at the pre-sessional meeting in July 2006 in connection with its upcoming examination of Ukraine's sixth periodic report on implementation of the International Covenant on Civil and Political Rights (ICCPR). This submission aims to provide information on particular concerns of Amnesty International about some of the areas in which Ukraine has failed to fulfil its obligations under the ICCPR. In particular, this submission highlights the organization's concerns with regards to the failure of the government to respect its obligations under the ICCPR to:

- Absolutely prohibit torture and cruel inhuman and degrading treatment or punishment (Article 7) – see page 2;
- Ensure respect for the procedural rights of detained persons and that all persons deprived of their liberty are treated with respect for the inherent dignity of the human person and are not subjected to cruel, inhuman or degrading treatment (Articles 7, 9 and 10) – see page 7;
- Ensure full and fair asylum determinations and expulsion procedures and protection against refoulement (Articles 13 and 7) – see page 10;
- Prohibit and prevent discrimination, including acts of racism and anti-Semitism (Articles 2 and 26) – see page 12.

Background

President Viktor Yushchenko came to power in January 2005 promising: "I will do all I can to make the democratic changes in my country irreversible so that the fundamental principles of the Council of Europe -- protection of human rights, pluralistic democracy, and the rule of law -- prevail in our country."¹ Since the HRC last considered Ukraine's implementation of its

¹ *Radio Free Europe/Radio Liberty newswire (RFE/RL)*, 25 January 2005, "Yushchenko: Ukraine's democratic changes irreversible".

obligations under the ICCPR in 2001, there have been some improvements in the human rights situation in Ukraine. The organization has received very few reports of violations of the right to freedom of expression since January 2005 and some progress has been made on bringing to justice those responsible for the “disappearance” in September 2000 of investigative journalist Georgiy Gongadze. On coming to power President Yushchenko promised that those responsible would be brought before a court within two months. The trial of three police officers accused of the murder finally began on 19 December 2005 and remains pending.

During a briefing on the EU-Ukraine summit on 7 December 2005, Mrs Hilde Hardeman, Head of Ukraine Desk in the European Commission, said that human rights were still an area of great concern and that “the whole process is very slow and unfortunately not promising”. Amnesty International is also concerned that despite the new government’s willingness to admit to the existence of human rights problems, decisive action still needs to be taken to eliminate torture and ill-treatment and to improve the protection of refugees and ethnic and racial minorities. In May 2006, Ukraine was elected to the UN Human Rights Council. When seeking election Ukraine pledged to work for the elimination of torture and racial discrimination in the world.² If Ukraine’s participation in the Human Rights Council is to be credible it must take effective measures to eradicate these problems at home.

Torture and cruel inhuman and degrading treatment or punishment

Article 7 “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

Some positive steps have been taken over the past year by the Ukrainian government to improve laws and practice. During 2005, a pilot project was launched jointly by the Ministry of Internal Affairs, the National University of the Ministry of Internal Affairs and the Kharkiv Human Rights Group to monitor places of detention under the control of the Ministry of Internal Affairs in one region of the country. In July, it was decided to expand this project to cover the whole of Ukraine. The Ministry of Internal Affairs took first steps aimed at a future increase in the use of bail measures in order to cut down on overcrowding in pre-trial detention centres. These steps have not yet resulted in less overcrowding. In mid April 2006 the Minister of the Interior issued an order that all suspects were to be informed of their rights, but detailed instructions have not yet been issued to the police.

Despite these initiatives, some of which, as mentioned above, have yet to be implemented, Amnesty International remains concerned about allegations of ill-treatment and torture of detainees by police officers.

The concluding observations of the Human Rights Committee on the fifth periodic report by Ukraine in 2001 called, *inter alia*, for: a more effective mechanism for monitoring the treatment of detainees; the establishment of an independent authority to investigate complaints against the police; the investigation of all allegations of torture by an independent

² *Commitments and pledges of Ukraine on Human Rights*, 17 April 2006 (<http://www.un.org/ga/60/elect/hrc/ukraine.pdf>).

authority; free access to lawyers and doctors for all detainees in practice; ensuring that detainees are able to inform their families immediately of the fact and place of detention; and the investigation of allegations that statements had been gained through coercion and the exclusion of such statements as evidence except as evidence of torture.³ Five years later, Amnesty International is concerned that these recommendations have yet to be implemented.

