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Freedom from torture and ill-treatment

Overview

The problem of torture is one of the most difficult to resolve. Its roots like in the formula used by Vyshynsky that "a confession is the queen of proof", in the attitude towards an offender as to an enemy you don't need to be on ceremony with and in general cruelty in society, with a failure to appreciate the value of each human life. There is a fixed idea among the public that any, sometimes harsh, methods are acceptable in order to eradicate crime. The investigation into a large percentage of crimes is based on the confession of the suspect. Therefore, regardless of declarations about commitment to human rights, the legislators and the courts are reluctant to change entrenched practice and legislation. This is not effective enough at avoiding the use of torture and it also fosters the right conditions for a high level of latency with regard to this crime. The latter makes it positive to present the problem both to Ukrainian society and to international institutions and the international community as minor. Unfortunately, ill-treatment or torture often remain unpunished, or worse, are treated as the norm.

The following remain forms of torture and ill-treatment of a widespread and systematic nature:

1. the use of torture against those suspected of having committed a crime during the detective inquiry stage or pre-trial investigation;
2. the conditions and ill-treatment meted out in pre-trial detention centres [SIZO], temporary holding facilities [ITT] and some penal institutions;
3. "didivshchyna" [hazing or bullying] in the army when more senior servicemen torment and humiliate young soldiers.

Over recent years, however, there has been a change in the attitude of the management of some government bodies implicated in the use of torture.

The Ministry of Defence, for example, has adopted a principled stand in carefully investigating all complaints and cooperating actively with human rights organizations which are able to visit military units, meet with solders and officers, and carry out surveys, etc. Thanks to this, from 2002 – 2006 we observed a reduction in the number of cases of "didivshchyna", as compared with the period from 1998 to 2001. Although cases do still occur, over recent years there have almost not been any killings or cases where soldiers committed suicide as the result of "didivshchyna".

The adoption on 4 April 2006 of a new version of the Law "On general military conscription and military service" made a significant change with direct impact on "didivshchyna". The period of military service in the Armed Forces was reduced from two years to one and in the Naval Forces to 18 months. With this change, the divide between soldiers from the first and second year of their service disappeared. One can still see lighter forms of "didivshchyna", as when conscripts who have

served six months already treat beginners with contempt. The number of criminal investigations over "unfitting relations" [the official term for "didivshchyna"] has fallen sharply, although it is extremely difficult to eradicate the problem. The following is a typical case.

According to the sentence passed by the local military court of the Sevastopol garrison, conscript VCh-AO428 sailor Prokhurenko, in order to demonstrate his imagined superiority over a conscript who had been called up later, and kicked Udin and Dubyn so hard that Dubyn suffered serious bodily injury as a result of which he had to have his spleen removed. The court sentenced Prokhurenko to two years in a disciplinary battalion, however refused to allow Dubyn's claim for 5,000 UAH in compensation for material damages, although it did partially allow the claim for moral damages, ordering that the defendant pay his victim 20 thousand UAH. The command of the military unit did not take any part in the court proceedings.

The Ukrainian Government's answers to questions put by the UN Committee against Torture regarding Ukraine's Fifth Periodic Report give the following figures. In 2005, when compared with the previous year, in all Ukraine's military formations, there were 1.6 times less cases of force used by military officials to their subordinates (83 cases involving 140 military servicemen against 123 cases involving 154 people in 2004). У 2006 military personnel committed 73 offences linked with violence against subordinates, a drop of 58% over 2004, and of 12 over 2005. Overall in 2006, 9 military servicemen died as the result of a crime, however most were not connected with didivshchyna According to Ministry of Defence figures, there were no cases of suicide linked with didivshchyna In 2004 one soldier committed suicide, in 2005 no cases were recorded, while in 2006 two soldiers killed themselves. We should mention that in order to avoid didivshchyna in the Armed Forces a new system for registering and reporting on offences has been introduced. According to the new approach, the commanders of military units who have uncovered offences linked with didivshchyna are not themselves held liable, while liability is increased for management at all levels for not informing of such offences in timely manner, or for concealing them. The Ministry of Defence states that during 2006 150 soldiers were convicted of didivshchyna-related offences or of using excessive force. Compared with 2002 the number of criminal proceedings fell by 20% (in 2002 this was 142, in 2006 – 119)) while the number over the use of force dropped by 23% (in 2002 – 85, in 2006 – 66).

