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Ukraine
Time for Action:
Torture and ill-treatment in police detention

1. Introduction

In a speech to the Council of Europe shortly after his inauguration in January 2005 President Viktor Yushchenko promised: "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] He declared that Ukraine would have an association agreement, usually a first step towards full membership, with the European Union (EU), by 2007.[2] There are clear signs of willingness on the part of the new government to address the problem of torture and ill-treatment in police detention. In a meeting with the Ukrainian Ministry of Internal Affairs, in July 2005, President Yushchenko said: "I ask you to make sure that within six months nobody will be able to use the word 'torture'". He went on to say that the head of any department of the Ministry of Internal Affairs, where a case of torture came to light, would be encouraged to resign. He also demanded that within six months the sanitary conditions in pre-trial detention facilities under the control of the Ministry of Internal Affairs should be improved. He stated: "I would like you to understand that the people there are citizens of Ukraine, not people from the moon, not animals."[3]

On 21 February 2005 the EU and Ukraine signed a joint "action plan" which lays the groundwork for political and economic reforms in the country over the next three years and includes a detailed scoreboard requiring specific changes to the criminal justice system. If the government of Ukraine is going to achieve the goal of an association agreement with the EU by 2007 it is going to have to make far-ranging changes in the criminal justice system. However, Amnesty International is concerned that, despite promising words, allegations of torture and ill-treatment in police detention persist and Amnesty International and local human rights organizations have continued to receive such allegations since the new government came to power in January 2005. If the fundamental principles of the Council of Europe are to prevail in Ukraine, President Yushchenko's words will need to be matched with concrete actions. The police will need to be equipped and trained so that they are not just "relentless pursuers of suspects" who frequently beat confessions out of people, but "people who investigate in a neutral manner and are there to expose the truth".[4]

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[1] *Radio Free Europe/Radio Liberty newsline (RFE/RL)*, 25 January 2005, "Yushchenko: Ukraine's democratic changes irreversible".
[2] *Financial Times*, 25 January 2005, "Ukraine leader sets EU target of 2007".
[3] *Pro UA website*, 18 July, 2005, "Yushchenko napomnil MVD, chto v izolyatorakh sidyat ukraintsy i ne zhivotnye".
[4] David Kavanagh, Senior Management Development Officer, Garda Síochána, Ireland, at a Council of Europe conference on police and policing and human rights in Strasbourg on 14 – 15 April 2005.

This report concentrates on allegations of police ill-treatment and torture at the arrest and pre-trial detention stage. Suspects are held first in holding cells at local police stations before being transferred to temporary holding facilities or ITTs (acronym from the Ukrainian - ізолятор тимчасового тримання) under the auspices of the Ministry of Internal Affairs. After 72 hours, 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. Although there are cases of torture and ill-treatment at all stages in the pre-trial detention system, most sources confirm that the problem is most acute in police stations and ITTs. The report highlights some of the weaknesses in the criminal justice system, that give rise to torture and ill-treatment and recommends some measures based on Amnesty International's *12-Point Programme for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by Agents of the State* to bring law and practice into line with Ukraine's obligations under international human rights law.

Amnesty International has campaigned against torture and ill-treatment since 1972. The organization has developed a 12-point programme (see Appendix) setting out the essential practical measures which governments should take to eradicate torture and ill-treatment.

The information in this report was gathered through visits to Ukraine, correspondence with local human rights groups, lawyers and victims, and through monitoring of the press. Amnesty International delegates visited Ukraine in June 2004 and in February and April 2005. The organization has also raised the issue of torture and ill-treatment and some of the cases featured in this report in letters to President Yushchenko and to the Minister of Justice.

2. What is torture and ill-treatment?

The UN Convention against Torture and Other Cruel Inhuman or Degrading Treatment (Convention against Torture), to which Ukraine is a state party, deals explicitly with torture and other cruel, inhuman or degrading treatment by public officials. Article 1 contains the following definition of torture:

> "For the purposes of this Convention, the term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity..."

Cruel, inhuman or degrading treatment is the term used to describe a spectrum of practices including physical or psychological abuse, confinement in a dark cell, denial of detainees' basic needs, and other forms of abuse. Torture represents the most severe and deliberate end of this spectrum, and it is not always possible to draw a clear line between the type of abuse that amounts to torture, and that which amounts to other forms of ill-treatment. Some of the cases that feature in this report are so severe that they unquestionably amount to torture. For example, when Aleksei Zakharkin (Section 5.5) was allegedly suspended from a metal bar and beaten, then forced to wear a gas mask into which some kind of liquid had been poured causing him to suffocate. The suffering caused was so great that the fear that it would be repeated caused him to attempt suicide. There can be no doubt that what he suffered falls under the definition of torture in the Convention against Torture. But, irrespective of whether any particular case cited in this report amounts to torture or other ill-treatment, it is a breach of Ukraine's obligations under international human rights law.

3. The prohibition of torture and ill-treatment in international law

All forms of torture or other ill-treatment are unequivocally prohibited under international human rights law. This prohibition is set out in numerous treaties and other instruments, and is also part of international customary law which applies to all states, irrespective of whether they are party to specific treaties containing the prohibition. Torture and ill-treatment are prohibited at all times and in all circumstances. No exceptions are permitted and states cannot derogate from their obligations in time of public emergency or for any other reason.

Article 5 of the **Universal Declaration of Human Rights,** which was adopted by the UN General Assembly in 1948, signified a consensus among states that no one should be subjected to torture or ill-treatment. Since 1948, numerous international and regional human rights instruments have been adopted which include this prohibition. These instruments include legally binding treaties and conventions, as well as declarations and similar instruments which are not legally binding in the same way as treaties, but which, having been adopted by the UN General Assembly or other UN bodies, carry considerable authority and represent strong agreement by states regarding the standards set out in them. The **International Covenant on Civil and Political Rights (**ICCPR**),** adopted in 1966, prohibits torture and ill-treatment under Article 7. The ICCPR establishes a body of independent experts, the Human Rights Committee, to supervise states' parties' implementation of its provisions. The **European Convention for the Protection of Human Rights and Fundamental Freedoms** (ECHR), adopted in 1950, prohibits torture and inhuman or degrading treatment under Article 3. The ECHR allows individuals to submit formal complaints to the European Court of Human Rights if their rights under the convention have been violated. The court delivers judgments which are binding and can instruct states to pay compensation to victims.

In addition to the prohibition in these general human rights instruments, there are a number of instruments and mechanisms which relate specifically to torture and ill-treatment.

Some of these have been adopted and refined because of public pressure through organizations such as Amnesty International. In 1972, the UN General Assembly adopted the **Declaration on the Protection of all Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**. In 1984, the UN General Assembly adopted the **Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment** (Convention against Torture), which sets out measures to be taken by states to prevent torture and ill-treatment by public officials, and which is legally binding on those states that have ratified the convention. The Convention establishes the Committee against Torture (CAT), as a body of independent experts which supervises states' parties' implementation of its provisions. In 1985, the UN Commission on Human Rights appointed a **Special Rapporteur on Torture,** an expert who is mandated to address the government of any state, irrespective of the specific treaties it is a party to, including by intervening in urgent cases.

At the European level and the international level there are treaties which establish monitoring bodies to visit places of detention. The **European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment,** adopted in 1987, establishes a committee of experts drawn from the states parties – the **European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment** (CPT) - which is empowered to visit places of detention with a view to strengthening the protection of detainees from torture and ill-treatment. The CPT has published a collection of standards which cover the main issues that it looks at during its visits to places of detention in states parties; these include a section dealing with police detention.[5] More specifically, the CPT has made four visits to Ukraine, during which it has looked into, among other things, torture and ill-treatment in police detention.[6] The reports of these visits provide very detailed recommendations and are referred to in this report. In 2002, the UN General Assembly adopted the **Optional Protocol to the UN Convention against Torture** (Optional Protocol to the Convention against Torture). This has not yet entered into force, but like the European Convention for the Prevention of Torture (above), the Optional Protocol to the Convention against Torture establishes mechanisms for visiting places of detention in states parties; it also requires states parties to establish their own national visiting bodies for the prevention of torture and ill-treatment.

In addition to the instruments which deal specifically with torture and ill-treatment, there are two key international texts which set out standards relating to detention generally, and which include important safeguards against torture and ill-treatment: the **UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment** (UN Body of Principles) and the **UN Standard Minimum Rules for the Treatment of Prisoners** (UN Standard Minimum Rules).

[5] The CPT Standards can be found in English on the CPT website: http://www.cpt.coe.int/en/documents/eng-standards-scr.pdf and in Ukrainian and Russian: http://www.cpt.coe.int/en/other-languages.htm

[6] All CPT reports are available on the CPT website: at http://www.cpt.coe.int/en/states/ukr.htm

Ukraine is a state party to all the treaties mentioned above, with the exception of the Optional Protocol to the Convention against Torture, and is consequently bound by their provisions. President Yushchenko has signalled his hope that Ukraine will start admission negotiations with the European Union in 2007 and the ability of Ukraine to comply with these international human rights instruments will be one of the key criteria by which Ukraine's application to join will be judged.

4. The extent of torture and ill-treatment in Ukraine

There is no comprehensive official information to give a clear picture of the extent of torture and ill-treatment in police custody in Ukraine. Part of the reason for this is the fact that the article referring to torture in the Criminal Code, that was adopted in 2001, was not in line with the definition of torture in the Convention against Torture and did not mention law enforcement officers, including police, as possible perpetrators. Inadequate legislation was compounded by a culture of impunity which meant that police officers were prosecuted under other articles such as Article 365 - "Excess of authority or official powers", making it impossible to extract statistics for the number of police officers convicted for torture or ill-treatment. However, despite the absence of figures for convictions there is ample evidence that the practice of torture and ill-treatment remains widespread.

In her latest report on human rights violations in Ukraine, issued on 6 July 2005, the parliamentary ombudsperson, Nina Karpacheva, stated that torture and ill-treatment in police detention was widespread. Her office received 1,518 complaints about torture and ill-treatment at the hands of the police in 2003 while, according to her report, the Ministry of Internal Affairs received 32,296 complaints about police ill-treatment in 2002 and 2003.

The Kharkiv Human Rights Group is carrying out a comprehensive project to monitor torture and ill-treatment throughout Ukraine from July 2003 to June 2006, and during 2004 the group and its regional partners received approximately 200 complaints of torture and ill-treatment.[7] They also wrote to the Ministry of Internal Affairs and its regional departments to ask for information about complaints against law enforcement officers for torture and ill-treatment in 2001, 2002 and the first half of 2003, and they received information that in the Lugansk district there had been on average 1,800 complaints per year, in Donetsk 1,300.