In September 2005, Amnesty International published a 40-page report on torture and ill-treatment in Ukraine entitled *Time for Action: Torture and Ill-treatment in Police Custody* (AI Index: EUR 50/004/2005). The report focused on allegations of police ill-treatment and torture at the arrest and pre-trial detention stage, in police stations and temporary holding facilities (ITTs acronym from the Ukrainian - ізолятор тимчасового тримання)⁴ where the problem is most acute.

In meetings and correspondence since the publication of the report, government representatives have readily agreed that torture and ill-treatment in police detention continues to be a problem and have demonstrated openness and willingness to cooperate with Amnesty International. In a letter to Amnesty International dated 17 November 2005 the Ministry of Internal Affairs confirmed the continuing existence of torture and ill-treatment:

“We must recognize that despite a series of positive steps taken by the Ministry of Internal Affairs of Ukraine with the aim of eradicating the conditions and factors which cause ill-treatment and the use of torture by law enforcement officers, the practice still persists within the system and has not been completely eradicated.”

Despite the government’s admission that torture and other ill-treatment is a problem, the government’s sixth periodic report to the Committee makes no reference to the problem of torture and other cruel, inhuman and degrading treatment at the hands of the police in Ukraine.

In the report of its visit to Ukraine in 2002, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) repeated the conclusions of its previous reports that “people deprived of their liberty by the police run a significant risk of being physically ill-treated at the time of their apprehension or while in custody”.⁵ The CPT also reported that “in many cases, the severity of the ill-treatment alleged was such that it could be considered to amount to torture”. The reports that Amnesty International and other human rights groups continue to receive indicate that this state of affairs remains the case. Based on Amnesty International’s research, the organization is concerned that law enforcement officers continue to use torture and other ill-treatment routinely and with impunity to extract confessions and information from detainees. Among other things, Amnesty International’s research has led the organization to conclude that police officers are not being adequately trained or equipped to gather evidence and therefore depend

³ UN Doc: *CCPR/CO/73/UKR, of 12/11/01, at para 15.*

⁴ On arrest suspects are held first in holding cells at local police stations before being transferred to temporary holding facilities (ITTs) run under the authority of the Ministry of Internal Affairs. After 72 hours, according to the Criminal Procedural Code all detainees should be transferred to a remand centre or SIZO (acronym from the Ukrainian, слідчий ізолятор) controlled by the Department for the Enforcement of Punishments. Until May 2006 the Department for the Enforcement of Punishments was a separate and independent body not subordinated to any ministry. It has now been put under the authority of the Ministry of Justice.

⁵ Report to the Ukrainian Government on the visit to Ukraine carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 24 November to 6 December 2002 (CPT Report), p. 24 (<http://www.cpt.coe.int/en/states/ukr.htm>).

on “confessions” to solve crimes; in many of the cases which have been reported to Amnesty International, “confessions” have been obtained as a result of torture or other ill-treatment.

Torture methods

The cases that have come to Amnesty International’s attention contain allegations that detainees have been suspended from metal bars (a method known as “lom” or “the bar”), forced to wear gas masks so that they partially suffocate (a very common form of torture in most countries of the former USSR, known as “slonik” or “little elephant”), beaten with fists or kicked, or beaten with other items or heavy books, such as the Code of Criminal Procedure, or filled water bottles, that do not leave marks on the body. In other cases psychological pressure has reportedly been used such as threats of rape, threats of convictions for other crimes, or in one case separating a mother from her sick baby.

The following case is illustrative of the types of cases still reported to Amnesty International.