The Ministry of Internal Affairs which over a number of years had not acknowledged any problem over torture and ill-treatment or had tried to create the impression that any such incidents were isolated aberrations of individual police officers, in 2005-2006 acknowledged the systemic nature of the problem. A demonstration of the positive change in the Ministry's attitude to protecting human rights, and specifically to the issue of torture, was the creation at the end of 2005 of a Public Council for the Observance of Human Rights attached to the Ministry of Internal Affairs, with similar public councils attached to regional departments of the Ministry created in 2006. 10 working groups have been established, namely groups: on complaints alleging unlawful actions by law enforcement officers; on protection against torture and the right to liberty and personal security in MIA work; the MIA and human rights during elections; the MIA and freedom of peaceful assembly; the right to privacy in MIA work; the rights of the child and the MIA; the rights of refugees and migrants; preventing domestic violence and ill-treatment of children, human trafficking and gender issues in the MIA; human rights education; normative legal and method backup for the work of the Council. Documents regulating the work of the Public Council are available on the Ukrainian Helsinki Human Rights Union website: www.helsinki.org.ua. There is also a section on the Public Council on the MIA's official website.

Another step in introducing public control over the work of the police came with the establishment of mobile groups. These include specially trained MIA officers and representatives of human rights organizations. The mobile groups carry out inspection visits to police stations in order to monitor the observance of human rights mainly in the MIA's temporary holding facilities [ITT]. . The work

of these mobile groups was first launched in 2004 in three regions – Kharkiv, Poltava and Sumy, while in 2005 it was extended to cover the entire territory of the country.

We should note that the MIA has over the last two years become the most open of all enforcement authorities. It is the most forthcoming in responding to information requests, for example to questions regarding unlawful activities committed by police officers. This information was previous given the stamp "For Official Use Only" and not available to the public, whereas now the MIA has made its internal statistics on such unlawful actions openly available.

According to MIA figures in 2006 5,126 complaints were received alleging unlawful actions by police officers. Of these, 435 were found to be warranted (8.5%). Included in this figure were 23 complaints of torture; 164 of beatings and inflicting of bodily injuries; 21 cases of unlawful detention on suspicion of having committed a crime; 48 cases of unlawful administrative detention and administrative liability. Criminal charges were laid against 14 officers of Internal Affairs agencies, and 225 officers faced disciplinary proceedings. This percentage of complaints found to be valid – 7 – 8% of the overall number is typical for the police in European Union countries.

Nonetheless the use of torture and ill-treatment in the police continues to be of a widespread and systemic nature. The number of reports of such cases has not abated. In order to achieve fundamental improvements a change in attitude to torture is needed, and this is a difficult task. Changes are needed also to both legislation and practice.

The State Department for the Execution of Sentences [the Department] remains entirely lacking in openness, which can be seen, for example, by comparing analogous figures from the MIA and the Department. According to their letter, during 2005 and the first six months of 2006, the Department received 489 complaints alleging unlawful actions by Department personnel. Not one of them (!) was found to be warranted. In response to an information request seeking figures for the number of complaints alleging unlawful actions by Department personnel, the number of complaints found to be warranted, the number of members of staff who faced disciplinary or criminal proceedings in 2006, a fob-off answer was received: "Bearing in mind that according to Article 19 of the Law "On information", government statistics are systematically and openly published and open access to them is assured, You are able, according to the legally established procedure, to find statistical information. The information you have expressed an interest in is given on the website of the State Department of Ukraine for the Execution of Sentences, which has the Internet address: www.kvs.gov.ua". Obviously, the figures requested are not contained on the Department's website.