According to a study carried out by the Kharkiv Institute for Social Research,[8] 62.4 per cent of those interviewed who had been in police detention were subjected to ill-treatment on arrest: 44.6 per cent were subjected to having their arms, legs or necks twisted; 32.8 per cent were punched or kicked; and 3.8 per cent claimed to have been subjected to torture and ill-treatment using special equipment. According to the study, the methods used most

[7] Ukrainian Helsinki Human Rights Union, *Human Rights in Ukraine - 2004, Human Rights Organizations' report (Human Rights in Ukraine – 2004),* Kharkiv: Folio, 2005

[8] Kharkiv Institute for Social Research, *Final report on the results of a sociological survey carried out in the framework of the "Campaign against torture and ill-treatment in Ukraine financed by the European Commission,* Kharkov, 2004

frequently to put pressure on suspects during police interrogation were: punching and kicking, beating with rubber batons and other items, beating and humiliation with the connivance of other detainees[9], use of handcuffs for long periods of time, torture with the use of gas masks, electric current or suspension from metal bars. 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 crowbar"), forced to wear gas masks so that they partially suffocate (a very common form of torture in all countries of the former USSR, known as "slonik" or "little elephant"), beaten with fists or kicked, or beaten with other items such as heavy books, for example, 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, as in the case of Tatiana Doroshenko (Section 5.2), separating a mother from her sick baby. A discussion forum on the Ministry of Internal Affairs website provided a revealing insight into police attitudes and the attitudes of the public towards them. In one discussion thread entitled "How confessions are beaten out…" one police officer writes:

> "Concerning 'slonik' and 'lom' those are just inventions, maybe somebody tried to carry them out at some time, but they are mostly used to frighten the detainees, to make them more talkative. You've beaten up your criminal…you've put your man with him – he just tells him about 'sloniki' and the 'lom' in detail and his nerves give out."[10]

Threats and intimidation can in themselves amount to torture or ill-treatment. The concept of mental suffering is a component of the definition of torture in Article 1 of the Convention against Torture, and that definition also identifies intimidation as one of the specific purposes for which torture might be used. The UN Special Rapporteur on torture has pointed out that "The fear of physical torture may itself constitute mental torture."[11]

In December 2004, the report of the CPT's visit to Ukraine in 2002 was published. The report repeated the conclusions of previous ones 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". 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".[12]

[9] detainees are sometimes put with other detainees who are instructed to intimidate them or scare them with stories of possible torture

[10] Ministry of Internal Affairs website: www.centrmia.gov.ua, Forum MVD 27/01/04

[11] Report on visit to Azerbaijan, E/CN.4/2001/66/Add.1, para.115

[12] Report to the Ukrainian Government on the visit to the 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. 17, para. 18

5. Case examples

5.1 Mikhailo Koval and his family

Mikhailo Koval
© private

Mikhailo Koval, his son, Dmitrii Brik, and his wife Anna Koval, were reportedly subjected to ill-treatment and torture by members of the police force in Chernihiv in August 2001, to force them to hand over "voluntarily" a drill and a gas pistol. Mikhailo Koval told an Amnesty International researcher that his son, Dmitrii Brik, had bought the drill jointly with a colleague who had been working with him in the building trade in Moscow. When the colleague wanted to claim the drill as his own, he and a third builder who had worked in Moscow, apparently enlisted the help of members of the local police force.

Mikhailo Koval gave Amnesty International the following account of their treatment. He said that at 10am on 14 August, two men came to his door and demanded that he hand over the drill belonging to his son, Dmitrii Brik. Mikhailo Koval did not recognize the men but it later turned out that they were Dmitrii Brik's colleagues from Moscow. The two men forced their way into the flat, but when Mikhailo Koval threatened the intruders with a gas pistol,[13] they left. The two men then went to Chernihiv city police station and reported that they had been threatened with a gas pistol by Mikhailo Koval. Later the same day at 6pm, two more strangers arrived at the flat and, without introducing themselves, demanded that Mikhailo Koval hand over the gas pistol he had used earlier. When he tried to stop the men entering the flat, Mikhailo Koval was pushed to the ground and neighbours witnessed how one man knelt on his neck and threatened him with a gun while hitting him on the head. When Dmitrii Brik came out to try and defend his father he was beaten too. Anna Koval was also beaten. Neighbours witnessing the attack called the police and when the police car arrived it became clear that the two strangers had also been police officers in civilian clothes. Mikhailo Koval and Dmitrii Brik, who was handcuffed, were taken to the city police station. Once at the police station they were put in separate rooms. Mikhailo Koval told how they were both beaten and ill-treated to force them to sign a statement saying that they voluntarily handed over the gas pistol and the drill to the police. Mikhailo Koval was beaten by police officers on the head and chest with a gun and a plastic bottle filled with water. Police officers beat Dmitrii Brik's ears with the palms of their hands, bursting an eardrum. They also thrust their fingers into his eyes and ears. Both men were threatened with rape and with being set up and imprisoned for possession of drugs. At

[13] This is a firearm propelled by pressurized gas rather than gunpowder which is less dangerous and less regulated than a regular firearm. Ownership of them is common in Ukraine.

about 10pm, the police drove Mikhailo Koval back to his flat and Dmitrii Brik returned later by taxi. Police officers called neighbours as witnesses and demanded that Mikhailo Koval hand over the gas pistol. This he did, but when the police officers demanded the drill he refused on the grounds that it was his son's property. At this point the police officers threatened to remove other valuables from the flat if he did not hand over the drill. When Dmitrii Brik arrived home he handed over the drill and the police officers left. Both men were treated in hospital for their injuries after the incident and medical certificates, dated 17 August 2001, stated that Mikhailo Koval had concussion, a broken rib and bruising and cuts, and that Dmitrii Brik had a burst eardrum, bruising and concussion.

Mikhailo Koval and his son Dmitrii Brik both wrote to the Chernihiv city Public Prosecutor on 31 August 2001 about the ill-treatment and torture that they and Anna Koval had allegedly suffered at the hands of Chernihiv city police officers on 14 August 2001. Despite repeated complaints to the authorities, letters to the president, to MPs and to the press over a period of five years, the officers concerned have still not been prosecuted (see Section 8.2).

5.2 Vladimirov, Doroshenko, Vorobeva and others

Tatiana Doroshenko in June 2005
© A. Lesovoi

According to the complaint submitted to the European Court of Human Rights by their lawyer, Gennadii Vladimirov, Valerii Vladimirov, Yurii Barsiuk, Tatiana and Oleg Doroshenko (18 months old), and Tatiana Vorobeva from Mazanka village in Simferopol, Crimea, were all subjected to ill-treatment and torture in January and February 2004, by police officers from the Simferopol district department of the Ministry of Internal Affairs during an investigation into an attack on an individual, which had occurred in September 2003. Tatiana Doroshenko and Tatiana Vorobeva were witnesses to this attack, but were unable to identify the attackers. The investigation had been closed in 2003, but in January 2004 it was reopened and Yurii Barsiuk, Gennadii Vladimirov and his brother Valerii Vladimirov were identified by the police as suspects.

Gennadii Vladimirov was detained at 12 noon on 9 January 2004 by police officers who came to his place of work and his brother, Valerii Vladimirov, was called to the district department of the Ministry of Internal Affairs at 10am on the same day. Both were held at the Simferopol district department of the Ministry of Internal Affairs until 6pm on 12 January. Throughout that time both were reportedly beaten and threatened and forced to sign confessions. Gennadii Vladimirov was later treated in hospital for injuries to his back and kidneys. After consulting a lawyer following their release,

both men wrote to the police denying the confessions and complained to the Public Prosecutor. Valerii Vladimirov was detained again on 21 February 2004 from 6am until 11pm and allegedly beaten again to make him confess to the attack.

At 9am on 14 January, Yurii Barsiuk was detained by police officers from Simferopol in Maslova, Belgorod District in the Russian Federation. He was taken to Razumensky district police station in Belgorod District and held there until 4pm at which point he was transported across the border to Ukraine. He was then transported overnight in the boot of a police car from Kharkiv to Simferopol. He was held until 28 January in the Ministry of Internal Affairs department in Simferopol during which time he was allegedly beaten and threatened to force him to confess to the attack. He was released at 11pm on 28 January without charge.

At 6.30am on 21 February, Tatiana Vorobeva, Tatiana Doroshenko and her 18-month-old son, Oleg, were detained by police at their home and taken to the Simferopol district department of the Ministry of Internal Affairs. Oleg Doroshenko was ill and had a high temperature. Mother and child were separated once they arrived at the police station, and Tatiana Doroshenko was told that she would be reunited with her child only if she gave testimony against Gennadii and Valerii Vladimirov and Yurii Barsiuk. At 9.30am Oleg's condition worsened, an ambulance was called, and the paramedics diagnosed a severe respiratory viral infection, and gave the child sedatives and a pain killer. The child remained in the police station, separated from his mother and was reportedly not fed or given anything to drink until 6pm when he and his mother were allowed to go home. According to the lawyer, Tatiana Vorobeva was detained until 8pm on 21 February during which time she was subjected to beatings and threats to force her to give testimony against Gennadii and Valerii Vladimirov and Yurii Barsiuk. She was detained again on 25 February from 6.30am until 5pm during which time she was again beaten and asked to give testimony. Her detention was not recorded and no arrest order was drawn up and she finally defied police instructions and left the police station at 5pm. At 7pm police officers came to her house and removed her by force, damaging the doors as they did so, and detained her again. At no point was her detention recorded. She was charged with the administrative offence of disobedience to the police and detained until 2 March. Throughout this time she was held in a cell with seven or eight men.

5.3 Ihor Timchuk

Forty-seven-year-old businessman Ihor Timchuk from Ivano-Frankivsk was allegedly tortured by high-ranking police officers in April 2002, to force him to confess to a murder for which he is currently serving a life sentence.

