

UKRAINE

CAT A/45/44 (1990)

503. The Committee considered the initial report of the Ukrainian SSR (CAT/C/5/Add.20) at its 52nd and 53rd meetings, held on 30 April 1990 (CAT/C/SR.52 and 53).

504. The report was introduced by the representative of the State party who stated that a genuinely revolutionary process was currently taking place in the Ukrainian SSR, where the reforms being adopted were intended to modify radically the legal status of the individual, to strengthen democracy and establish the rule of law. On 15 May 1990, the Supreme Soviet of the Ukrainian SSR was to begin some important legislative work dealing, in particular, with the amendment of the Constitution of the Republic and legal reform. The Supreme Soviet would, in addition, be considering drafts of a new criminal code, a new code of criminal procedure and a new code on re-education through work.

505. The representative supplemented the information contained in the report by informing the Committee of the measures adopted by his Government since the submission of the report and gave a detailed description thereof. He referred, *inter alia*, to the establishment of a provisional Committee against Criminality whose mandate included supervision of the activities of the bodies responsible for applying the law. New legislative provisions concerned the time-limits on detention during the investigation and strengthening the rights of the accused during such investigation. In that connection, he emphasized that cases of abuse of power on the part of agents of the Ministry of the Interior had been decreasing every year; in 1989, only eight officials had been found guilty of such abuse, as against 67 in 1985.

506. He also informed the Committee that, since 1977, humanization of penal legislation had made it possible to replace certain sentences of imprisonment by fines or sentences to rehabilitation through work. Only one person sentenced out of three (as against one out of two previously) had to serve a term of imprisonment. Over the last three years, the number of persons detained in work camps had fallen by about one half to 88,000 at the beginning of 1990.

507. The representative stated that the new legislation reduced the number of offences punishable by death, although the death penalty would be retained in the new criminal code. He said that an alternative penalty of deprivation of freedom would be provided for in all cases and that the death penalty could not be applied to minors, women or persons over the age of 60.

508. To conclude, the representative stated that the Ukrainian SSR attached much importance to the appropriate training of the personnel responsible for applying the laws. In all the Republic's law schools and faculties, the study of international human rights instruments had pride of place.

509. The members of the Committee congratulated the representative of the State party on his introduction of the report and for providing the Committee with additional information, and praised the efforts made by the Ukrainian SSR to amend its legislation so as to ensure greater respect for human rights. Having noted that the initial report was both clear and dense, though very

succinct, they asked for some clarifications on certain aspects, both general and specific, of the application of the Convention against Torture in the Ukrainian SSR.

510. Generally speaking, the members asked for details on the machinery for applying the Convention in domestic law and on the possibilities of citing its provisions in court. In addition, they recalled that the Ukrainian SSR had entered some reservations on the subject of articles 20 and 30 of the Convention and had not made the declarations provided for in articles 21 and 22.

511. Information was requested on the organization of the judiciary and on the division of powers of the courts according to offences. Questions were also asked concerning the guarantees of the independence of the judiciary, the relationship between the prosecutor and the investigators and the practical steps that had been taken to implement article 56 of the Constitution. Clarifications were requested on the right to redress of persons stating they had been victims of cruel, inhuman or degrading treatment. Lastly, members expressed the view that the average duration of the pre-trial detention provided for in Ukrainian legislation was excessive and asked for more information on the subject.

512. Members of the Committee also wished to know how the rights of the defence were ensured during criminal trials, how legal aid was granted, if there were enough lawyers in the Ukrainian SSR, what penalties were provided for the offences of torture and whether the Government of the Ukrainian SSR was encountering any difficulties in applying the provisions of the Convention against Torture.

513. With respect to the application of article 1 of the Convention, members of the Committee asked whether the term “violence” used in the report covered the definition of torture given in that article, whether forms of corporal punishment existed in the Ukrainian SSR and what legislative provisions had been adopted to limit the application of the death penalty.

514. With regard to the application of article 2 of the Convention, members of the Committee wished to know what was the legal rule establishing the principle that the orders of a superior officer or of a public authority could not be invoked as a justification of torture.

