

(Part of A/57/44)

Ukraine

1. 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

2. 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

3. 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

4. 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

5. 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.