According to information sent to Amnesty International by his son, Ihor Timchuk was originally detained on suspicion of having attempted to interfere with local elections by bribing the election committee, a crime to which he freely confessed. He was a candidate in

the local elections in Ivano-Frankivsk on 29 March 2002, and together with Mykola Shkribliak, he had arranged to bribe the election committee. They wanted to ensure that Roman Zvarych (now Minister of Justice) did not win the election. On 29 March, Mykola Shkribliak was shot in the entrance to his house and died on 30 March in hospital. Ihor Timchuk was detained on 4 April and held for 10 days during which time he admitted to the crime of attempting to bribe the election committee and was released on bail. On 25 April, he was detained again by the deputy director of Nadvorniansk police station and this time he was accused of murdering Mykola Shkribliak. He was beaten on the day of his arrest and police officers tried to force him to sign a confession. Ihor Timchuk insisted that he had not murdered Shkribliak, but investigators continued to beat him and kept him in the office of the Head of Criminal Investigations until 29 April. At night he was handcuffed to a radiator and forced to sleep sitting in a chair. He was not allowed to see a lawyer despite his requests and his detention was not recorded. When he objected to being detained in this way he was told that his attendance at the police station for the past four days was being treated as voluntary.

At 11.20pm on 29 April, he was informed that he was accused under Article 258 of the Criminal Code of having committed a terrorist act. The article carries a maximum sentence of life. On 2 May, the Ivano-Frankivsk court authorized his detention for two months. According to his son, he was kept in an ITT and continually beaten and ill-treated to force him to sign a confession. Finally, on 4 May he was reportedly led out of the cell, blindfolded and handcuffed. His son gave the following account of his father being subjected to torture that day. Ihor Timchuk's handcuffed hands were placed over his bent knees and a metal bar was inserted under his knees. He was suspended on the bar still blindfolded so that his head swung down. He was then beaten on the soles of his feet with rubber batons. The metal bar was then placed under his armpits and he was hung in this position while police officers beat him with sticks on his arms, head, chest and face. Ihor Timchuk endured this treatment for 10 hours from 11am until 9pm. He later learnt that he had been beaten by operational police officers, the head of criminal investigation and a general in the Ministry of Internal Affairs from Kyiv. He was then told that he would write a confession like a dictation in school, but he had lost all feeling in both arms, and was unable to write. The general from Kyiv started to shout at his colleagues that it was the hands he needed not the head of the suspect. Ihor Timchuk was taken back to his cell and threatened that if he told anybody about what had happened he would not survive long. When he finally met his lawyer the same day he was too intimidated to mention the torture he had endured. He was finally transferred to the SIZO despite their reluctance to accept a detainee who was in such bad health, and who did not have the use of his hands. He was let out on bail and spent six months in hospital for treatment and then on 8 September he was detained again. The trial started on 25 December 2003 and in April 2004, he was a given a life sentence under Article 258 for the murder of Mykola Shkribliak. He is currently held in Ivano-Frankivsk SIZO and is receiving medical treatment for his continuing health problems.

5.4 Maksim Kalinin

Maksim Kalinin, after he was beaten by police officers on 7 June 2005
© A. Lesovoi

According to information sent to Amnesty International by his lawyer, 16-year-old Maksim Kalinin was with a group of teenagers in the centre of Kerch at about 10pm on 6 June 2005 when he got into an argument with a girl who was part of the group, but whom he had not known previously. She claimed to have friends in the police and threatened to tell them that he had insulted her. She was seen to be speaking on her mobile phone and within five minutes a police car arrived. Three police sergeants/officers got out of the car and beat up Maksim Kalinin. There were 15 witnesses to the beating, some of whom tried to stop the police. Maksim Kalinin was handcuffed and taken to the local police station where police continued to beat him and threatened to accuse him of a serious crime. He was held in police custody for 24 hours and then taken home. Maksim Kalinin required hospital treatment for his head injuries and his parents called an ambulance the following morning. When they arrived at the hospital and Maksim Kalinin told the doctors that he had been beaten by police the doctors then said that he did not need to be hospitalized and could recover at home. Only when his parents threatened to take him the district hospital and complain about the doctors at the local hospital in Kerch did the doctors consent to admit him. Within two hours, he had been diagnosed with a head injury and cranial bleeding. He remained in hospital until 21 June. Maksim Kalinin's parents met further obstacles in their efforts to make an official complaint about the ill-treatment of their son (see Section 8.4). On 17 June criminal proceedings were started against two police officers and the case is expected to come to court in October.

5.5 Aleksei Zakharkin

According to the documents submitted to the European Court of Human Rights by a lawyer from the Kharkiv Human Rights Group, 35-year-old Aleksei Zakharkin was detained by police officers in Ivano-Frankivsk district on 17 May 2003. For the next week he was subjected to beatings and severe torture in two different police stations and forced to sign a confession for robbery. By the seventh day, when threatened with further torture, he attempted to kill himself.

At 4pm on 17 May, Aleksei Zakharkin was driving with two friends near Ivano-Frankivsk when detectives in plain clothes stopped them. It later became clear that the men were criminal investigation officers from Vovchinetsky police station in Ivano-Frankivsk. The three men were driven in their car to Vovchinetsky police station where Aleksei Zakharkin and his friends were searched and beaten. The police officers then called some soldiers as witnesses and searched the car where they "found" a bag of marihuana, which Aleksei Zakharkin claims was not in the car previously. Aleksei Zakharkin was then beaten and suspended on a metal bar and threatened that the police officers could kill him and nothing would happen. At 9pm two young boys, who had been detained for some offence, were brought into the office and told that they were needed as witnesses and that they would be free to go if they co-operated. According to Aleksei Zakharkin, they were both drunk. The police officers gave them more vodka to drink from a bottle on the table in the office. Aleksei Zakharkin was then searched and police officers "found" a small bag of marihuana in the back pocket of his jeans. He was forced to sign a statement and was then detained for possession of drugs. At midnight, he was transferred to the ITT, where he remained the following day.

On 19 May, he was taken to the interrogation room where officers from Vovchinetsky police station beat him and said that he had a girlfriend in Ivano-Frankivsk and that he had robbed her flat. Aleksei Zakharkin denied having a girlfriend or of having committed any robbery. On 20 May, he was handcuffed and driven to Pasichniansky police station. When asked where he was being taken, he was beaten on the face and told he would be drowned in the river. On the night of 20 – 21 May, between 11pm and midnight, he was taken to the Department of Internal Affairs in Ivano-Frankivsk where he was shown reports and accused of over 50 burglaries. He was then taken back to Pasichniansky police station where police officers tortured him. In his complaint to the European Court, Aleksei Zakharkin stated that 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 from a gas canister. While he was suspended from the metal bar he was beaten and he 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 fearing that he would not get out of the police station alive. He wrote in his testimony to the European Court: "I understood that I wouldn't get out alive and signed the confession to a robbery in Kalush." On 21 May, he was taken to the Ivano-Frankivsk department of Internal Affairs where he signed a statement and was then taken back to Pasichniansky police station where he was beaten again.

Finally, on 22 May, six days after his detention Aleksei Zakharkin met his lawyer for the first time and told him that he had signed a confession under torture. Seeing the evident bruises and marks on his client's body his lawyer made a request for a medical examination. The following day Aleksei Zakharkin was not given a medical examination but at 7pm he was taken back to Pasichniansky police station where he was threatened and then taken to Kalush police station where he was taken to the investigation department. There he heard the order

given for operatives to come and "work with him" all night. Aleksei Zakharkin wrote that he could not take any more torture:

"I was physically and morally exhausted. I understood that I could not go through all that again. Therefore I decided to commit suicide. I asked to go to the toilet and cutting up the skin on my left wrist I bit through the vein with my teeth."

A police officer administered first aid and the emergency services were called. At 4am on 24 May, Aleksei Zakharkin was taken to hospital and his family were informed of his whereabouts after six days of detention.

5.6 Edit Shmelina

Sixty-four-year-old Edit Shmelina, who lives with her daughter, a drug addict, in Mirnoye village in Crimea, was allegedly subjected to ill-treatment when officers from the narcotics division came to search her house. At 12 noon on 30 September 2004, officers from the narcotics department came to Edit Shmelina's house and demanded to be let in to search the house for drugs. Edit Shmelina refused to allow the officers to enter her house because they did not have a search warrant. As a result, she was allegedly subjected to violence and threats by no less than nine policemen and their assistants. In the documents sent to Amnesty International by her lawyer, the ill-treatment was described as follows. Police first held a gun to her head and fired a shot in the air from another gun. She was punched in the stomach and shoved so that she fell against a fence and hit her head. She was then forced to lie on her stomach on the bonnet of the police car. She was handcuffed to the car in her front garden for approximately two hours while police officers searched her house. She begged to be released because of the physical pain and nervous agitation she was suffering, but police insulted and swore at her and threatened to use further violence against her. After two hours, she was untied from the car but remained in handcuffs until 4pm. The police continued to beat and threaten her to make her sign a declaration that she had voluntarily allowed police offices to search her house. When she refused to do this she was put in the car and police threatened to put her in the cellar at the police station. Frightened to find herself being driven to an unknown destination, she finally agreed to sign a declaration stating that she allowed the police to search her house, and that she had no complaints against the police. On 14 February 2005, Edit Shmelina was detained on suspicion of possession and of illegally obtaining drugs and she is currently charged under Article 307 of the Criminal Code.

Edit Shmelina's daughter, D. Golobkova, was detained on 16 February 2005 by the narcotics police and held for three days without being given a reason. She was then detained again on 25 February, and placed in the Central police station in Simferopol. According to her relatives, she was very dependent on drugs and required medical help. There is no information that she was given any assistance while in the police station and while being held in a cell alone, she committed suicide by hanging herself on 26 February 2005.

6. The Police

In the Soviet Union the police (known as the Militia) had a "rather quiet and relatively peaceful job".[14] Crime levels were relatively low and police were expected to carry out orders and had little discretionary power. The state exercised control over the population through a vast number of administrative regulations, and it was the police that had the responsibility of enforcing these controls which included internal passports, registration and permits of many kinds. The police also worked with the Committee for State Security (KGB) and bore some responsibility for controlling political dissidence.

In Ukraine, as in other parts of the former Soviet Union, the police are adapting to working in a democratic rather than an authoritarian political system, but the transition is not yet complete and there are still many similarities with the Soviet system. The various police forces including criminal police, transport police and riot police are under the jurisdiction of the Ministry of Internal Affairs. In each region there is a local department of the Ministry of Internal Affairs, which also runs the ITT. The Crimea is an autonomous region and there the police forces are under the charge of a deputy of the Minister of Internal Affairs.

According to the Law on the Police, the police forces should carry out their duties on the basis of the principles of legality, humanity, respect for the individual, social justice, cooperation with work collectives and with social organizations and the population. Respect for human rights is not explicitly stated as one of the principles, but the Universal Declaration of Human Rights and other international human rights instruments are given as the legal basis for police work along with the constitution and other domestic laws. The Criminal Procedural Code lays out the procedures for arrest and treatment of detainees and their rights.