515. In connection with article 3 of the Convention, some members of the Committee, who had noted certain contradictions between paragraphs 32 and 33 of the report, asked whether the Ukrainian SSR regarded itself as competent in the event that an individual to which it had granted asylum was accused of having engaged in torture in another country. They asked for details of the relationship between article 36 of the Constitution and the obligation imposed by the Convention in its article 3.

516. With respect to article 4 of the Convention, some members asked what were the provisions of articles 165 to 167, 175 and 180 of the Criminal Code in general, and of article 175 in particular, what authority was entitled to reach a decision concerning the mental health of persons committed to a psychiatric institution, whether there was any appeal against such a decision and who chose the psychiatrist responsible for judging the mental health of a person.

517. With reference to articles 5, 7 and 8 of the Convention, detailed information was requested

on the jurisdiction of the Ukrainian SSR, on the general application of the aut dedere aut judicare rule, and on the practical application of article 8 of the Convention.

518. With reference to the application of article 9 of the Convention, some members of the Committee pointed out that the obligation to assist other States in connection with criminal proceedings placed upon the Ukrainian SSR by the Convention was distinct from any obligations it might have contracted under international treaties.

519. In connection with articles 10 to 15 of the Convention, members of the Committee asked whether the personnel responsible for ensuring respect for the law received specific information on the prohibition of torture and on ways of identifying victims of torture and whether medical personnel was trained in the treatment to be given to such victims. Having noted with satisfaction that the legal system of the Ukrainian SSR provided for full compensation for any harm, including moral harm, done to the victims of torture, some members wished to know whether there was also any provision for medical rehabilitation. They wished to know the contents of the decision by the plenary assembly of the Supreme Court on 27 December 1985, the number of convictions for torture and the penalties applied thereto. On the subject of articles 12, 13 and 14 of the Convention, some members wished to know how many cases had been prosecuted and what the results of the criminal proceedings had been. They also wished to know whether statements or confessions obtained by the use of violence, threats or any other illegal measure could be admitted as evidence in legal proceedings.

520. The representative of the State party, replying to the general questions raised by members of the Committee, referred to the relationship between the Convention against Torture and his country's domestic legislation and pointed out that the Criminal Code and the Code of Criminal Procedure contained no general norms regarding the primacy of international treaties. However, in the Civil Code, the Family Code and other legislative acts it had been proposed that, where there was a conflict between international and domestic law, the international treaty would prevail. It was always permitted to refer to international obligations in judicial procedure. He assured the Committee that, in the preparation of future legislation, the rule of the primacy of international treaties would be enshrined in law.

521. The representative of the State party described in detail the judiciary system, indicating that, in the Ukrainian SSR, a judicial reform process was under way with a view to implementing the principle of the separation of powers and ensuring that judges were genuinely independent. He said that there were no disciplinary tribunals per se. When necessary, a judge's colleagues on the bench would meet to consider any alleged breaches of his professional ethics in the conduct of his work. He confirmed that there were no political prisoners in the Ukrainian SSR. With regard to overcrowding in prisons, he pointed out that over the past three years the prison population had been halved to 88,000. The legal norm was a minimum of two square metres per person and two and a half square metres for minors. There was therefore no overcrowding, and the situation would improve further in the longer term.

522. Turning to the questions concerning custody, preventive detention, the rights and obligations of investigators and the division of authority between investigators and prosecutors, he informed

the Committee that persons could be detained only when there were grounds for assuming that a crime had been committed or when there was a likelihood that a person would try to escape the jurisdiction of the court or might substantially affect the course of justice. If there were no such grounds, other methods were used: for example, restriction on the person's right to leave a particular locality without the investigator's permission. The investigators were bound to conduct their investigations and the procurators were bound to oversee the whole investigation process, regardless of whether the investigating body was an organ of the Ministry of Internal Affairs, the Procurator's Office or the Committee for State Security. It was currently being considered to merge investigating bodies into one single system with a view to strengthening legality and the rights of suspects and accused.