The extraordinary difference in responses to information requests is one aspect of the different attitude of the management of these institutions to the issue of torture. Whereas the management of the MIA publicly acknowledges the existence of this problem and seeks ways and mechanisms for solving it, the words uttered by the Department's heads are aimed at extolling Department achievements and asserting the progressiveness of all its steps which are supposedly aimed at protecting human rights. The Department's actions, on the other hand, are aimed at retained the existing lack of openness and of any public control, and intimidation of prisoners in order to maintain order.

An expert of Kharkiv human rights protection group study on how penal legislation and practice comply with international standards reached the following conclusions: "the main concept (paradigm) of the Ukrainian system of punishment is the idea of developing a sense of guilt in the individual who is remanded in custody or convicted. All the conditions, procedure, mechanisms for implementing legal restrictions (in the case of remand in custody) or punitive elements (in the case of punishment) are aimed at differentiating between the person imprisoned and other members of society, at immersing the imprisoned individual in the negative consequences of the crime, not for the sake of self-correction, but in order that he or she "understands" what he/she has (allegedly) done. And this brings with it the sense that the individual is removed from society, separated from it

and the sense that there is no possibility of "return". That is, the state shows no "forgiveness", and this is seen in all the structures directed at so-called resocialization (administrative surveillance, social and everyday provisions for such people, the existing problems with finding work, etc). These structures are not of a supportive nature, but rather of total control and lack of trust. … A major problem which leads to the lack of conformity of norms of Ukrainian legislation to international laws is, in my opinion, the fact that in Ukraine there is a lack of culture and tradition for treating each person as an individual and as a human being, and for respecting him or her as such. in the consciousness of modern citizens and members of Ukrainian society there is no such thing as concepts like "dignity", "honour" and "humane attitude", or if there is, it is somehow lacking in clear substance. This situation leads to the attitude to people remanded in custody or to convicted prisoners being purely negatively. Such people are "bandits" and you have to be hard with them. This attitude was confirmed during the recent Orange Revolution when one of the slogans was "bandits should be put in prison!" Precisely this phrase encapsulates the attitude of society to individuals who are remanded in custody, and still more so to convicted prisoners. They should disappear from society, have no access to it, and just stay in prison. It is this attitude too which can be found in current penal legislation. The problem of bringing conditions of remand and convicted prisoners into line with international standards will not be resolved until the attitude of society changes to individuals who have ended up imprisoned. Only then will society formulate those provisions in legislation not only on paper, but also through real legal mechanisms and will understand those provisions and carry them out, not out of fear of being held liable, but from respect for the human being and individual"

Prosecutor's offices, as before, are to a large extent impeding progress on preventing torture by the slack way they carry out their duty to investigate allegations or other information suggesting the use of torture and ill-treatment. The effective lack of proper investigation into such cases is a systemic problem for the legal system in Ukraine. It engenders a feeling of impunity on the part of law enforcement officers who resort to torture, and contributes greatly to the fact that torture and ill-treatment are treated by many of them not as a crime, but as a routine element of their work in fighting crime.

Human rights organizations who united their efforts in the *Campaign against Torture and Ill-treatment in Ukraine (July 2003 – July 2006)* monitored investigations into allegations of torture. They attempted to have criminal investigations instituted in more than 60 cases. Although they do eventually succeed in getting investigations started, this requires enormous effort and leads to a late investigation.

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

We believe that the lack of independent, impartial and effective investigations and prosecution of law enforcement officers over allegations of torture and ill-treatment in part stems from the role of the Prosecutor in Ukraine. As the authority responsible for carrying out investigations and preliminary reviews of ordinary criminal cases, it is the Prosecutor who decides whether to institute criminal proceedings against police officers. The lack of an independent investigative body means that cases against law enforcement officers are investigated inadequately, are dragged out, suspended or terminated altogether.

It is impossible to get substantive responses to information requests concerning the results of supervision by the Prosecutor over the work of law enforcement agencies. To all such requests for information, the Prosecutor General responded with formal fob-offs. No wonder that it was recipient of the anti-award "Thistle of the Year" awarded by the Ukrainian Helsinki Human Rights Union in 2006 as the least open government body in Ukraine. All of the information given below is taken from documents sent by the Government to the UN Committee against Torture.