One of the legacies of the Soviet past is the expectation that the police will solve a very high percentage of crimes. Until mid-2003, the police force was set an extremely high target of 80 per cent for solving crimes - this should be compared with a Western European detection rate of 20 – 40 per cent.[15] Even though this high target has been abolished, the expectation persists that police will solve a high number of crimes, and this is used as a measure of success rather than other factors, such as public perception of the police or crime prevention. The Ukrainian authorities admitted that this was one of the causes of police misconduct in their reply to the CPT:

> "One of the factors of abuse of power by the detective officers of the operative militia units is their wrong understanding of the crime disclosure rate as the main criteria of

[14] Uildriks, Niels and van Reenen, Piet, *Policing Post-communist Societies. Police-Public Violence, Democratic Policing and Human Rights,* Intersentia, 2003 p.14
[15] Ibid., p.47.

> the efficiency of their work. That is why some officers try to achieve the high crime disclosure rate by any means."[16]

The authorities further stated that they were developing new criteria for evaluating police work that would be based on public attitudes towards the police.

There is a high level of corruption in the Ministry of Internal Affairs at all levels and police officers have been known to beat people for material gain. For example, Mikhailo Koval (Section 5. 1) was ill-treated along with his son and wife by police officers who were trying to gain possession of a drill. Police salaries are low and starting salaries are advertised on the Ministry of Internal Affairs website as between 350 and 450 Hryvnia (US$70-US$90) per month. When the new government came to power in January 2005, it promised to tackle corruption at all levels of government. The Ministry of Internal Affairs was identified as a particularly egregious example. In announcing the new anti-corruption drive, Yurii Lutsenko, the new Minister of Internal Affairs, claimed that he had been offered a bribe of one million dollars for the appointment of the chief of police of Donetsk region. The Minister also announced that the usual rate for the appointment of a Head of a Ministry of Internal Affairs regional branch was 50,000 – 250,000 dollars and for a head of department 20,000 – 50,000 dollars.[17] All serving police officers were asked to declare their personal assets in order to be re-accredited. By May 2005, Yurii Lutsenko announced that 253 criminal cases had been opened against police officers in relation to corruption. The Minister announced that 127 regional heads of the Ministry of Internal Affairs had been dismissed along with the entire leadership of the ministry.[18]

7. Police custody

Under the Code on Administrative Offences, detainees may be held up to three hours at a police station. If after three hours the police consider that they have enough information to start a criminal investigation, the suspect is then detained, and transferred to an ITT, where they can be held up to 72 hours. In the whole of Ukraine, 7,000 people are held in ITTs at any one time. If the police do not have enough information to start a criminal investigation it is quite common for them to fabricate an administrative charge so as to gain more time. According to Article 106 of the Criminal Procedural Code, after the 72 hours period has elapsed police investigators must a) free the detainee if the suspicions have not been confirmed, b) let him/her out on bail or c) bring him/her before a judge. The judge may prolong the detention by up to 15 days or have the detainee transferred to a SIZO. The SIZOs are under the control of the Department for the Enforcement of Punishments, which is currently a separate body although discussions are under way to bring the Department under the control of the Ministry of Justice.

[16] Response of the Ukrainian Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Ukraine from 24 November to 6 December 2002, p. 7

[17] *Pro UA website*, 28 February 2005, "Lutsenko predlagali vzyatku 1 milyon dolarov".

[18] *Glavred.info website*, 11 May 2005, " Lutskenko vydelil 5 napravlenii raboty militsii na 2005 god"

7.1 Alternatives to custody

> 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.
>
> ICCPR, Article 9, Part 3

International standards encourage governments to avoid holding people in custody wherever possible and to use non-custodial alternatives. Reducing the number of people held in custody is the simplest and cheapest way of reducing overcrowding and improving conditions of detention.

In the report on the 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 their power to apply non-custodial preventive measures to persons suspected of a criminal offence".[19]

The Criminal Procedural Code lays out three non-custodial measures or bail conditions that can be applied in civilian rather than military cases: a personal guarantee not to leave the town of residence, a guarantee by another individual or an organization, and a bail deposit. In practice, these alternative measures are very rarely applied and a very high percentage of suspects are detained. This leads to a very severe problem of overcrowding in ITTs and SIZOs. During a meeting with the Deputy Director of the ITT in Sevastopol, Crimea, in February 2005, an Amnesty International delegate was told that the premises were built to hold 80 detainees and were currently holding 182 – by May 2005 this figure had risen to 240. In a letter to the Sevastopol Human Rights group, in which he gave these figures, the Director of the Department of Internal Affairs in Sevastopol stated the following:

> "The average number of detainees in the ITT in recent times is 240 people, which is significantly above the established norms and considerably worsens the conditions of detention for the detainees. As a result it is impossible to ensure that the standards of the European Convention for the Protection of [Human] Rights and [Fundamental] Freedoms, the rights of citizens and proper conditions of work for the employees are protected." [20]

[19] CPT report, p. 15

[20] Letter from Major General V.A. Petukhov, Director of the Department of Internal Affairs Sevastopol to Olga Vilkova, Director of Sevastopol Human Rights Group, dated 10 May 2005.

7.2 Conditions in pre-trial detention (ITTs)

> "… All police cells should be of a reasonable size for the number of persons they are used to accommodate, and have adequate lighting (i.e. sufficient to read by, sleeping periods excluded) and ventilation; preferably, cells should enjoy natural light. Further, cells should be equipped with a means of rest (e.g. a fixed chair or bench), and persons obliged to stay overnight in custody should be provided with a clean mattress and blankets. Persons in custody should be allowed to comply with the needs of nature when necessary in clean and decent conditions, and be offered adequate washing facilities. They should be given food at appropriate times, including at least one full meal (i.e. something more substantial than a sandwich) every day (The CPT also advocates that persons kept in police custody for 24 hours or more should, as far as possible, be offered outdoor exercise every day.)"
>
> CPT 2nd General report, para 42, included in CPT Standards, p. 8

Most of the buildings that house ITTs date from the nineteenth century or earlier, and are not equipped with adequate sanitary facilities, ventilation or exercise yards. The government has recently started a programme of renovation and reconstruction. According to Nina Karpacheva, the Parliamentary Ombudsperson, by February 2005, 139 out of the 500 ITTs had been renovated and four completely new ITTs had been built in Kharkiv, Dnipropetrovsk, Kirovohrad, Kyiv and Mariupul.

An Amnesty International delegation visited an ITT in Lviv City Police Headquarters in June 2004. The cell shown to the delegation was empty, but it was easy to imagine how unbearable the conditions could be when overcrowded. The cell was approximately three metres by three metres, and the delegation was informed that it accommodated up to four detainees. The window was covered with metal sheeting shutting out most of the natural light, and there was one low wattage bulb. The window was sealed, and although there was a ventilation pipe, from the stench in the cell even when empty, it was clear that when there are four people in the cell the ventilation would not work very well. There was one large wooden platform on which mattresses could be placed, and we were shown a cupboard which contained dirty looking mattresses and sheets. There was a toilet without any screens around it and a tap over the toilet. Until very recently there was no budget for feeding detainees in ITTs, but Nina Karpacheva informed an Amnesty International delegation in June 2004, that a budget had recently been provided. In this ITT the Amnesty International delegation were shown a menu list, which suggested that the detainees were provided with three basic meals a day.

Edit Shmelina (Section 5.6) is awaiting trial on a charge of possession of narcotics and is being held in the Yevpatoriia IVS in Crimea. The cell has sleeping places for four people, but currently holds from six to 10 women, which means that they must sleep in shifts.

The one window is covered with a perforated metal screen which allows very little air or light to enter, and the ventilation system is inadequate. As most of the other inmates are smokers, Edit Shmelina finds it very difficult to breathe. The women are able to wash at the one tap in the cell by using plastic water bottles.

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 Ukraine. The highest percentage 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. [21] Poor conditions are exacerbated by overcrowding. 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 5.8m^2, and that between 16 and 32 persons were held in three similarly-sized cells. Such conditions, according to the CPT, "could easily be qualified as inhuman and degrading treatment."[22]

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. In a letter to the Sevastopol Human Rights Group, a legal advisor in the Public Prosecutor's officer wrote: "the problem of TB in ITTs is a particularly burning question and there are currently 34 people with TB in the ITT in Sevastopol." It seems unlikely that in the overcrowded conditions of the ITTs those with TB can be kept in strictly isolated conditions.

Andrei Ovsiannikov was arrested in June 2003, on suspicion of drug dealing and held in the Sevastopol ITT. He was not ill with TB at the time, but by September had been diagnosed with TB. He was not informed and found out only by chance in November when his health worsened. He did not receive any treatment until March 2004 when through the efforts of his family and the Sevastopol Human Rights Group he was hospitalized and received treatment. On 30 June, he was returned to the ITT. Detainees are frequently held for very long periods in the ITT in Sevastopol as the closest SIZO is in Simferopol.

Rule 8 of the Standard Minimum Rules stipulates than men and women should be detained in separate accommodation: "…in an institution which receives both men and women the whole of the premises allocated to women shall be entirely separate." Tatiana Vorobeva was detained from 25 February to 2 March in a cell in the Simferopol ITT together with male detainees (Section 5.2).

[21] Kharkiv Institute for Social Research Survey, Final Report, p. 24
[22] CPT report, p. 24

7.3 Safeguards for detainees

The CPT has identified three rights which are fundamental safeguards against ill-treatment in detention and of particular importance for those detained by the police: "the right to have the fact of his detention notified to a third party of his choice (family member, friend, consulate), the right of access to a lawyer, and the right to a medical examination by a doctor of his choice. Persons taken into custody should be expressly informed without delay of all their rights, including [these]".[23] The CPT has stated that these safeguards should apply from the very outset of custody, from the moment the person concerned is obliged to remain with the police. In order to reinforce and ensure implementation of these safeguards, the CPT has stipulated that there should be a comprehensive custody record for each person detained.