Case example

Aleksei Zakharkin was detained by police officers in Ivano-Frankivsk district on 17 May 2003. For the next week he was allegedly subjected to torture and other ill-treatment in two different police stations and forced to sign a “confession” for robbery. By the seventh day in custody, when threatened with further torture he attempted to kill himself. Aleksei Zakharkin stated that during the seven days he was in detention before he attempted suicide, he was suspended from a metal bar, forced to wear a gas mask in which there was some kind of liquid and when he breathed he felt a sharp pain in his chest. At times the vent in the gas mask was closed so that it was impossible to breathe at all. He was also sprayed in the eyes with a gas canister. While he was suspended from the metal bar he was allegedly beaten and lost consciousness. He heard the deputy head of Kalushskiy police station say to the officers beating him: “You can kill him, but just be sure to get the confession.” Aleksei Zakharkin then signed the “confession” written by the police fearing that he would not get out of the police station alive. He was subsequently released and no charges were brought against him. The procurator refused to open a case against the police officers in question.

Other cases which are illustrative of the cases received and researched by Amnesty International about torture and ill-treatment in custody are set out in the organization’s September 2005 report (see pages 7 - 13).

Impunity

As highlighted in its report on torture and ill-treatment, Amnesty International’s research indicates that perpetrators of torture or ill-treatment enjoy effective impunity in Ukraine. When investigations are carried out they do not meet international standards of promptness, thoroughness, independence and impartiality, due largely to the dual role of the prosecution. Flawed investigations result in few prosecutions of law enforcement officers; and in the few cases where an official is convicted, often minimal sentences are imposed. The Prosecutor plays a central role, not only in the prosecution of cases, but also in the investigation of torture allegations, but by its very nature the institution is not independent or impartial.

Prosecutions of police officers

Acts of torture or ill-treatment by police officers when prosecuted, are prosecuted under two articles of the Criminal Code. Article 127 which criminalizes torture was added to the Ukrainian Criminal Code in 2001 and in January 2005 the law was amended so that it expressly criminalized such conduct when committed by state officials. Until these amendments were adopted, this provision of the law only criminalized torture by private

individuals. The definition of torture in the article is now in line with the definition of torture in Article 1 of the Convention against Torture. Police officers can also be prosecuted for exceeding authority or official powers under Article 365 of the Criminal Code.⁶ However, despite these legal provisions there are problems within the criminal justice system which make it difficult for victims to lodge complaints, to get those complaints investigated promptly, independently and impartially, and to see those responsible are disciplined or prosecuted (for more information on the difficulty of lodging complaints please see pages 30 – 31 in Amnesty International’s September 2005 report).

In November 2005 the Ministry of the Interior informed Amnesty International that from January to November 2005, 757 police officers had been found guilty of unlawful behaviour, and “violating the constitutional rights of citizens”. The main violations were inflicting bodily harm, carrying out unauthorized searches and inspections, illegal detention and detention on administrative premises. During 2005, 496 criminal cases were opened against serving police officers: of them, 47 for exceeding authority, nine for abuse of power or office, four for torture.

Of the six cases of alleged torture or other ill-treatment that featured in Amnesty International’s September 2005 report, only two cases have resulted in the prosecution of some of the police officers concerned. In December 2005, Amnesty International wrote to the General Prosecutor (with a copy to the Ministry of the Interior) to raise four further cases that we had received. In its reply to our letter the Ministry of the Interior concluded that in all four cases the detainees had falsely accused police officers of ill-treatment in order to avoid conviction for the crimes they had committed. However, the reply did not give any details of the investigations that had been carried out or how the Ministry came to this conclusion.

The Role of the Public Prosecutor

Amnesty International considers that impunity (in particular the lack of independent, impartial and effective investigations and prosecutions of law enforcement officers in connection with allegations of torture and ill-treatment) is partly rooted in the role of the Public Prosecutor in Ukraine. As well as being the body that is responsible for investigation and prosecution of ordinary criminal cases, it is the prosecutors who decide whether a case will be opened against a public official and then oversee the police investigation. In 2001, in his general report to the UN Commission on Human Rights, the UN Special Rapporteur on torture drew attention to “the conflict of interest inherent in having the same institutions responsible for the investigation and prosecution of ordinary law-breaking being also responsible for the same functions in respect of law-breaking by members of those very institutions”. The Rapporteur went on to say that: “Independent entities are essential for investigating and prosecuting crimes committed by those responsible for law enforcement.”⁷ In Ukraine the lack of independence of the investigating body means that cases against law enforcement officers are inadequately investigated, delayed or stalled, or are not opened at all.