In 2006 the Prosecutor considered 506 allegations of prohibited methods against remand or convicted prisoners. 6 were found to be warranted. According to the results of their review, 3 public officials have had criminal charges brought against them.

It should be noted that the number of criminal investigations launched under Article 127 of the Criminal Code (torture and ill-treatment) rose in 2006. In 2005 criminal charges were brought against 9 people under paragraph one of Article 127 and 24 people under paragraph two. Over various instances of torture and other violent behaviour on the part of law enforcement personnel, the prosecutor's office in 2006 initiated 127 criminal investigations of which 62 have already submitted to the courts for examination in substance. However according to a response to our information request directed to the State Judicial Administration, nobody was convicted of the crime set down in paragraphs three and four of Article 127. So either the court proceedings have not yet concluded, or Article 365 which covers abuse of official position was used.

Nor does the Prosecutor take any steps to ensure the safety of people who submit complaints alleging torture. This is particularly applicable to those deprived of their liberty. The Prosecutor is, as a rule, passive and does not look after the safety of prisoners who have lodged complaints. There have, however, been cases of more treacherous behaviour.

In one case, after the beating of a large number of prisoners by special units, the Prosecutor General received a letter with complaints sent from the penal colony through illicit channels. The complaints gave a step by step account of events which had taken place on 31 March 2001, then later on 29 January 2002 in Penal Colony No. 58 in Izyaslav (Khmelnytsky region).

Such a consistent and logical account of events, combined with the way the information had been passed on, should have convinced the authorities not only of the likelihood that the events had indeed taken place, but that possibly officials of the local prosecutor's office were trying to prevent information being spread about the incidents.

The Prosecutor General should have at very least made efforts to ensure minimum guarantees of safety of the complainants, and specifically, confidentiality of the information received. According to Principle 33.3 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, "Confidentiality concerning the request or complaint shall be maintained if so requested by the complainant". Yet the Prosecutor General sent the letter to the local prosecutor's office, and the latter in turn, in a letter dated 26 June 2001 suggested that the administration take disciplinary measures against Davydov for illegally sending complaints to the Prosecutor General.

Instead of investigating the reasons why a prisoner had been forced to use illicit means for sending complaints to the Prosecutor General, when the law envisages the possibility of submitting confidential complaints to the Prosecutor – the prosecutor's office proposed that Davydov should be punished for providing information which might demonstrate a crime and other violations of the law.

The consequences of the actions of both the Prosecutor General and the local prosecutor's office proved fatal for any investigation. For the purposes of the investigation, the Prosecutor General should have assumed that the events described in the complaint had taken place, and that even if the

local prosecutor's office was not implicated in them, it had nonetheless failed to use any measures of response, even though it was supposed to know about the events having its own representative on the spot.

The very lack of response from the local prosecutor's office to the events constituted a crime committed by a person in their official capacity.

Thus, if in the interests of the investigation, one assumes that the claimant was telling the truth, then in any case the local prosecutor's office and the penal colony administration had one interest in common – to conceal any proof of the event.

On 15 January 2007 the European Court of Human Rights found admissible the applications of 13 convicted prisoners, victims of the terrible beatings of 31 May 2001 and 29 January 2002 against Ukraine. The Court found that the claims of the applicants that Articles 3, 8, 13 and 34 of the European Convention had been violated were admissible.

Courts continue to use confessions obtained under torture even though both the Constitution and the Criminal Procedure Code prohibit using testimony received with infringements of criminal procedure legislation. This can be partly explained by the fact that, aside from a general provision regarding the inadmissibility of evidence obtained in breach of the law, there are no special rules or criteria for determining admissibility, in particular, whether the confession was made voluntarily. The rather weak development of the law on evidence is rooted in disregard for procedural issues. For a very long time, assessment of evidence was based upon the virtually unlimited personal conviction of a judge, which was, in turn, based on a "socialist sense of justice". As a result, in criminal procedure there are to this day no reasonably well-developed criteria for determining whether a confession was made voluntarily, nor is there any procedure for its exclusion from case evidence.