523. As for cases involving breaches of discipline, he said that out of the 365 people investigated for various breaches, 247 had been examined in 1989. Of the remainder, seven had been sentenced for assault.

524. With reference to the questions raised in connection with article 1 of the Convention, he stated that the term "torture" did not exist in Ukrainian legislation. The use of violence or humiliating treatment referred to in legislation was, however, regarded as physical or mental torture. A special chapter in the law on crime against the administration of justice established liability for a whole range of unlawful acts. There were no corporal punishments in the Ukrainian SSR and such treatment would be regarded as an act of violence against the prisoner and be punished accordingly. As for the death penalty, he stated that the trend was to move towards its abolition. The 17 capital offences enumerated in the old Criminal Code had been reduced to 6 in the new Code: crimes against the person, aggravated homicide, high treason, terrorism, rape of a minor and sabotage. In practice, no death sentences had been carried out on women in general in the past 15 years, and in the last 10 years there had been only one case, involving a war crime dating from the Second World War, of a person over the age of 60 being executed.

525. With regard to questions raised on article 2 of the Convention, the representative pointed out that, under current legislation, the person ordering the torture was as liable as the executor of that order. As for the complaints lodged against officials, he said there had been about 30,000 complaints from people who had served sentences, of which about 2 per cent or 2.5 per cent had been upheld. He also provided the Committee with detailed information regarding solitary confinement and explained that the law clearly regulated the actual duration of custody; for administrative offences, a person could be held for no more than three hours; where a person was suspected of having committed a crime, detention could last no longer than three days. Furthermore, the Procurator must be notified of the arrest within 24 hours.

526. The representative of the State party confirmed that article 3 of the Convention against Torture would protect a person against extradition from the Ukrainian SSR, although his case might not be covered by article 36 of the Ukrainian Constitution.

527. With reference to article 5 of the Convention, the representative stated that where the offence was committed on the Ukrainian territory, all persons, whether citizens, stateless persons or aliens enjoying diplomatic immunity, were liable under criminal laws of the Ukrainian SSR. Where the

offence was committed abroad, citizens of the USSR committing such crime were liable to prosecution on their return. Currently, persons committing such offences were liable under Ukrainian law, regardless of whether they were also liable to prosecution abroad. With regard to foreigners, he emphasized that if the crime was not provided for in an agreement between the Ukrainian SSR or the USSR and the foreign State, such persons were not liable to prosecution for the offence. In that case, the laws of the place where the offence has been committed were applicable.

528. Replying to the questions on article 10 of the Convention, the representative informed the Committee that a special human rights training programme was being run, under which practically all educational institutions gave special courses on human rights which included the Convention against Torture in their curricula.

529. Turning to the questions raised in connection with article 11 of the Convention against Torture, the representative said that, for the moment, a lawyer was not present when a person was taken into custody. An amendment to the legislation according to which a lawyer could be involved from the moment a person was taken in custody was currently being considered. However, he further stated that a lawyer was not normally present when a person was committed to a mental hospital, although if the person requested the services of a lawyer, he could do so. He confirmed that such committal proceedings could be appealed and provided detailed information on the circumstances in which a person could be committed to a psychiatric institution. He pointed out, in that respect, that since 1988 much progress had been made in that field. The representative also gave a detailed description of the supervisory and monitoring functions carried out by the Procurator's Office, the Committee against Criminality, the permanent commission of people's deputies to be set up within the new Supreme Soviet, as well as by a number of non-governmental organizations.

530. With regard to articles 12 to 15 of the Convention, the representative clarified the decision of the Supreme Court of the Ukrainian SSR concerning penalties against persons exceeding their powers or official authority. He further explained that the definition of the term "violence" had been extended to cover the illegal deprivation of liberty; striking; beating; acts of torture, and acts causing bodily harm, thus covering all acts of physical torture. He added that the Supreme Court had expanded the definition to include psychological violence too. Thus that decision was a significant addition to the legislation, and was in keeping with the Convention against Torture, which had inspired it directly.