In its report on its visit in 2002 the CPT called for prosecutors to adopt “a significantly more proactive approach in the fight against ill-treatment”, and furthermore that action by prosecutors should not necessarily depend upon a formal complaint; but that they should take appropriate action in every case when it comes to their attention that a person may have sustained injuries while in the custody of law enforcement officials.

⁶ Article 365 of the Criminal Code: “Exceeding authority or official powers” (Перевищення влади або службових повноважень).

⁷ Report to 2001 session of the UN Commission on Human Rights E/CN.4/2001/66, para 1310 (<http://daccessdds.un.org/doc/UNDOC/GEN/G01/106/82/PDF/G0110682.pdf?OpenElement>).

When Ukraine applied to join the Council of Europe in 1995 one of the reforms Ukraine committed to was to change the role and functions of the Prosecutor's Office in order to bring this institution into line with Council of Europe standards.⁸ Ukraine has not yet fulfilled this commitment and in 2005 the Parliamentary Assembly of the Council of Europe (PACE) called again for the Prosecutor's office to be reformed.⁹

The Role of judges

In many of the cases that Amnesty International has received, judges have also failed to react to allegations of torture by conducting an independent investigation and ensuring that statements elicited as a result of torture or other ill-treatment are excluded as evidence in proceedings against all but the suspected perpetrators of such treatment.

Case example

Andrei Mazurovich was convicted of murder in December 2002 on the basis of a "confession" that had reportedly been extracted through the use of torture and ill-treatment. He had reportedly been tortured and ill-treated by police officers to force him to "confess" to the murder, and was finally told that his partner Yuriy Mikhievsky had proved more talkative and had given evidence against Andrei Mazurovich. Yuriy Mikhievsky later stated in court that he had been under physical and psychological pressure by law enforcement officers and for that reason had signed statements incriminating himself and Andrei Mazurovich. Another witness also stated in court that he had only written his statement because of physical force to which he had been subjected. The Court however, did not initiate an investigation into the allegations of torture or other ill-treatment. Andrei Mazurovich was convicted on the basis of his "confession" and other testimony that had allegedly been extracted through the use of torture and other ill-treatment. Furthermore, according to the information available to Amnesty International, to date, no investigation has been carried out into these allegations of torture or other ill-treatment and no person has been brought to justice for such conduct in connection with these allegations.

Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

One of the recommendations of the Amnesty International 2005 report was that Ukraine should ratify the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). Amnesty International welcomes the fact that Ukraine signed the Protocol in September 2005. The organization will be monitoring the establishment of the national mechanism set up under the OPCAT with a view to ensuring that it will be consistent with the requirements of the Protocol, and in particular that it is truly independent.

⁸ Parliamentary Assembly of the Council of Europe (PACE), Opinion No.190 (1995) "On the application by Ukraine for membership of the Council of Europe", adopted 26 September 1995 (<http://assembly.coe.int/Main.asp?link=http://assembly.coe.int/Documents/AdoptedText/TA95/EOP1190.htm>).

⁹ PACE, Resolution 1466(2005), adopted on 5 October 2005, paragraph 13.4 (<http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta05/ERES1466.htm>).

The pilot project that was launched in 2005 by the Ministry of Internal Affairs (see p.3 above), with the participation of the National University of the Ministry of Internal Affairs, and local human rights groups to monitor places of detention under the control of the Ministry of Internal Affairs is a positive step, but the monitoring groups are under the control of the Ministry of the Interior and the information that is gathered during the monitoring is not publicly available. To comply with the requirements of the OPCAT, the government will need to establish a truly independent and transparent monitoring body.

Conditions in detention and procedural rights of detainees

- Article 7** “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”
- Article 9.1** “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”
- Article 9.3** “Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.”
- Article 10** “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”

Alternatives to pre-trial detention(Article 9.3)

The Ukrainian government’s sixth periodic report on its implementation of the ICCPR states that suspects are only detained before trial if they have attempted to evade the police or do not have a permanent place of residence. Despite provisions in the Criminal Procedural Code to this effect¹⁰, and the availability of three non-custodial measures applicable in civilian cases as opposed to military cases, in practice these alternative measures are very rarely applied and a very high percentage of suspects are detained.