7.3.1 Custody Records

> Principle 12
> There shall be duly recorded: (a) The reasons for the arrest; (b) The time of the arrest and the taking of the arrested person to a place of custody as well as that of his first appearance before a judicial or other authority; (c) The identity of the law enforcement officials concerned; (d) Precise information concerning the place of custody.
>
> UN Body of Principles
>
> "…the fundamental safeguards … in police custody would be reinforced … if a single and comprehensive custody record were to exist for each person detained, on which would be recorded all aspects of his custody and action taken regarding them (when deprived of liberty and reasons for that measure; when told of rights; signs of injury, mental illness, etc; when next of kin/consulate and lawyer contacted and when visited by them; when offered food; when interrogated; when transferred or released, etc.). For various matters (for example, items in the person's possession, the fact of being told of one's rights and of invoking or waiving them), the signature of the detainee should be obtained and, if necessary, the absence of a signature explained. Further, the detainee's lawyer should have access to such a custody record."
>
> CPT, 2nd General Report, para 39, included in CPT Standards

Accurate record-keeping helps to ensure that proper procedures are followed and that police officers can be held accountable for their actions. Article 106 of the Criminal Procedural Code requires that a report should be drawn up about every detention which includes the reason, date, and time of arrest, place of detention, time of writing the report and other facts, but it does not specify when the report is to be drawn up.

When Gennadii and Valerii Vladimirov were detained by police officers in Simferopol, their detention was recorded five and 10 hours respectively after their actual detention. Tatiana Doroshenko was detained by police in Simferopol as a witness in connection with the same case, yet her presence in the police station was not documented in

[23]CPT, 2nd General Report, 1992, paras 36-37, and included in the CPT Standards.

any way, even though she and her 18-month-old child were effectively detained in the police station for 11 and a half hours (Section 5.2).

In paragraph 39 of its report on the 2000 visit to Ukraine, the CPT was "compelled to underline the importance of promptly and accurately recording the detention of a person (i.e. from the moment the person is obliged to remain with the Militia)." The report went on to state:

> "The 2002 visit once again demonstrated that, on numerous occasions, this had not been the case (for example, no mention of the time of arrest or release, a lack of consistency between the duration of arrest indicated in the detention record and detention registers, crossings out, and even the total absence of any register). To sum up, persons were held by the Militia for prolonged periods without any reliable recording of their deprivation of liberty. This is a highly reprehensible state of affairs."

7.3.2 Informing detainees of their rights and the reasons for their arrest

Principle 13
Any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively with information on and an explanation of his rights and how to avail himself of such rights.

UN Body of Principles

Anyone who is arrested shall be informed at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

Article 9(2) ICCPR

Rights for persons deprived of their liberty will be of little value if the persons concerned are unaware of their existence. Consequently, it is imperative that persons taken into police custody are expressly informed of their rights without delay and in a language which they understand. In order to ensure that this is done, a form setting out those rights in a straightforward manner should be systematically given to persons detained by the police at the very outset of their custody. Further, the persons concerned should be asked to sign a statement attesting that they have been informed of their rights.

CPT, 12th General Report, included in CPT Standards

Article 106 of the Criminal Procedural Code requires the investigator to present the detainee with a report which explains the reasons for arrest and also explains the detainee's rights. However, the CPT commented in its last report on Ukraine that the forms for this purpose only state that the detainee has been informed of their rights and do not give any information about what those rights actually are. On some of the forms that the CPT viewed the signature of the detainee was missing. It is not always possible to give a comprehensive explanation of prisoners' rights at the very moment of arrest, but nevertheless arrested people should be

informed without delay in simple non-technical language about the rights which are of immediate importance, including those which provide key safeguards against torture or ill-treatment.

7.3.3 Right to notify family, friends or a third party

> Principle 16
> Promptly after arrest and after each transfer from one place of detention or imprisonment to another, a detained or imprisoned person shall be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of his choice of his arrest, detention or imprisonment or of the transfer and of the place where he is kept in custody.
>
> UN Body of Principles

The right to have friends or family notified of detention is a key safeguard against "disappearance" and unacknowledged detention, during which those detained are often ill-treated or tortured. Article 106 of the Criminal Procedural Code requires that the investigator should immediately inform a relative or (in the case of the armed forces) a colleague about the whereabouts of the detainee. In practice this requirement is often ignored. Amnesty International has come across several cases where relatives were not informed about the whereabouts of a detainee for several days or even up to a week after their detention. When Aleksei Zakharkin (Section 5.5) was detained by police in Ivano-Frankivsk in May 2003, his family were only informed six days later. When 16-year-old Maksim Kalinin (Section 5.4) was detained in Kerch in June 2005 the first his parents knew of his detention was when he was brought home 24 hours later, seriously injured.

7.3.4 Access to a lawyer

> Principle 17
> 1. A detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it.
> 2. If a detained person does not have a legal counsel of his own choice, he shall be entitled to have a legal counsel assigned to him by a judicial or other authority in all cases where the interests of justice so require and without payment by him if he does not have sufficient means to pay.
>
> UN Body of Principles
>
> "....the period immediately following deprivation of liberty is when the risk of intimidation and physical ill-treatment is greatest. Consequently, the possibility for persons taken into police custody to have access to a lawyer during that period is a fundamental safeguard against ill-treatment. …. The right of access to a lawyer must include the right to talk to him in private. The person concerned should also, in principle, be entitled to have a lawyer present during any interrogation conducted by the police. …the right of access to a lawyer should be enjoyed not only by criminal suspects

> but also by anyone who is under a legal obligation to attend - and stay at - a police establishment, e.g. as a "witness". Further, for the right of access to a lawyer to be fully effective in practice, appropriate provision should be made for persons who are not in a position to pay for a lawyer.
>
> CPT, 12th General Report, para 41, included in CPT Standards

The right to legal counsel is one of the key norms for a fair trial under international human rights standards. The UN Commission on Human Rights has stressed the recommendations of the UN Special Rapporteur on torture "[t]hat the right to have access to a lawyer is one of the basic rights of a person who is deprived of his liberty".[24] The CPT has stated that the right of access to a lawyer is a "fundamental safeguard" against ill-treatment and that this right should apply from the outset of custody.

There is the right to legal defence in Ukrainian legislation, but it is not stated clearly enough at what stage in the process a detainee should have the right to consult a lawyer. Article 21 of the Criminal Procedural Code of Ukraine states that detainees have the right to legal defence and that investigators, prosecutors and judges have the obligation to make them aware of this right *before the first interrogation*. The Law on the Police, however, states that detainees are entitled to a lawyer *from the moment of arrest*. There is no requirement for a lawyer to be present during police interrogation, but 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. 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.

In their report on the 2002 visit to Ukraine, the CPT expressed concern that many of the detainees they had interviewed had not had access to a lawyer and recommended that "the relevant provisions of the Code of Criminal Procedure should be amended so that it is clearly established that all persons deprived of their liberty by the Militia have access to a lawyer as from the very outset of their deprivation of liberty".[25] In their reply, the Ukrainian authorities explained that the right to legal defence was often neglected because the task of providing legal defence fell to the investigators. The legislation only provides for lawyers' associations to arrange legal services 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:

> "That is why in practice the investigators are obliged to be responsible for implementation of the right for defence in case of detention or accusation of the

[24] Commission on Human Rights Resolution, 1994/37, 4 March 1994
[25] CPT report, p. 22

> suspected persons. At the same time they have no real instrument of their influence on guaranteeing that right to the citizens."[26]

At times it appears that Ukrainian police investigators either do not understand the legislation or cynically deprive detainees of their right to a lawyer. When Dmitrii Savchenko was detained by police in Kyiv in August 2004, in connection with a bomb explosion at Troyeshchina market, he was told by the investigator that he had no need of a lawyer - "lawyers are only needed by minors" and anyway he would be let free as soon as the investigators had "worked with him" a bit. When Gennadiii and Valerii Vladimirov were detained by police in Simferopol in January 2004 on suspicion of having attacked an individual, both men were refused access to a lawyer and were only able to contact a lawyer three days later when they were briefly released before being detained again.

Even when detainees demand their rights and are given access to a lawyer, this does not necessarily mean that they are being provided with an adequate defence. It is a very common career path for police investigators and prosecutors to work until they can claim their pensions and then start practising as lawyers. For this reason, there is often a very close professional relationship between lawyers and the police. As one lawyer commented to an Amnesty International delegate during a mission to Ukraine in February 2005, "lawyers work for the policeman that calls them in". When Dmitrii Savchenko was finally assigned a state lawyer by the investigator, the lawyer he was assigned had been working as a police investigator in the same department just three months previously.

Since 2004, there has been a budget for legal assistance and 15 hryvnia (2.50 Euros) per day is available to pay lawyers for those suspects who cannot provide their own legal defence. According to research by the Kharkiv Human Rights Group, most regional departments of the Ministry of Justice have not drawn on these budgets. According to a survey that the group carried out, Ivano-Frankivsk region had spent only 210 hryvnia on legal aid out of a budget of 12,000 hryvnia, while Kherson, Sevastopol, Zakarpattia and Chernivtsi regions had used none of the allotted funds and Kyiv only used 7,000 out of 28,200 hryvnia. It seems from these figures that despite the fact that legal aid is provided for in law and in the budget, it is not being offered in practice.

Many lawyers complained that the status of the profession is very low in Ukraine and for that reason many people do not insist on their right to a lawyer and prefer to take the word of the police officers interrogating them that they do not need a lawyer. There is no bar association that all lawyers are required to be a member of as part of their professional accreditation, but there are a number of organizations that play part of that role. To set standards for professional exams and investigate disciplinary problems, examination and disciplinary boards are set up which consist of representatives of local government, judges and lawyers. There are also a number of organizations run by lawyers; the Board of Lawyers (Kollegiya advokativ), the Lawyers' Conference (Zyizd advokativ), an amorphous

[26] Reply from the Ukrainian government to CPT, p. 13

organization that meets occasionally, the Union of Lawyers (Spilka advokativ) and the Association of lawyers (Asotsiatsia pravnykiv). The Union of Lawyers and the Association of lawyers both play a similar role to a bar association, but only about 20 per cent of lawyers are members of the Union of lawyers. There is no system of continuing professional training and no rigorous control of professional standards.

7.3.5 The role of Judges

> 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.
>
> ICCPR. Article 9.3
>
> Each state party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.
>
> Convention against Torture, Article 15

The requirement to bring detainees before a judicial or similar authority after arrest is a key safeguard against torture and ill-treatment and removes the absolute power over the detainee which the police or other detaining authority might otherwise have over them. The Body of Principles specifies two key roles for the judge: to decide on the necessity and lawfulness of the detention and to hear any statement from the detainee on his or her treatment while in custody. Judges therefore have an important role to play in preventing torture or ill-treatment in police custody and identifying it where it has taken place. At a later stage in the criminal justice process, judges also have a role in ensuring that no information obtained as a result of torture or ill-treatment is invoked as evidence.