531. Responding to other questions, he said that compensation would be given for both actual and direct damage to health and for any reduction in the ability to work; that the Supreme Court of the Ukrainian SSR had in 1989 heard nine actions seeking compensation for damage to health and that none of the cases involved torture. He also provided the Committee with statistical data on the measures taken to rectify past illegalities. Lastly, he confirmed that evidence obtained as a result of torture would, without reservation, be considered inadmissible.

532. The members of the Committee thanked the representative of the Ukrainian SSR for the replies given and for the report submitted. It was noted with great satisfaction that legislative and

other measures had been taken or were about to be taken to improve human rights safeguards in general and the application of the Convention against Torture in particular. The Committee took note with satisfaction especially of the changes envisaged by the forthcoming reform of the penal legislation of the Ukrainian SSR and hoped that information on the outcome of those changes would be included in the next periodic report.

CAT A/48/44 (1993)

116. The Committee considered the second periodic report of Ukraine (CAT/C/17/Add.4) at its 125th meeting, on 12 November 1992 (see CAT/C/SR.125).

117. In introducing the report, the representative of the State party pointed out that an act on the validity of international agreements in Ukrainian territory had been promulgated on 10 December 1991 and that international agreements ratified by Ukraine formed an integral part of national law. He then referred to the changes taking place in Ukraine, which had started with the proclamation of its independence on 24 August 1991. Generally, it had been decided that the laws in force under the previous regime would be maintained if they were compatible with the new Constitution of Ukraine which was being drafted. In particular, considerable attention was being given to reducing the number of offences punishable by the death penalty and to including a definition of torture in the new codes which were being prepared. The reform of the judiciary had not yet been completed, but legal measures were under consideration to guarantee the separation of powers and the independence of the judiciary. In addition, the new Supreme Soviet of Ukraine had set up three Commissions. The first dealt with legislative activities, the second with questions of public order and the third was a human rights commission which considered complaints submitted to it. The authorities also planned to set up a new human rights institute which would be responsible for monitoring the implementation of the relevant legislation. Finally, the representative provided some information on the judicial bodies existing in Ukraine and stated that his Government was actively working on the democratization and modernization of the Ukrainian legal system.

118. Members of the Committee were of the view that the current circumstances and changes in Ukraine made it impossible to judge the results achieved and to assess how the Convention was actually implemented in that country. Perhaps a new report was needed. Furthermore, the report under consideration did not follow the Committee's general guidelines for the preparation of reports and did not refer to any specific decision or provision taken to give effect to each of the articles of the Convention; it set forth principles and said nothing about their practical implementation. No information had been provided, in particular, on measures taken in Ukraine to implement articles 3 and 5 to 15 of the Convention.

119. Members of the Committee also observed that some provisions of the Convention were reflected in national legislation but not all, and wished to know what measures were being taken to incorporate the provisions of the Convention into internal law and whether the Convention could be invoked before a court. In addition, they asked whether the public and, in particular, the convicted prisoners and detainees were informed about the Convention, what the cases were in which human rights and freedoms could be restricted, as referred to in the Act on criminal investigation activities, and what legal grounds existed for those restrictions. Further information was requested on the amendments which had been made to existing legislation, and on law enforcement. The text of the legislation mentioned in the report was also requested.

120. In connection with article 2 of the Convention, members of the Committee wished to know, in particular, what the maximum length of pre-trial detention was, at what stage the lawyer was brought in to assist the accused person, and whether the rules governing arrest and detention

applied equally to the ordinary police, the State security forces and the armed forces.

121. With reference to articles 1 and 4 of the Convention, members of the Committee wished to know whether the existing Ukrainian Penal Code gave a definition of torture, what the penalties were for public officials who violated the Convention, and whether there were any cases of torture in Ukraine.

122. With regard to articles 6 and 7 of the Convention, it was asked whether there was an immigration act in Ukraine, whether ordinary criminals and military personnel found guilty of a crime were subject to the same rules and regulations and what happened to convicted prisoners who served their sentence in another State.

123. Referring to article 10 of the Convention, members of the Committee requested information on measures taken for the training of public officials about matters relating to torture and its prohibition.