Among other things, this practice has resulted in a very severe problem of overcrowding in ITTs and SIZOs. According to the Ministry of Internal Affairs, of the total of 150,000 people investigated by the police in 2005, 25,800 or 18.7% were detained in custody. The remaining 110,400 were released on bail usually with the condition not to leave their town of residence. In the report on their 2002 visit to Ukraine the CPT commented that judges preferred to detain suspects rather than use other measures and recommended that investigating bodies, prosecutors and judges should be encouraged “to make extensive use of

¹⁰ Ukrainian Criminal Procedural Code, Article 149.

their power to apply non-custodial preventive measures to persons suspected of a criminal offence”.¹¹

In the letter to Amnesty International of 17 November 2005, the Ministry of Internal Affairs admitted that overcrowding is a problem and stated that it was taking measures to increase the use of alternative measures. It has prepared recommendations for investigators concerning the use of Article 154 of the Criminal Procedural Code which refers to the use of bail deposits. The Head of the Department of International Legal Cooperation of the Supreme Court informed Amnesty International that legal mechanisms for the use of alternative measures were being developed. In addition, some changes to the criminal procedure of Ukraine concerning the use of non-custodial sentences were reportedly being submitted to the Ukrainian parliament. Amnesty International is concerned that until these measures are implemented, people will continue to be detained rather than being released on bail; and thus many will continue to be exposed to the risk of torture and ill-treatment in police custody and will be detained in conditions which violate their rights under Article 10 of the ICCPR and amount to treatment prohibited by Article 7 of the Covenant (see the next section of this submission *Conditions in detention*).

Conditions in Detention (Articles 7 and 10)

In a letter to Amnesty International in November 2005, the Deputy Minister of Internal Affairs admitted that conditions in pre-trial detention centres were not in line with international standards: 13 per cent of pre-trial detention centres were not equipped with water and sewage facilities, one in four had insufficient natural lighting and lacked individual sleeping places, only one in five had an exercise yard and each detainee has only 2.5 square metres living space. A programme of reconstruction has begun and the government has allocated 30 million Hryvnya (4,840 million euros) to refurbish and build new pre-trial detention centres, however the Ministry of Interior informed Amnesty International in their letter that this amount is inadequate. Amnesty International is concerned that many detainees continue to be held in very poor conditions.

In a survey of ill-treatment and conditions of detention in ITTs and SIZOs, the Kharkiv Institute of Social Research interviewed 200 people who had been detained in SIZOs and ITTs throughout the Ukraine. The highest percentage reportedly complained about lack of light and inadequate ventilation (54 per cent and 53.1 per cent), inability to take a shower and lack of adequate food were the next most common complaints (52 per cent and 50.8 per cent), 47.2 per cent complained that there were no sheets or bedding, 26.7 per cent complained that there were never enough sleeping places and 9.2 per cent complained that they were held with other detainees who had infectious diseases.¹² These poor conditions are exacerbated by overcrowding, as mentioned above, in the sub-section *Alternatives to pre-trial detention*. The CPT reported after their 2002 visit that four people were held for up to 72 hours in a cell in Kyivskii district police station in Odessa in a cell measuring 5.8m², and that between 16 and 32 persons were held in three similarly-sized cells. In addition to violating Article 10 of the ICCPR, such conditions, according to the CPT, “could easily be qualified as inhuman and degrading treatment.”¹³

Case example

Edit Shmelina was detained in February 2005 on a charge of possession of narcotics and was held in the Yevpatoriia ITT in Crimea. The cell had sleeping places for four people, but held from six to 10 women,

¹¹ CPT Report p.15 (<http://www.cpt.coe.int/en/states/ukr.htm>)

¹² Kharkiv Institute for Social Research Survey, Final Report p. 24

¹³ CPT Report p.17, para.18 (<http://www.cpt.coe.int/en/states/ukr.htm>).

which meant that they were forced to sleep in shifts. The one window was covered with a perforated metal screen which allowed very little air or light to enter, and the ventilation system was inadequate. As most of the other inmates were smokers, Edit Shmelina found it very difficult to breathe. The women were able to wash at the one tap in the cell by using plastic water bottles.