Judges in Ukraine must pass an examination and are then appointed for five years, after which time their appointment may be made permanent. Although judicial salaries are low and in a report published in 2002, the American Bar Association's Central and East European Law Initiative found that "many judges are prey to bribery in multiple forms. Some interviewees described both parties making contributions to the judge simply to obtain a decision, rather than to influence the outcome."[27]

In Ukraine all detainees must be brought before a judge after 72 hours, for a decision as to whether to impose bail or to release the detainee. Unfortunately, judges tend to order further detention and do not make use of the alternative measures available (Section 7.5).

[27] American Bar Association, Central and East European Law Initiative, *Judicial Reform Index for Ukraine*, May 202 p. 19

Moreover, at the trial stage, judges tend in practice to rely very heavily on confessional evidence and according to the Kharkiv Human Rights group report, "there is no … criteria to determine the willingness of confessions, as well as any procedure for their exclusion from evidence."[28]

7.3.6 Interrogation

> Principle 21
> 1. It shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, to incriminate himself otherwise or to testify against any other person.
> 2. No detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his capacity of decision or his judgement.
>
> UN Body of Principles
>
> Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.
>
> ICCPR, Article 14(2)

One of the most common purposes of torture and ill-treatment is to coerce people into making a "confession" or providing information. The presumption of innocence, that is that suspects are to be treated as innocent unless proved guilty in a fair trial, is a very important principle of the rule of law and is stipulated in the ICCPR, Article 14 along with the right not to testify against oneself (of which a concomitant is the right to remain silent).

Article 43 of the Criminal Procedural Code states that a suspect has the right to refuse to give testimony or to answer questions put to him/her. However, in practice it is difficult to exercise this right in a Ukrainian police station.

"You can kill him, but just be sure to get the confession ('yavka s povinnoy')."

The above quote is from the testimony of Aleksei Zakharkin, quoting what he overheard the Deputy Director of the police station saying to the officers who were beating him (Section 5.5). From the cases that have come to Amnesty International's attention, it can be seen that obtaining confessions from suspects plays a very central role in police work. Article 96 of the Criminal Procedural Code refers specifically to confessions or statements of guilt (yavka s povinnoy) which are defined as a "personal, voluntary written or oral statement to the investigator, procurator, judge or court about a crime that has been committed or is being committed". However, it has frequently been alleged that the "yavka s povinnoy" is extracted through ill-treatment and torture or through the use of threats.

Ihor Timchuk is currently serving a life sentence after having been convicted under Article 258 of the Criminal Code for a "terrorist" act (Section 5.3). Investigators reportedly

[28] *Human Rights in Ukraine – 2004*, p. 26

tried to extract a confession from him under torture, but were unable to do so because by the time they had allegedly suspended him twice from a metal bar and beaten him on various parts of his body for over 10 hours he had lost the use of his arms and was unable to write the "yavka s povinnoy" that police officers proposed to dictate to him.

All interrogation sessions should be properly recorded and audio or video recording is an additional very valuable safeguard. The Special Rapporteur on torture has stated: "All interrogation sessions should be recorded and preferably video-recorded, and the identity of all persons present should be included in the records. Evidence from non-recorded interrogations should be excluded from court proceedings."[29] The CPT recommended in its most recent report that a code of conduct for interviews should be drawn up.[30] In its reply the government stated: "The internal affairs officers carry out the above mentioned investigative acts in accordance with Ukrainian legislation".[31]

International standards insist on the right to legal counsel (Section 7.3.4). As a protection against ill-treatment and in order to ensure the implementation in practice of Principle 21 of the Body of Principles (see top of this section), it is important that a person's lawyer be permitted to be present during interrogation. The CPT has stated: "Access to a lawyer for persons in police custody should include…in principle, the right for the person concerned to have the lawyer present during interrogation."[32] Another important safeguard against ill-treatment in detention is that the authorities responsible for interrogation should be separate from those responsible for detention. The Special Rapporteur on torture has stated:

> "Those legally arrested should not be held in facilities under the control of their interrogators or investigators for more than the time required by law to obtain a judicial warrant of pre-trial detention which, in any case, should not exceed a period of 48 hours."[33]

In Ukraine, detainees are held first in police stations and then transferred to ITTs where they can be held for up to 72 hours. Both these detention facilities are under the control of the police, and it is only once detainees are transferred to SIZOs that they are under the supervision of staff of the Department for the Enforcement for Punishments. There is evidence that incidents of torture and ill-treatment are less frequent in SIZOs, and this suggests that transferring supervision of the ITTs from the Ministry of Internal Affairs to the Department for the Enforcement of Punishments could contribute to reducing torture and ill-treatment.

[29] A/56/156, para 39(f)
[30] CPT report, para. 34
[31] Response of the Ukrainian Government to the report of the CPT, p. 13
[32] 12th General Report, para 41, included in the CPT Standards..
[33] A/50/44, para 68

7.3.7 Access to medical care

> Principle 24
> A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.
>
> UN Body of Principles
>
> 24. The medical officer shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures; the segregation of prisoners suspected of infectious or contagious conditions; the noting of physical or mental defects which might hamper rehabilitation, and the determination of the physical capacity of every prisoner for work.
>
> UN Standard Minimum Rules

The UN Standard Minimum Rules for the Treatment of Prisoners and the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, call for a detainee to be given a medical examination as soon as possible after admission to a place of detention. International human rights bodies have underlined the importance of medical attention, not only in order to provide care for any detainees who are ill, but as a safeguard against ill-treatment, and for this reason have stressed that medical examinations should be carried out by an independent doctor. For example, the CPT has identified the right to a medical examination by a doctor of one's choice as one of the "fundamental safeguards" that should apply from the outset of police custody (Section 7.3).

There is no requirement in Ukrainian law for detainees routinely to be given access to medical care. The Law on the Police requires police officers to provide emergency medical care when it is required. There is an instruction that detainees should be asked on arrival at ITTs whether they have any health problems. This is usually carried out by a duty officer.

Amnesty International has come across many cases where detainees in ITTs were not offered adequate medical assistance. Beslan Kutarba and Revaz Kishikashvili were detained in Sevastopol ITT from August 2004. They were accused of petty theft and of breaking and entering, crimes to which they reportedly confessed. Their lawyers were concerned that these confessions had been extracted under torture, after seeing bruises on their faces. The two men reportedly received no medical attention and had limited access to families and lawyers. Beslan Kutarba suffers from Hepatitis C and pancreatitis, but received no treatment for his condition and both men have now been kept in ITT in Sevastopol for 12 months and are still awaiting trial.

The Sevastopol Human Rights Group has received many complaints about lack of adequate medical care from the families of detainees in Sevastopol ITT. In April 2005, the

group received five complaints from detainees in the ITT about lack of access to medical care. In a letter to the group the director of the ITT admitted that there was no qualified medical personnel:

> "The role of medical attendant (feldsher) falls on a policeman from the escort brigade, but he does not have any medical training and is therefore unable to diagnose any illnesses or give qualified treatment."[34]

8. Impunity

Any government that wishes to combat torture and ill-treatment must ensure that there is no impunity for those who commit these human rights violations. There are many factors which contribute to a climate of impunity, including an inadequate legal framework, failure to investigate or to conduct adequate investigation, failure to convict those who are prosecuted, the imposition of disproportionately lenient punishments, or other weaknesses in the criminal justice system that enable officials to obstruct the course of justice.

8.1 Prohibition in law

> 1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.
> 2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.
>
> Convention against Torture, Article 4

Article 4 of the Convention against Torture requires states parties to ensure that all acts of torture and participation in such acts are offences under their criminal law and that these offences are punishable by appropriate penalties which take into account their grave nature.

In 2001, Article 127 prohibiting torture was added to the Ukrainian Criminal Code. The article defines torture as "the intentional infliction of severe physical pain and physical or mental suffering through beating, physical suffering or other violent acts with the purpose of forcing the victim to commit acts against their will" and provides for a punishment of three to five years' imprisonment and in particularly severe cases five to 10 years' imprisonment. [35]

[34] Letter from Major General V.A. Petukhov, Director of the Department of Internal Affairs Sevastopol to Olga Vilkova, Director of Sevastopol Human Rights Group dated 10 May 2005.

[35] Катування, тобто умисне заподіяння сильного фізичного болю або фізичного чи морального страждання шляхом нанесення побоїв, мучення або інших насильницьких дій з метою спонукати потерпілого або іншу особу вчинити дії, що суперечать їх волі, в тому числі отримати від нього або іншої особи інформацію, свідчення або визнання, покарати за його

Until January 2005, this law was an ineffective tool for combating impunity because the text failed to state that torture may be inflicted by state officials. For this reason it appears that it was not used for the prosecution of police or other law enforcement officials who committed acts of torture or ill-treatment. Not until January 2005, was the article amended to include state officials as possible perpetrators. Nevertheless, the wording of the article still does not correspond with the definition of torture in Article 1 of the Convention against Torture, because its reference to "violent acts" does not make fully clear that acts of torture can include acts which cause mental as well as physical suffering, and because the stated purposes and reasons for which any given act of torture may be committed are much narrower than those contained in the definition in Article 1 of the Convention against Torture. In order to comply with its obligations under Article 4 of the Convention against Torture to make all acts of torture offences under the criminal law, it is necessary for Ukraine to ensure that the definition of torture in the Criminal Code contains all the elements identified in Article 1 of the Convention against Torture: "…any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."

There are a number of provisions of the Criminal Code under which police or other law enforcement officials can be prosecuted for ill-treatment. Until now, those who have been prosecuted for acts of torture and ill-treatment have been prosecuted under Article 365 of the Criminal Code ("Excess of authority or official powers" - Перевищення влади або службових повноважень) which carries a sentence of three to 10 years depending on the gravity of the crime. It seems that policemen continue to be prosecuted for "exceeding authority" rather than torture even since the adjustments were made to the article in the Criminal Code on torture. In April 2005 a policeman was convicted in Donetsk under Article 365 for "exceeding his duties with violence", which carries a sentence of three to eight years. The policeman in question had reportedly detained a young woman on suspicion of theft, and taken her to the local police station where she was beaten and detained for over 24 hours. Her arm was broken and she required hospital treatment for her injuries.[36]

Amnesty International is concerned that the absence of official statistics regarding the number of state officials who have been prosecuted or convicted of acts of torture or ill-treatment contributes to a situation of effective impunity. The fact that Article 365 covers a wide range of crimes including torture and ill-treatment means that it is very difficult to collect statistics specifically relating to torture and ill-treatment. However, there also appears to be a culture of secrecy about police misconduct. Nina Karpacheva, the parliamentary ombudsperson, complained at a meeting with Amnesty International delegates in June 2004

дії, які він скоїв або у скоєнні яких підозрюється, або залякування його або інших осіб. – Criminal Code of Ukraine, article 127

36 P*ro UA website*, 25 April 2005, "Donetsk: behind bars – duty police officer."

that the Ministry of Internal Affairs does not give her information about prosecutions, convictions and complaints against their employees. The editor of *Pravda Lyudyny* (Human Rights), the journal produced by the Kharkiv Human Rights Group, wrote to the General Prosecutor and to regional Public Prosecutors to ask for information about prosecutions, convictions and complaints against law enforcement officers for torture and ill-treatment. The General Prosecutor did not reply at all, and the regional Public Prosecutors refused stating that the information was confidential and quoting the Law on Information.[37]

In the absence of official statistics human rights groups can only extrapolate from press reports and in the opinion of the Kharkiv Human Rights Group, there have been very few prosecutions or convictions of police officers for torture or ill-treatment even under Article 365.