124. In his reply, the representative of Ukraine, referring to the difficult transitional period of his country, stressed that three different governments had been formed in less than one year and in such circumstances a government had no time to adopt legislation aimed at providing solutions to the problems which had been mentioned. In particular, the new codes to which reference had been made during the discussion did not yet exist. In view of the complexity of the situation, it would be very difficult, therefore, to provide supplementary information, apart from the specific information on changes which had just been reported.

125. Referring to questions of a general nature raised by the members of the Committee, the representative stated that in Ukraine the provisions of international treaties had force of law without having to be incorporated into the legislation, except in cases where implementation machinery had to be established. For example, the Convention against Torture provided for compensation to be paid to victims for injury or damage they had suffered. In that case, specific legislation had been enacted to compensate, in particular, victims of political repression. The representative also stressed that the independence of the judiciary was a guarantee against torture and confessions obtained by force and, in his view, the adoption of an act on the judiciary providing for such independence was the most important measure to be taken at present in his country. With regard to cases of restriction on the exercise of human rights, he said that, in the past, cases of restriction were kept secret, while, at present, they were established by law. For example, it was known in which cases telephone listening devices could be used and when correspondence could be opened.

126. Referring to article 2 of the Convention, the representative explained that an individual could be held in pre-trial detention for three hours but, if there were grounds for believing that he would be accused of a crime and it was necessary to hold him longer, he could be held for three days, provided that, during the first 24 hours, the procurator had been notified of his arrest and had made sure that it had been carried out in conformity with the law. The accused could have access to a lawyer after three days and once he had been charged; that was the general rule, whether the person had been detained by the police, the army or the security forces. However, in practice, that was still

not the case. The representative pointed out that, not long before, the maximum period of pre-trial detention in Ukraine could be extended by the procurator of the Union for up to one and a half years.

127. With regard to article 4 of the Convention, the representative provided figures on proceedings instituted in the last three years against public officials and members of the police force. Those figures showed that legal action had been taken against 1,567 officials in 1990, 438 in 1991 and 1,002 in 1992. He also provided additional information on the four crimes which were punishable by the death penalty under the Ukrainian Penal Code and underlined that under the Soviet Code 37 crimes had been made punishable by the death penalty.

128. With reference to articles 6 and 7 of the Convention, the representative stated that the rules applied to extradition had not yet changed but, in his view, appropriate provisions on extradition would be included in the new Constitution.

129. With regard to article 10 of the Convention, the representative indicated that a special training institute for public officials was to be set up in Ukraine to ensure that all Government departments had competent managerial staff. The training of psychologists who would be sent to work in penal establishments would include the study of international human rights instruments and the legislation on the implementation of the Convention against Torture, in particular.

Conclusions and recommendations

130. The Committee thanked the Government of Ukraine for having submitted its second periodic report on time. It took note, in particular, of the part of the report dealing with the laws and other measures introduced to ensure respect for human rights in general and the application of the Convention in particular.

131. The Committee also noted that the second periodic report of Ukraine was not fully in accordance with the general guidelines regarding the form and contents of periodic reports and recommended that the next periodic report should describe in detail the measures planned or taken with a view to the application of the provisions of the Convention, and would appreciate it if legislative texts of interest, such as the Constitution, codes and new laws, could be transmitted as soon as they had been drawn up to the Secretariat for communication to the Committee against Torture. The Committee expressed the view that, within approximately two years, the desirability of requesting an additional report from Ukraine should be considered.

132. In addition, the Committee expressed the hope that the Supreme Council and Government of Ukraine would take all necessary steps to ensure application of the provisions and respect for the requirements of the Convention.

CAT A/52/44 (1997)

122. The Committee considered the third periodic report of Ukraine (CAT/C/34/Add.1) at its 283rd, 284th and 287th meetings, on 29 April and 1 May 1997 (CAT/C/SR.283, 284/Add.1 and 287), and formulated the following conclusions and recommendations.

1. Introduction

123. The Government of Ukraine submitted its third periodic report in due time, in accordance with article 19, paragraph 1, of the Convention.

124. The Committee expresses its satisfaction with the report, which, in the main, conforms to the general guidelines concerning the presentation and content of such reports.