Tuberculosis

According to the World Health Organization, Ukraine has an estimated tuberculosis (TB) case rate of 95 cases per year per 100,000 people which is the eighth highest in Europe and Eurasia. In a country with a very high rate of TB, overcrowding and poor conditions in pre-trial detention have led to a high rate of infection among detainees. In an e-mail to Amnesty International in January 2006 the Sevastopol Human Rights Group reported that there were 30 – 40 TB infected detainees in the Sevastopol ITT in the Crimea. These people are detained for the full period of their pre-trial detention in the ITT, in violation of the Criminal Procedural Code, because of a long-standing practice that the nearest SIZO in Simferopol will not accept detainees infected with TB. In January 2006, 20 TB infected detainees were held in a cell designed for six people. They are provided with drugs, but reportedly they do not receive special food or the vitamins needed to counteract the effects of the drugs.

In Resolution 1466 (2005) on Honouring of obligations and commitments by Ukraine the Parliamentary Assembly of the Council of Europe (PACE) called for improvements in “conditions of detention and medical treatment in the penitentiary establishments and detention facilities in line with CPT standards”.¹⁴

Failures to respect the procedural rights of detainees

According to reports that Amnesty International receives, detainees are not informed of or aware of their rights. Therefore in many cases, detainees reportedly do not request a lawyer including before or during questioning or insist on respect of their right to have their family informed of the fact and place of their detention. The CPT recommended in its report on its visit in 2002 that “all persons detained by the Militia be issued with a form setting out all their rights in a clear and concise manner at the very outset of their deprivation of liberty.” The Minister of Internal Affairs, Yury Lutsenko, issued an order in April 2006 that all detainees must be informed of their rights. However, according to the information available to Amnesty International, no practical measures have yet been agreed as to how this will be done.

Amnesty International is concerned that suspects/detainees are frequently not being informed of their right to a lawyer or being represented by a lawyer during questioning. The organization considers that this renders individuals suspected of criminal conduct more susceptible to torture and other ill-treatment and impedes their right to defend themselves.

The right to legal defence is set out in Ukrainian legislation, but Amnesty International is concerned that the law is not clear enough about when a person should be granted access to a lawyer. Article 21 of the Criminal Procedural Code of Ukraine states that detainees have the right to legal defence; it requires investigators, prosecutors and judges to make suspects *aware* of this right *before the first interrogation*. The Law on the Police states that detainees are entitled to a lawyer *from the moment of arrest*. However, there is wide disagreement as to when arrest actually occurs – when a suspect is apprehended by police or when the arrest is registered in the police station. While, unless the suspect is a minor or disabled, there is no requirement for a lawyer to be present during police interrogation, unless

¹⁴ Para , 13.7 Available at:
<http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta05/ERES1466.htm>

specifically requested by a suspect.¹⁵ The Criminal Procedural Code lists exceptional circumstances when the presence of a lawyer is required such as for minors, and disabled detainees, but otherwise a lawyer is required only when requested by the detainee.

Also, Amnesty International is concerned about the lack of availability of legal aid throughout the country for persons who cannot afford to hire their own counsel. Ukrainian legislation only provides for lawyers' associations to arrange legal services including legal aid and does not envisage the involvement of private legal practices in the provision of legal services for detainees, yet in the majority of administrative centres in Ukraine there are no lawyers' associations. This means that investigators are themselves responsible for ensuring that detainees have the right to legal counsel, and there are no mechanisms for safeguarding this right. In its recently adopted resolution PACE has also called on Ukraine to guarantee prompt access to lawyers and legal aid.¹⁶

Right to full and fair asylum determinations and expulsion proceedings and protection against refoulement

Article 13 “An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Article 7 “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

Amnesty International is concerned by the failure of the Ukrainian authorities to observe the principle of non-refoulement and to provide full and fair refugee status determination procedures. The organization had expressed this concern (inter alia) when Ukraine deported 10 Uzbek asylum seekers from Ukraine to Uzbekistan in February 2006. Amnesty International wrote to President Yushchenko on 2 March asking for assurances that Ukraine would not conduct such refoulements in violation of international human rights standards in the future. The organization has not yet received a reply.