8.2 Difficulties in lodging complaints

The UN Human Rights Committee, in its General Comment 20 on Article 7 of the ICCPR, has stated that: "The right to lodge complaints against maltreatment prohibited by Article 7 must be recognized in the domestic law. Complaints must be investigated promptly and impartially by competent authorities so as to make the remedy effective." But in Ukraine, 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 disciplined or prosecuted.

In its study on torture and ill-treatment, the Kharkiv Institute for Social Research cites the reluctance of victims to complain about the misconduct of police officers as one of the reasons why torture and ill-treatment is not documented statistically or publicized adequately.[38] Many of the victims that have turned to Amnesty International have said that they think it is a waste of time to try and complain to Ukrainian authorities, because their chances of obtaining a satisfactory response are so slim. Even those that have persisted in pursuing their complaints have faced enormous obstacles.

Mikhailo Koval (Section 5.1) has demonstrated enormous persistence and courage in his attempts to ensure that those who tortured him and his son were prosecuted. Mikhailo Koval and his son Dmitrii Brik both wrote to the Chernihiv city Public Prosecutor on 31 August 2001 about the ill-treatment and torture that they and Anna Koval had allegedly suffered at the hands of Chernihiv city police officers on 14 August 2001. On 20 September 2001, Mikhailo Koval was informed by Chernihiv city Public Prosecutor that an investigation had been carried out and that three of the police officers involved had been dismissed, but according to Mikhailo Koval they continued working. On 9 November 2001 Mikhailo Koval was informed that a criminal case had been started against one police officer, who allegedly had been the ring leader, and that he was being charged under Article 166 of the old Criminal Code - "Excess of authority or official powers". On 29 November 2001, the police officer in question threatened Mikhailo Koval in front of a witness on the street in Chernihiv and told

[37] *Human Rights in Ukraine – 2004*, p.20 - 21
[38] Kharkiv Institute for Social Research Survey, Final Report, p. 3

him that he and his family would suffer if he pursued his complaints. On 24 March 2002 Mikhailo Koval wrote to the Public Prosecutor asking why the case had not yet come to court. On 26 March 2002 Mikhailo Koval was beaten up by a stranger in the market place in Chernihiv, but he suspects that the attack was linked to his attempts to get the three police officers convicted. On 19 August 2002 he was informed that the investigation was continuing. On 2 October 2003 Mikhailo Koval was informed that the case was closed. An appeal to the court was also rejected, but on 12 January 2004 he was informed by the Chernihiv district Public Prosecutor that the case had been closed prematurely and it was being re-opened. In November 2004 the charges against the police officer who had been charged were dropped. Mikhailo Koval appealed against the closure of the case in January 2005, and in April 2005, after Amnesty International raised his case in a letter to the Minister of Justice, he was visited by officers of the Department for Organized Crime, who told him that the police officers concerned would be dismissed. He has also been advised in writing that he should approach the Public Prosecutor regarding the drill that was stolen. However, there is still no information that the police officers have been prosecuted for their crimes.

When Aleksei Zakharkin was allegedly tortured by police officers in Ivano-Frankivsk, his mother immediately complained to the Public Prosecutor in May 2003, but on 21 July she was informed that a criminal case would not be opened, although she was not sent a copy of the document stating the reasons. She then appealed to the General Prosecutor and the regional Prosecutor, and a case was finally opened by the Public Prosecutor in November 2003. The first court hearings were in April 2004. As a result of the investigations, two officers have been charged under various articles including Article 365 for exceeding official duties, misuse of official position, and illegal detention. However, the remaining five officers that Aleksei Zakharkin identified have not been charged and the case against them was rejected by the court.

8.3 Independent investigation

If effective prosecutions are to take place then all cases of torture and ill-treatment need to be thoroughly and independently investigated. Article 12 of the Convention against Torture states that:

> "Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction."

Article 13 goes on to say that every individual who alleges that he has been subjected to torture has the right to complain to and "to have his case promptly and impartially examined by competent authorities."

According to Article 112 of the Criminal Procedural Code, it is the Public Prosecutor that investigates all crimes involving state officials, such as police officers. Any crime under Article 365 (exceeding authority), which in the past has been used to prosecute police who have committed acts of torture or ill-treatment, must be investigated by the Public Prosecutor. The Public Prosecutor is responsible for deciding whether a case will be opened against a public official and overseeing the police investigation as well as being the body that is

responsible for investigation and prosecution of ordinary criminal cases. The UN Special Rapporteur on torture has drawn 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."[39] 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.

When Gennadii and Valerii Vladimirov complained to the Zheleznodorozhniy district court in the Crimea about the fact that they had been arbitrarily detained and ill-treated by police officers of the Simferopol district department of the Ministry of Internal Affairs, the court did not accept their complaints (Section 5.2). They also complained to the Public Prosecutor and the Ministry of Internal Affairs of the Autonomous Republic of Crimea, but the Public Prosecutor declined to open a criminal case and the Ministry of Internal Affairs replied that there had been no violations. They both appealed against these decisions with no result. Tatiana Doroshenko and Tatiana Vorobeva, who had been ill-treated in connection with the same investigation, complained to the Public Prosecutor of Simferopol region, but no action was taken. Yurii Barsiuk also complained to the Public Prosecutor and again, no action was taken. Only after Amnesty International raised this case in a letter to the Minister of Justice was an investigation carried out. A commission of enquiry was sent from Kyiv and Gennadii and Valerii Vladimirov were subsequently awarded 1,000 hryvnia (US$200) each in compensation. The other victims have apparently not been compensated and to Amnesty International's knowledge no police officers have been prosecuted.

The Public Prosecutor could potentially play a crucial role in the prevention of torture and ill-treatment. However, in almost all the cases that have come to Amnesty International's attention, prosecutors have not acted on allegations of torture and ill-treatment. Indeed, some lawyers who have spoken to Amnesty International have identified them as part of the problem, rather than the solution.

"Being a prosecutor is not a profession - it is a business," lawyer in Simferopol.

As in the case of the police, prosecutors are poorly paid and corruption is reportedly widespread. For instance, lawyers in Simferopol informed an Amnesty International delegate that the usual rate that the general public pay for having charges dropped is between US$500 and US$2,000 to US$3,000 depending on the nature of the crime.

According to Article 234 of the Criminal Procedural Code complaints about torture and ill-treatment by the police can be made to judges as well as to the Prosecutor. Once a complaint has been made about a case of police misconduct a decision by the prosecutor to stop an investigation can be appealed to the courts. In March 2005 Mikhailo Koval succeeded in having the prosecutor's decision to halt the investigation in his case overturned by a local court in Chernihiv.

[39] Report to 2001 session of the UN Commission on Human Rights E/CN.4/2001/66, para 1310

8.4 Documentation of torture and ill-treatment

The effective investigation of cases of torture depends on the availability of adequate documentation enabling the prosecution to bring evidence of torture and ill-treatment to light, and hold the perpetrators accountable for their actions.

> States shall ensure that complaints and reports of torture or ill-treatment are promptly and effectively investigated. Even in the absence of an express complaint, an investigation shall be undertaken if there are other indications that torture or ill-treatment might have occurred. The investigators, who shall be independent of the suspected perpetrators and the agency they serve, shall be competent and impartial. They shall have access to, or be empowered to commission investigations by, impartial medical or other experts. The methods used to carry out such investigations shall meet the highest professional standards and the findings shall be made public.
>
> UN Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Principle 2

The UN Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment recommend to states to ensure that complaints and reports of torture are promptly and effectively investigated, and that investigators should be independent and impartial and should have access to impartial medical experts.

The Istanbul Protocol, a manual published by the UN in 1999,[40] provides detailed guidelines for the effective implementation in practice of these principles. The Istanbul Protocol stipulates that the investigators should be independent of the suspected perpetrators and the organization they work for and that they must be competent and impartial. It goes on to say that "they must have access to or be empowered to commission investigations by impartial medical or other experts. The methods used to carry out these investigations must meet the highest professional standards, and the findings must be made public."[41]

Since 2000 forensic examinations can only be carried out in Ukraine by state bodies which are defined as research institutions of forensic medicine under the auspices of the Ministry of Justice, research institutions under the auspices of the Ministry of Health, and expert services of the Ministry of Internal Affairs, Ministry of Defence, Security services and State Border Service. [42] In order to have access to such examinations the victim or their

40 Available on the UN Human rights website at http://www.ohchr.org/english/about/publications/docs/8rev1.pdf (English) and http://www.ohchr.org/english/about/publications/docs/8rev1_ru.pdf (Russian).
41 Istanbul Protocol, p. 17
42 *Human Rights in Ukraine - 2004*

family or lawyer must apply to the investigator. There can be enormous delays, and examinations can take months or even years.

In practice it can be very difficult to get the necessary tests carried out and victims of torture or ill-treatment must show perseverance and assertiveness to claim their rights. When 16-year-old Maksim Kalinin was subjected to police violence in June 2005 in Kerch, his parents were very determined to ensure that they had the possibility to seek justice and they were able to circumvent all the hurdles placed in their way by the authorities (Section 5.4). They immediately reported the ill-treatment to the Public Prosecutor in Kerch and the regional Public Prosecutor of the Crimea. The first problem they faced was at the local hospital where Maksim Kalinin was taken the morning after he was beaten by police officers. The hospital doctors were reluctant to treat Maksim Kalinin when they learnt that he had received his injuries as a result of beating by police officers and doctors refused to treat him claiming that he was not seriously injured and could recover at home. It was only when his parents threatened to take him to the district hospital and to complain about the doctors' refusal to treat him that he was admitted. In fact he required treatment for a serious head injury and remained in hospital until 21 June. When his parents applied to the Prosecutor in Kerch on 7 June to request a forensic examination they were refused without reason. Only when they demanded to know the name of the official who refused them, and threatened to complain to the regional Prosecutor were they given permission to consult a forensic expert. Finally, when they got as far as seeing the expert, he refused to see Maksim Kalinin immediately and said that he would examine him once his treatment was over, regardless of the risk that his injuries might by then be invisible. Only when the parents threatened to complain to the district forensic department did the expert agree to carry out an examination on 9 June. On 17 June criminal proceedings were started against two police officers who are charged under Article 365 of the Criminal Code.