125. The Committee heard comments on and clarifications of the report by the representatives of Ukraine.

126. Following its consideration and discussion of the report, the Committee noted the following.

2. Positive aspects

127. A positive aspect of Ukraine's compliance with the Convention is the adoption, on 28 June 1996, of its Constitution, article 28 of which prohibits torture.

128. The Committee notes with satisfaction that Ukraine joined the Council of Europe on 9 November 1995 and that it has signed the European Convention on Human Rights and 11 protocols to that Convention. The Committee supports the intention of Ukraine to ratify that Convention.

129. The Committee welcomes the incorporation by Ukraine, in its legislation on the activities of law enforcement bodies, of provisions (such as article 5 of the Act on the Militia and article 5 of the Act on the Security Service) ensuring respect by law enforcement personnel for human rights and freedoms and on the obligation to comply with them.

130. The Committee expresses the hope that the Government will make efforts to bring its legislation and the practices of law enforcement bodies into line with the task of protecting the rights and freedoms of citizens proclaimed by the Convention.

3. Principal subjects of concern

131. The Committee is concerned about the large number of reports by non-governmental organizations of cases of torture and violence committed by officials during preliminary investigations, causing suffering, bodily injury and, in a number of cases, death.

132. The State party lacks a sufficiently effective system of independent bodies capable of

successfully investigating complaints and allegations of the use of torture, preventing and putting an end to torture and ensuring that the perpetrators of such acts are held fully responsible for them.

133. The legislation in force fails to provide any effective judicial control of the lawfulness of arrests.

134. Although article 28 of Ukraine's Constitution prohibits the use of torture, its criminal legislation fails to define torture as a distinct and dangerous crime. In the circumstances, this provision of the Constitution is merely declaratory. Provisions on criminal responsibility for the imposition of inhuman and degrading punishment are also lacking.

135. The Committee is seriously concerned about the scale on which the death penalty is applied as being contrary to the European Convention on Human Rights and the European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The Committee is also concerned about the large number of provisions in the Criminal Code that envisage the imposition of the death penalty, including an attempt on the life of a militiaman. This situation is contrary to the obligation assumed by Ukraine to introduce a moratorium on the imposition of the death penalty.

136. The Committee considers that the systematic mistreatment and beating of recruits in the armed forces constitutes a flagrant violation of the Convention.

137. The conditions prevailing in premises used for holding persons in custody and in prisons may be described as inhuman and degrading, causing suffering and the impairment of health.

138. A major obstacle in efforts to prevent torture is the difficulty experienced by accused persons in gaining access to a lawyer of their choice in cases where the lawyer's participation in the proceedings depends on his presentation of an authorization to act as defence counsel; this problem can be solved only by the Ministry of Justice which issues such authorizations.

139. The Committee expresses regret that Ukraine has not as yet joined those countries which have recognized the provisions of article 20 of the Convention.

140. The Committee notes that the report contains insufficient information and, in particular, gives no statistical data on the number of persons serving custodial sentences or arrested as a preventive measure, on the number of complaints made regarding the use of torture or on the number of persons prosecuted for that offence. There is also insufficient information about conditions of detention. No details are provided with regard to compensation for persons subjected to torture or their rehabilitation.

141. The Committee is particularly concerned that article 29 of the Constitution of Ukraine has been suspended for five years, especially since the provisions of that article are of great importance in ensuring the observance of the law and preventing the use of torture. The Committee notes the lack of an independent body for monitoring compliance with the Convention in all its aspects.

4. Recommendations

142. The main issue in connection with the fulfilment by Ukraine of the requirements of the Convention concerns the drafting and adoption of directly enforceable regulatory instruments, as only by this means can the provisions of the Convention, and the relevant provision of the Constitution of Ukraine, be applied.

143. Priority should be given to the adoption of a new criminal code, defining torture as a punishable offence, and a new code of criminal procedure, guaranteeing the right of an accused person to counsel at all stages of criminal proceedings, as well as to effective and practical supervision by the courts of preliminary confinement to preclude any use of torture at the stage of detention or arrest or at subsequent stages of criminal proceedings.