Non-refoulement (Article 7)

During the night of 14-15 February 2006, 10 asylum-seekers from Uzbekistan, who had been seeking international protection in Ukraine, were forcibly returned to Uzbekistan by the Ukrainian authorities. Amnesty International is concerned that they are at risk of serious

¹⁵ Article 5 of the Law on the Police gives suspects the right not to make any statements until their legal counsel is present. The law instructs the police to inform suspects of their right to legal counsel and their right to refrain from making any statements in the absence of a lawyer. The law also states that when this is not complied with the suspect or their family can apply to a court for redress and compensation.

¹⁶ PACE Resolution 1466(2005), Honouring of obligations and commitments by Ukraine, paragraphs 13.12 and 13.13 (<http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta05/ERES1466.htm>).

human rights violations in Uzbekistan, including incommunicado detention, torture or other ill-treatment, and a flagrantly unfair trial followed by either long prison sentences or even the death penalty. The Uzbekistani authorities had issued extradition warrants for 11 asylum-seekers in Ukraine on the grounds that they had allegedly participated in the Andizhan events in Uzbekistan on 13 May 2005. Ten of them were forcibly returned, but one asylum-seeker was reportedly allowed to stay as he has relatives in Ukraine. The fate of the deported-asylum seekers remains unknown (for more information, see Ukraine: Ten asylum-seekers forcibly returned to Uzbekistan, AI Index: EUR 50/001/2006).

Fair expulsion procedures (Article 13)

In a news conference on 2 March 2006, the chairman of the State Committee for Nationalities and Migration, Serhiy Rudyk, admitted that proper deportation procedures had not been followed in this case, because the individuals were deported before the deadline for appeals against the expulsion had expired. The UNHCR had also expressed concern that full and fair asylum procedures had not been followed including the right to appeal.¹⁷

The UNHCR has stated that the only way to determine whether an individual is in need of international protection is to implement procedures to identify such persons.¹⁸ At a minimum, the UNHCR states that individuals should be allowed to remain in the territory until a determination is reached as to his or her refugee status.¹⁹

Discrimination: Racist and anti-Semitic attacks

Article 2 “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 26 “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

¹⁷ UNHCR spokesperson, Ron Redmond, at a press briefing on 17 February in Geneva (<http://www.unhcr.org/cgi-bin/texis/vtx/news/opendoc.htm?tbl=NEWS&id=43feea312f&page=news>)

¹⁸ UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, Geneva, Jan. 1992, Part Two. See, also, EXCOM Conclusions Nos. 81(XLVIII) 1997, 85 (XLIX) 1998.

¹⁹ *Ibid.*

In its concluding observations in 2001 the Human Rights Committee called on the Ukrainian government to take effective measures to prevent and punish racist and anti-Semitic acts. However, press reports and reports from other organizations indicate that racist and anti-semitic attacks continue and that the authorities are often reluctant to admit that such attacks are motivated by racism.

The Union of Councils for Jews in the former Soviet Union reported at least eight attacks against Jews and defacement of synagogues in Ukraine in 2005.²⁰ Despite the fact that the Criminal Code penalizes discrimination on the basis of racial, national identity or attitude to religion,²¹ in the cases that Amnesty International has monitored in the press, the perpetrators have most often been prosecuted for “hooliganism”. Amnesty International is concerned that such reports appear to indicate a reluctance on the part of the Ministry of Internal Affairs to admit that racism and anti-Semitism are the motivation for these attacks.

Case example

It is reported that on 28 August 2005 Mordechai Molozhenov, a 32-year-old student of Judaism, and another student were attacked by skinheads in an underground passage in Kyiv. The skinheads allegedly shouted anti-Semitic abuse during the attack. Modechai Molozhenov was left in a coma and required brain surgery. He was later treated in hospital in Israel. Three suspects were detained for “hooliganism”. The Deputy Minister of Internal Affairs reportedly told the Israeli ambassador that the attack had not been motivated by anti-Semitism. President Yushchenko later acknowledged that anti-Semitism was the cause and called the incident shameful.

²⁰ See reports on Ukraine on the Union of Councils for Jews in the Former Soviet Union website: <http://www.fsmonitor.com/>.

²¹ Article 161 of the Criminal Code - *Порушення рівноправності громадян залежно від їх расової, національної належності або ставлення до релігії*