Courts hold to rather primitive tests to determine whether the confession was voluntary, usually failing to take into account the specific circumstances, under which defendants are forced, including through the use of torture, to make a confession. . They work, for example, on the erroneous idea that the use of torture or other kinds of coercion used to force a confession must be established by a court decision in order to declare a given confession inadmissible. Court practice shows that a well-grounded doubt as to whether a confession was made voluntarily is not sufficient to have it excluded from the evidence.

In cases, when a court considers that there are serious grounds for believing that «unlawful investigative methods» were applied to the defendant, the court instructs a prosecutor's office to examine the relevant claims made by the defendant. As a rule, this examination is carried out by the same unit of the prosecutor's office, which supported the case in court. In most cases, such examination results in a refusal to initiate a criminal investigation. Once courts receive the decision made by the prosecutor's office refusing to initiate a criminal investigation or, when applicable, a decision to suspend a criminal investigation, they do not, in general, investigate the defendant's claims of torture any further, and explain the claims away as being an attempt to avoid answering for their actions.

Such an approach by the courts to investigating and assessing defendants' allegations of torture takes into account neither Ukraine's international obligations, nor the existing system in Ukraine for examining claims that torture has been applied. Under international obligations, in particular, according to Article 15 of the Convention, rules as to whether confessions are to be excluded from admissible evidence should be governed by the shifting of the burden of proof that a confession was given freely on to the prosecution. The mere fact that, according to international standards, any claim that torture was used must be officially investigated suggests that a person who has been subjected to torture, will not be able to prove their claim on their own, still less to prove them

«beyond reasonable doubt». Yet the standards for evidence actually used by courts, do not take this fact into account.

This means that at present the onus of proving «beyond reasonable doubt» that a confession was made under duress is on the defendant. Such a shifting of the burden of proof that a confession was not voluntarily given results in the fact that a great number of confessions made under duress are not excluded from admissible evidence, and this, in turn, encourages further use of torture and other means of applying unlawful duress on defendants.

The problem with regard to determining the admissibility of a confession is further exacerbated by the fact that this approach makes no distinction between proving that torture did actually take place, and proving the personal guilt of those responsible. Thus, the defendant, who tries to prove that his or her confession was obtained by using torture, can do this only after criminal prosecution of the specific perpetrators has been completed.

In one monitoring study, 594 out of 732 prisoners asserted that they had been subjected to violence on the part of law enforcement officers. Two hundred and fifty four said that they had told the court that coercion had been applied. According to the respondents, however, only in 20 cases had the court paid attention to these allegations.

The results of the study demonstrate the attitude of the courts to allegations of torture in general. However since it is difficult from the report to understand what the respondents meant when they said that "the court paid attention to their allegations", one cannot judge whether the confessions obtained through the use of coercion were excluded from the evidence.

On the other hand, courts uphold 46-47% of the complaints lodged against the actions of the investigation units (in 2003 5,991 such complaints were examined by the courts with 2,805 being allowed; in 2004 – 7,494 (3,495 upheld); and in 2005 - 10,020 (4,616 upheld). Courts in 2003 issued 2,473 separate judgments regarding violations of the law in carrying out detective inquiry or pre-trial criminal investigations, with 3,495 such judgments issued in 2004, and 1,512 in the first six months of 2005. In 2006 the courts examined 11,629 complaints against the behaviour of investigation units, with 5,564 being allowed. However it is not possible to establish how many judgments were issued as a result of review of cases of torture or ill-treatment.