9. Conclusions and Recommendations

Torture and ill-treatment at the hands of the police is widespread in Ukraine, but the problem is not documented or publicized adequately. The cases that have come to the attention of Amnesty International show that suspects, witnesses, those involved in any way in a police investigation and even apparently innocent bystanders can be targeted. Law enforcement officers routinely extract confessions and testimony from detainees through force, sometimes resorting to torture. The Code of Criminal Procedure does not provide adequate protection for detainees and, in some cases, police officers break the law. Amnesty International is concerned that prevailing attitudes among police officers in Ukraine do not take account of the presumption of innocence. Police officers are not adequately trained and equipped to gather evidence and establish the facts of a case, and as a result rely too heavily on extracting confessions to solve crimes.

When torture or ill-treatment at the hands of the police does occur, the cases are rarely followed up and victims rarely receive reparation. This means that there is effective impunity in Ukraine for acts of torture and ill-treatment. Even when investigations are carried

out they do not meet international standards of promptness, thoroughness, independence and impartiality. Flawed investigations result in few prosecutions of law enforcement officers, and often minimal sentences, which are not commensurate with the gravity of the offence. Many victims do not lodge complaints because they fear the consequences, are distrustful of the complaints procedure or are unaware of the fact that their rights have been infringed. Those persistent and brave individuals who do try to pursue the quest for justice may find that they are again subjected to threats and violence to dissuade them from pursuing their complaints. Some victims have waited years for justice, and are still waiting.

In order to address the most pressing issues identified in this report Amnesty International makes the following 20 recommendations to the Ukrainian government:

The Absolute Prohibition of Torture and Ill-treatment

- The government should denounce torture and ill-treatment and take decisive action to demonstrate to the police that torture and ill-treatment will not be tolerated;

- Senior employees of the Ministry of Internal Affairs should deliver the clear message to their subordinates that torture or ill-treatment against people deprived of their liberty, or threats to use such treatment is absolutely prohibited, and that anybody committing such acts will be subject to severe sanctions;

- Prosecutors and judges should exercise their legal competence to initiate investigations whenever a person brought before them alleges torture or ill-treatment and whenever there are reasonable grounds to believe that an act of torture or ill-treatment has occurred;

Safeguards against Torture and Ill-treatment while in Police Custody

- All people deprived of their liberty should be informed at the outset of their custody of their rights to a lawyer, a doctor and to have their relatives informed of their whereabouts, and all detainees should be guaranteed prompt and regular access to lawyers (including the right to talk to a lawyer in private) and doctors (including a doctor of their choice);

- All detainees should be informed at the outset of their custody of the charges against them or the reasons for their arrest;

- Information about complaints procedures should be displayed in all police stations and detainees should be informed of their right to complain about police torture and ill-treatment;

- Ensure that in all cases, detailed individual custody records are kept by police stations and pre-trial detention facilities. Officers in charge of interrogation should not be responsible for custody;

- Ensure that there is a division of responsibility between those officers responsible for custody and those in charge of interrogation;

- A lawyer should always be present during police interrogations unless a detainee waives the right to a lawyer, and all interrogations should be recorded accurately, preferably with the use of video/audio equipment;
- Ensure that all people deprived of their liberty are held in conditions that are in accordance with international standards and implement fully the recommendations of the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment regarding conditions in pre-trial detention;

- Reduce overcrowding by ensuring that judges are aware of the possibility of bail and clarify and establish procedures to enable judges to use non-custodial measures;

Effective Training

- Ensure that human rights education is an integral part of the basic and further training of all police officers;

- Police officers should be instructed that they have the right and duty to refuse to obey any order to torture or to carry out other ill-treatment;

- Police officers should be provided with the necessary technical resources and professional skills to carry out their duties;

Preventing Impunity

- Article 127 of the Ukrainian Criminal Code should be amended so as to ensure that it accurately reflects all elements of the definition of torture as set out in Article 1 of the Convention against Torture;

- Ensure that all allegations of police ill-treatment or torture are subject to prompt, thorough and impartial investigation, including interviewing the victim and any witnesses. The Ukrainian government should consider establishing a fully resourced independent agency to investigate all allegations of human rights violations by law enforcement officers including the police;

- Any police officer or law enforcement official reasonably suspected of responsibility for torture or ill-treatment should be brought to justice; if proved guilty, the sentences imposed should be commensurate with the gravity of the crime;

- Victims or their families should receive reparations, including fair and adequate compensation, and where relevant, the means for as full rehabilitation as possible;

- Statistics on the number of complaints of torture and ill-treatment and how they have been dealt with should be regularly published, in order to identify patterns of violations and establish appropriate remedial action;

Independent monitoring mechanism

- Ukraine to ratify the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and to establish an independent body at the national level to monitor places of detention. Participation in such bodies should be open to non-governmental organizations.

Appendix

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Amnesty International's 12-Point Programme for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by Agents of the State

Torture and other cruel, inhuman or degrading treatment or punishment (other ill-treatment) are violations of human rights, condemned by the international community as an offence to human dignity and prohibited in all circumstances under international law. Yet they happen daily and across the globe. Immediate steps are needed to confront these abuses wherever they occur and to eradicate them. Amnesty International calls on all governments to implement the following 12-point programme and invites concerned individuals and organizations to ensure that they do so. Amnesty International believes that the implementation of these measures is a positive indication of a government's commitment to end torture and other ill-treatment and to work for their eradication worldwide.

1. Condemn torture and other ill-treatment
The highest authorities of every country should demonstrate their total opposition to torture and other ill-treatment. They should condemn these practices unreservedly whenever they occur. They should make clear to all members of the police, military and other security forces that torture and other ill-treatment will never be tolerated.

2. Ensure access to prisoners
Torture and other ill-treatment often take place while prisoners are held incommunicado – unable to contact people outside who could help them or find out what is happening to them. The practice of incommunicado detention should be ended. Governments should ensure that all prisoners are brought before an independent judicial authority without delay after being taken into custody. Prisoners should have access to relatives, lawyers and doctors without delay and regularly thereafter.

3. No secret detention
In some countries torture and other ill-treatment take place in secret locations, often after the victims are made to "disappear". Governments should ensure that prisoners are held only in officially recognized places of detention and that accurate information about their arrest and whereabouts is made available immediately to relatives, lawyers, the courts, and others with a legitimate interest, such as the International Committee of the Red Cross (ICRC). Effective judicial remedies should be available at all times to enable relatives and lawyers to find out

immediately where a prisoner is held and under what authority, and to ensure the prisoner's safety.

4. Provide safeguards during detention and interrogation All prisoners should be immediately informed of their rights. These include the right to lodge complaints about their treatment and to have a judge rule without delay on the lawfulness of their detention. Judges should investigate any evidence of torture or other ill-treatment and order release if the detention is unlawful. A lawyer should be present during interrogations. Governments should ensure that conditions of detention conform to international standards for the treatment of prisoners and take into account the needs of members of particularly vulnerable groups. The authorities responsible for detention should be separate from those in charge of interrogation. There should be regular, independent, unannounced and unrestricted visits of inspection to all places of detention.

5. Prohibit torture and other ill-treatment in law
Governments should adopt laws for the prohibition and prevention of torture and other illtreatment incorporating the main elements of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) and other relevant international standards. All judicial and administrative corporal punishments should be abolished. The prohibition of torture and other ill-treatment and the essential safeguards for their prevention must not be suspended under any circumstances, including states of war or other public emergency.

6. Investigate
All complaints and reports of torture or other ill-treatment should be promptly, impartially and effectively investigated by a body independent of the alleged perpetrators. The scope, methods and findings of such investigations should be made public. Officials suspected of committing torture or other ill-treatment should be suspended from active duty during the investigation. Complainants, witnesses and others at risk should be protected from intimidation and reprisals.

7. Prosecute
Those responsible for torture or other ill-treatment should be brought to justice. This principle applies wherever those suspected of these crimes happen to be, whatever their nationality or position, regardless of where the crime was committed and the nationality of the victims, and no matter how much time has elapsed since the commission of the crime. Governments should exercise universal jurisdiction over those suspected of these crimes, extradite them, or surrender them to an international criminal court, and cooperate in such criminal proceedings. Trials should be fair. An order from a superior officer should never be accepted as a justification for torture or ill-treatment.

8. No use of statements extracted under torture or other ill-treatment
Governments should ensure that statements and other evidence obtained through torture or

other ill-treatment may not be invoked in any proceedings, except against a person accused of torture or other ill-treatment.

9. Provide effective training
It should be made clear during the training of all officials involved in the custody, interrogation or medical care of prisoners that torture and other ill-treatment are criminal acts. Officials should be instructed that they have the right and duty to refuse to obey any order to torture or carry out other ill-treatment.

10. Provide reparation
Victims of torture or other ill-treatment and their dependants should be entitled to obtain prompt reparation from the state including restitution, fair and adequate financial compensation and appropriate medical care and rehabilitation.

11. Ratify international treaties
All governments should ratify without reservations international treaties containing safeguards against torture and other ill-treatment, including the International Covenant on Civil and Political Rights and its first Optional Protocol; and the UN Convention against Torture, with declarations providing for individual and inter-state complaints, and its Optional Protocol. Governments should comply with the recommendations of international bodies and experts on the prevention of torture and other ill-treatment.

12. Exercise international responsibility
Governments should use all available channels to intercede with the governments of countries where torture or other ill-treatment are reported. They should ensure that transfers of training and equipment for military, security or police use do not facilitate torture or other ill-treatment. Governments must not forcibly return or transfer a person to a country where he or she would be at risk of torture or other ill-treatment.

This 12-point programme sets out measures to prevent the torture and other ill-treatment of people who are in governmental custody or otherwise in the hands of agents of the state. It was first adopted by Amnesty International in 1984, revised in October 2000 and again in April 2005. Amnesty International holds governments to their international obligations to prevent and punish torture and other ill-treatment, whether committed by agents of the state or by other individuals. Amnesty International also opposes torture and other ill-treatment by armed political groups.