144. Another major task is to extend supervision by the judicial and civil authorities over the work of the law enforcement agencies and to establish a system of independent institutions for rapid and effective follow-up of complaints regarding the use of torture and other degrading treatment or punishment.

145. It is highly desirable that the widest possible publicity should be given to the main provisions of the Convention through the press and other media and that practical training in the rules and standards of the Convention should be made available for investigators and the staff of penal institutions.

146. The Committee recommends that interrogation of any person detained or arrested without the participation of defence counsel or when the person is being held incommunicado should be prohibited by law.

147. The Committee considers the 18-month maximum period during which an accused person may be held in custody to be excessive and recommends that it should be reduced.

148. The Committee encourages the Government of Ukraine to consider withdrawing its reservation to article 20 of the Convention and to make the declarations under articles 21 and 22, as well as ratify Protocol No. 6 to the European Convention on Human Rights.

149. The Committee considers that a radical reform of correctional institutions, such as colonies and prisons, and places of pre-trial detention is essential to ensure full compliance with the provisions of the Convention. Solitary confinement and especially conditions of imprisonment give rise to particular concern.

150. The Committee recommends that the moratorium on the application of the death penalty be given permanent effect.

151. It is particularly important, in the Committee's view, to organize special training for the personnel of correctional institutions, especially doctors, in the principles and standards of the Convention.

152. The Committee believes that there is a need to establish by law a procedure for providing redress for injury caused to victims of torture, including compensation for moral injury, and to define the arrangements, amount and conditions for such compensation.

CAT A/57/44 (2002)

54. The Committee considered the fourth periodic report of Ukraine (CAT/C/55/Add.1) at its 488th, 491st and 499th meetings (CAT/C/SR.488, 491 and 499), and adopted the following conclusions and recommendations.

A. Introduction

55. The Committee welcomes the punctual submission of the fourth periodic report of Ukraine. It notes that the report was not in total conformity with the Committee's guidelines for the preparation of periodic reports. The Committee also notes that the report mainly addresses legal provisions and lacks detailed information with respect to some articles of the Convention as well as information on the follow-up to the recommendations it made after the examination of the third periodic report. However, the Committee wishes to express its appreciation for the extensive and informative oral answers given by the delegation of the State party during the consideration of the report.

B. Positive aspects

56. The Committee notes with appreciation:

- (a) The ongoing efforts by the State party to reform its legislation, including the adoption of a new Criminal Code, which contains an article qualifying torture as a specific crime, the establishment of a new Constitutional Court, the enactment of new legislation relating to the protection of human rights and the adoption of a new Law on Immigration;
- (b) That although Ukraine is not a party to the 1951 Convention relating to the Status of Refugees, nor to its 1967 Protocol, it has adopted a new Law on Refugees in June 2001 that adheres, inter alia, to that Convention's definition of "refugee". The Committee also welcomes the adoption of a new Citizenship Law in January 2001, which enables formerly deported persons to return to Ukraine and obtain Ukrainian citizenship;
- (c) The removal from the State Secret Act of offences concerning breaches of human rights;
- (d) The abolition of the death penalty;
- (e) The information included in the report that, by Act of 5 November 1998, Ukraine acknowledged the Committee's jurisdiction, as provided for by articles 21 and 22 of the Convention;
- (f) The establishment of the Office of the Commissioner for Human Rights (Ombudsman), charged with the protection of human rights in Ukraine, and that the Ombudsman can visit and have full access to all places where persons are deprived of liberty;

(g) The assurances given by the head of delegation that the reports of the three visits of the European Committee for the Prevention of Torture, which took place in 1998, 1999 and 2000, will be published.