We would note that in July 2006 the Verkhovna Rada ratified the Optional Protocol to the UN Convention against Torture [OPCAT] which, among other things, envisages the creation of a national preventive mechanism [NPM] for the prevention of torture and ill-treatment. Yet since then the government has taken no steps towards creating this NPM. The Human Rights Ombudsperson, who the Verkhovna Rada had suggested should see to implementing the NPM at first said that her Secretariat was in fact the national preventive mechanism. Later it was stated that this was a matter for the Ministry of Justice, and later still, that a special executive body needed to be created which could carry out the functions of the NPM. It is clear, however, that the requirement of independence in this case is not being observed. The need for a functioning national preventive mechanism is extremely relevant as the examples below graphically indicate.

Cases of torture and ill-treatment

Valery Novik

Valery Novik was a businessman, living in Minsk. In August 2004 he left Belarus for Kyiv due to serious pressure he had begun experiencing from the authorities over his involvement in the opposition movement. In December his family joined him in Kyiv. On 30 November 2006 at

around 19.00 N. was stopped by police officers in Kyiv. They said that there were some problems with a car and asked him to go with them to the Pechersky District Police Station. Then when already in the police station he was informed that he had been detained at the request of the law enforcement agencies of Belarus and the Ukrainian Ministry of Internal Affairs in connection with the fact that in Belarus he was accused of having "run business activities without registration as a legal entity". He was shown the ruling on declaring him a suspect. No other documents were presented. On the same day he was placed in a temporary holding facility (ITT)..

On 1 December 2006 Valery Novik was remanded in custody for 40 days pending an application for his extradition. From the ruling of the Pechersky District Court, it would seem that the criminal investigation bodies in Belarus took the decision on 27 October 2005 to remand Novik in custody. Two days earlier, on 25 October, he was placed on the police wanted list.

On 4 December 2006 Novik's lawyer appealed the ruling in the Kyiv Court of Appeal, however on 8 December the latter upheld the original ruling by the Pechersky District Court. On 4 December lawyers from the Fund for Legal Aid to Victims of Torture lodged an application with the European Court of Human Rights to apply temporary measures and on 8 December the European Court acceded to this application and sent the relevant letter to the Government of Ukraine. On 11 December a claim was submitted to the European Court in which Novik asserts that Ukraine will be violating Articles 3 and 6 of the European Convention on Human Rights [the prohibition against torture, and the right to a fair trial] if it hands him over to Belarus. He claims that the criminal case is politically motivated and refers to the widespread practice of extracting "confessions" from suspects through the use of torture and other forms of inhuman treatment. He also asserts that due to the legal system and practice in Belarus he cannot hope for a fair court hearing. Novik has, in addition, stated that Article 5 [the right to liberty and security] of the Convention was violated during the detention.

On 25 December 2006 Ukraine's Prosecutor General turned down the request from the Prosecutor General in Belarus for Novik's extradition due to the fact that the crime he is charged with is not one subject to extradition according to the 1993 Minsk Convention. On 25 December 2006 he was released from custody.

The European Court has referred the Novik Case for communication with the Government of Ukraine with respect to Article 5 of the European Convention.

Yury Mosyeenkov

On 7 May 22-year-old Kyiv resident Yury Mosyeenkov was detained on suspicion of having killed Mr L. and taken to the Dniprovsky Prosecutor's Office in Kyiv. A week earlier, Yury had been in a snack bar one evening, a man he didn't know had come up to him, and they had chatted a bit. The man was found murdered the next morning, with four knife wounds. The waitress in the snack bar had stated that Yury was the last person to have spoken with the dead man.

Shortly before this Yury had undergone a serious operation involving trepanation of the skull which he immediately informed the investigators of. However three officers under the direct leadership of the Prosecutor's Investigator Dmytro Tytor began systematically beating him specifically on the head with rubber batons. When he lost consciousness, they flung him into the prosecutor's office basement, and then resumed their "interrogation". By the third day, Yury had lost any sense of reality and he signed not only the "voluntary confession" which they dictated to him, where he declared himself entirely guilty of the killing, but also a whole pile of blank sheets.

The investigation lasted almost two years. All of that time Yury Mosyeenkov was not allowed a lawyer, at first supposedly at his own request. When however a lawyer was appointed, it turned out that for more than 10 months Yury had been held in SIZO without any court order. From October

2005 “no applications from the pre-trial investigation unit were made to the court regarding an extension of the accused Yury Mosyeenkov’s remand in custody”. The Prosecutor General has initiated a criminal investigation into the case, yet is at the same time continuing to insist on the charges of murder. On 1 February 2007 Yury was released on a signed undertaking not to abscond. The court proceedings over the charges of murder are continuing while the case over his being held unlawfully in prison is not being investigated.

Prisoners of the Izyaslav Colony No. 31

On 14 January 2007 all prisoners at the Izyaslav Penal Colony No 31 (more than 1,200 men, first time offenders, and in the main young men from 18 to 22) declared a hunger strike. They were protesting against beatings and degrading treatment by staff, arbitrary punishments (each prisoner who wrote a statement gave glaring examples), infringements of working conditions (only a small percentage of those working, not more than 10%, had wages paid, the others received nothing), bad conditions and medical care (one telephone for everybody, and you had to earn the right to a call; food and medicines beyond their sell by date – there were even some cans of food from 1979), as well as the complete lack of any chance of sending complaints against administration behaviour. One of the prisoners’ demands was the removal of the head of the colony.

On the same day a commission from the State Department for the Execution of Sentences arrived at the colony. It was led by the Deputy Head of the Department Major-General Iltyai who listened to the prisoners’ grievances and promised to rectify the situation. That evening already the prisoners went to supper.

The Department explains the events at No. 31 differently. They say that the young head of the institution Andriy Bozkho was unable to cope with the problems of the colony, and “the informal management of the colony” got out of hand and wanted to determine themselves who would manage the institution and what the rules of behaviour would be. They therefore organized the protest action. Supposedly it was no hunger strike since none of the prisoners wrote a personal statement refusing to eat. The prisoners had received very good parcels from home coming up to New Year, and could afford to put such pressure on the administration. Such behaviour was a threat to order in the colony and the organizers of the action needed to be punished.

The punishment was not long in coming.

On 22 January 2007 a special anti-terrorist unit was brought into the colony, with men in masks and military gear. They brutally beat more than 40 prisoners and took them away, half-dressed, some of them without even house shoes (all their things were left in the colony), beaten and covered in blood, with broken noses, ribs and bones, and with teeth knocked out, to the Rivne and Khmelnytsky SIZO where they were again brutally beaten. In the SIZO they used torture to extract signed statements that they didn’t have any grievances against the administration of Penal Colony No. 31, against the SIZO, the convoy, and also a statement backdated to 21 January asking to be moved to another colony to serve out their sentence. The prisoners say that they were urinating blood for some time, and for more than a month, they couldn’t move their wrists properly because of the handcuffs used on them.

Try as the Department did to hush the story up, publicly asserting that there’d been no hunger strike, no special forces nor beatings, the mass media reported both the events of 14 and 22 January and later. The parents of the prisoners approached human rights organizations, journalists from TV Channels 5 and “1 + 1”, and other media outlets. The human rights organizations and parents wrote statements to various bodies demanding that a criminal investigation be instigated in connection with the unlawful actions of the Department.

The State Department for the Execution of Sentences has still not admitted that the prisoners were beaten and that their belongings disappeared. The Secretariat of the parliamentary Human Rights Ombudsperson sent the complaints received from parents and the prisoners themselves to the prosecutor's office and to the selfsame Department (!), although personnel from the Secretariat had themselves been in Colony No. 31. All prosecutor's offices at different levels have refused to launch a criminal investigation and have maintained that the behaviour of Department staff was lawful. With regard to the loss of belongings, the prosecutor's office in the Khmelnytsky region claimed that the belongings had been moved together with the prisoners, that the money in their personal accounts had been handed over and used for the needs of Izyaslav Penal Colony No. 31 on the written authorization of the prisoners themselves. The Prosecutor General, in contrast, has acknowledged that on 22 January methods of physical influence were applied to prisoners – but says this was as the result of resistance from the prisoners to a search. It also maintains that since not one of the prisoners has made a complaint alleging unlawful behaviour, there are no grounds for launching a criminal investigation.