C. Subjects of concern

57. The Committee expresses its concern about the following:

(a) The numerous instances indicating that torture is still being regularly practised in the State party and that, according to the Commissioner for Human Rights, 30 per cent of prisoners are victims of torture;

(b) The forced deportation of four Uzbek nationals, members of the Uzbek opposition, who were at high risk of being subjected to torture and whose case was the subject of an urgent appeal by the Special Rapporteur on torture;

(c) The fact that judges sit on the newly formed "coordination committees on crime fighting" together with representatives of the Ministry of the Interior, a situation which is contrary to the principle of the separation of powers and may affect the independence of the judiciary;

(d) The numerous convictions based on confessions and the criteria for the promotion of investigators which are said to include the number of solved crimes, which can lead to torture and ill-treatment of detainees or suspects to force them to "confess";

(e) Failure on the part of the authorities to carry out prompt, impartial and thorough investigations into allegations of such acts and to prosecute and punish those responsible;

(f) The information received by the Committee that relatives and lawyers are informed about the detention only after the arrested person has been transferred from police custody to a pre-trial detention facility, a process that usually takes not less than two weeks. The Committee is also concerned about the lack of clear legal provisions about the exact time when a detained person can exercise his right to a defence counsel, a medical examination, and to inform a family member of his detention;

(g) The duration of pre-trial detention, which can last for up to 18 months according to the law but which in practice can be extended for up to three years, of administrative detention for up to 15 days, and of detention of "vagrants" for up to 30 days;

(h) Long-term prison sentences for the non-violent expression of ideas and information;

(i) Reported threats and harassment, including ill-treatment, of independent journalists and others who have raised allegations of abuses by officials;

(j) Overcrowding and lack of access to basic hygienic facilities and adequate medical care, as well as the high incidence of tuberculosis, in prisons and pre-trial detention centres;

(k) The lack of adequate training of police and prison personnel in their duties under the law and on the rights of detainees;

(l) Despite certain progress, the practise of bullying and hazing (dedovshchina) of young conscript soldiers is still widely practised in the armed forces.

D. Recommendations

58. The Committee recommends that the State party:

(a) Take effective measures to prevent acts of torture and ill-treatment in its territory, in view of the persistent reports that torture is still regularly practised;

(b) Deposit with the Secretary-General its declaration accepting the Committee's competence with respect to articles 21 and 22 of the Convention and the removal of its reservation in regard to article 20;

(c) Ensure that its competent authorities strictly observe the principle enshrined in article 3 of the Convention not to expel, return or extradite a person to a State where he/she might be subject to torture;

(d) Establish its jurisdiction over offences of torture even if the offender is not a national of the State party, but is present in any territory under its jurisdiction and, where it does not exercise jurisdiction that it extradite the offender;

(e) Clarify and reconcile the sometimes contradictory provisions pertaining to the time at which a detained person has the right to a defence counsel and to ensure that this right is exercised from the moment of arrest;

(f) Ensure that there is a legal prohibition against carrying out interrogations of detainees without the presence of a defence counsel of his/her choice;

(g) Take appropriate measures to ensure the independence of the judiciary and counsel for defence, as well as the objectivity of the Procuracy, in the performance of their duties, in conformity with international standards;

(h) Ensure in practice absolute respect for the principle of the inadmissibility of evidence obtained through torture;

(i) Take effective steps to establish a fully independent complaints mechanism to ensure prompt, independent and full investigations into allegations of torture, including numerous detailed allegations received from various non-governmental organizations, both national and international;

- (j) Take effective measures to improve conditions in prisons and pre-trial detention centres, including those relating to space, various facilities and sanitation, and establish a system of inspection of prisons and detention centres by independent monitors, whose findings should be published;
- (k) Shorten the current 72-hour pre-trial detention period during which detainees may be held in isolation cells prior to being brought before a judge;
- (l) Expedite the process of training of law enforcement and medical personnel as to their duty to respect the rights and dignity of persons deprived of liberty;
- (m) Take effective measures to prevent and punish trafficking of women and other forms of violence against women;
- (n) Adopt a more effective system to end the practise of bullying and hazing (*dedovshchina*) in the armed forces, through training and education, and prosecute and punish offenders;
- (o) Establish a procedure for providing redress for victims of torture, including fair and adequate compensation;
- (p) Continue the programme against tuberculosis in prisons and pre-trial detention centres;
- (q) Widely disseminate the Committee's conclusions and recommendations, in all appropriate languages, in the country.