The events of 22 January were subjected to scrutiny by the UN Committee against Torture which reviewed Ukraine's Fifth Periodic Report at its 38th session on 8 and 9 May. When asked by one of the Committee's experts what had happened at Izyaslav, the Government Delegation responded that a special purpose unit had been brought in to quell a riot. Nonetheless, in their "Conclusions and Recommendations" on 18 May, the Committee directly stated that: "The State party should also ensure that the anti-terrorist unit is not used inside prisons and hence to prevent mistreat and intimidation of inmates"

The Head of the Department Vasyl Koshchynets often repeats that the Department is a law enforcement body which is in the frontline of the fight against crime. Yet throughout the world the penal system is a civilian service. In Ukraine this system requires radical reform. Conditions must really be created which ensure respect for prisoners' dignity, minimize the adverse effects of imprisonment, eliminate the enormous divide between life in penal institutions and at liberty, and support and consolidate those ties with relatives and with the outside world which best serve the interests of the prisoners and their families.

In our view, a shocking crime was committed. It remains however unpunished since there is effectively no system of investigating allegations of torture. After all the prosecutor's office on the one hand only agrees to launch a criminal investigation where there are statements from victims of torture, while on the other, fails to take any effort to ensure those people's safety. They are thus under the total control of their torturers which simply leaves no chance for complaints. Other mechanisms are therefore needed to prevent torture and to investigate these crimes.

Recommendations

Of the recommendations from last year's report, only that calling for immediate ratification of the Optional Protocol to the UN Convention against Torture was implemented. Therefore all other recommendations remain in force:

– adopt at legislative level a concept for creating a system of prevention and protection from torture and ill-treatment, as well as an action plan, based on the said concept, with clearly defined directions and stages of activity;

– bring the elements specified of the crime of "torture" into line with Article 1 of the UN Convention against Torture;

– institute the gathering of statistical data in courts and law enforcement agencies on crimes which contain elements of "torture" in the understanding of Article 1 of the UN Convention against Torture;

– make it impossible to apply amnesty and parole for people who have committed actions, which have elements of «torture» in the meaning of Article 1 of the UN Convention against Torture;

– promote the creation of effective mechanisms of public control over investigations into allegations of torture and ill-treatment;

– provide by legislative means for the activities of non-governmental experts and expert bureaux;

– ensure access by victims to medical documents which are of importance in proving torture or ill-treatment;

– assign the same validity as evidence to conclusions provided by independent medical and other experts, who conduct studies at the request of the alleged victim of torture or their legal representative, as that of conclusions made by experts assigned by an investigator or court;

– provide individuals who initiate an investigation or other legal procedure regarding allegations of torture or ill-treatment access to free legal aid should they be unable to pay for the services of a lawyer;

– introduce provisions in Ukrainian legislation on the inadmissibility of any testimony of the accused (suspect) received at the pre-trial stage of the criminal investigation without a lawyer being present;

– provide the appropriate guidelines to prosecutor's offices and judges for using measures to ensure the safety of individuals who have made an allegation of torture, in particular, if such an individual is held in custody, then to move him or her to another remand centre;

– eliminate the practice whereby judges «extend detention» of suspects held in police custody, or, at least, introduce necessary amendments in order to transfer people whose detention is extended by a judge to a pre-trial detention centre, and not leave them held in police custody;

– introduce into legislation the right of access and the appropriate procedure for gaining access to an independent doctor and independent expert of the person detained's own choosing, especially for persons, who are held in custody;

– review provisions of current legislation in order to provide the right to legal representation to people who make allegations of torture, regardless of whether or not criminal proceedings are initiated;

– provide clear guidelines to prosecutor's offices and judges concerning immediate consideration of claims and complaints related to investigations into torture;

– give individuals facing deportation to another country the right to court review of an appeal against the relevant decision of executive bodies, and appropriate court procedure capable of investigating the circumstances which could significantly influence the decision on deporting (extraditing) the individual to the other state.