



**Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

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Addendum

UKRAINIAN SOVIET SOCIALIST REPUBLIC

[17 January 1990]

I. General information

1. The Ukrainian SSR has consistently been in favour of eliminating the shameful practice of torture from people's lives and supports the United Nations efforts to get it completely banned everywhere. Ukrainian representatives played an active part in the drafting and adoption of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by the United Nations in 1984. The Convention was ratified by the Presidium of the Supreme Soviet of the Ukrainian SSR on 27 January 1987.
2. The basic legal principles which inevitably lead to the prohibition of torture and other cruel forms of treatment are contained in the Constitution (Fundamental Law) of the Ukrainian Soviet Socialist Republic. Thus, according to article 4, the Soviet State and all its bodies function on the basis of socialist law, ensure the maintenance of law and order and safeguard the interests of society and the rights and freedoms of citizens.
3. The Constitution also establishes that citizens of the Ukrainian SSR enjoy in full the social, economic, political and personal rights and freedoms proclaimed and guaranteed by the Constitution of the USSR, the Constitution of the Ukrainian SSR and by Soviet laws. The socialist system ensures enlargement of the rights and freedoms of citizens and continuous improvement of their living standards as social, economic and cultural development

programmes are fulfilled. Respect for the individual and protection of the rights and freedoms of citizens are the duty of all State bodies, public organizations and officials (Constitution of the Ukrainian SSR, arts. 37 and 55).

4. The Fundamental Law of the Republic establishes and guarantees the principle of the equality of citizens of the Ukrainian SSR before the law, without distinction of origin, social or property status, race or nationality, sex, education, language, attitude to religion, type and nature of occupation, domicile or other status (art. 32). Citizens of the Ukrainian SSR have the right to protection by the courts against encroachments on their honour and reputation, life and health, and personal freedom and property (Constitution, art. 55). They are guaranteed inviolability of the person, home, privacy of citizens and of their correspondence, telephone conversations and telegraphic communications (arts. 52, 53, 54).

5. An important guarantee of the rights of the individual is the provision in the Constitution that citizens have the right to lodge a complaint against the actions of officials, State bodies and public bodies. Complaints have to be examined according to the procedure and within the time-limit established by law. Actions by officials that contravene the law or exceed their powers, and infringe the rights of citizens, may be appealed against in a court in the manner prescribed by law.

6. Citizens of the Ukrainian SSR have the right to compensation for damage resulting from unlawful actions by State organizations and public organizations or by officials in the performance of their duties (Constitution of the Ukrainian SSR, art. 56).

7. In the Ukrainian SSR justice is administered only by the courts. The hearing of cases in all courts is collegial. Judges and people's assessors are independent and subject only to the law. A defendant in a criminal action is guaranteed the right to legal assistance. No one may be adjudged guilty of a crime and subjected to punishment as a criminal except by the sentence of a court and in conformity with the law (Constitution of the Ukrainian SSR, arts. 149, 152, 153, 156, 158).

8. The constitutional guarantees cited above are highly important principles of the Republic's legislation and are embodied in its Criminal Code and Code of Criminal Procedure, the Act on the Judicial System in the Ukrainian SSR and other legal instruments. On the basis of these constitutional provisions specific rules are formulated which lay down, for administrative and judicial organs and officials who are authorized to initiate criminal proceedings, to conduct inquiries, investigations and judicial proceedings relating to them and to supervise the execution of sentences by convicted persons, rules and procedures to ensure to the fullest possible extent that the truth of the matter is established, that the law is complied with and that any possibility of the use of torture or other cruel or degrading treatment or punishment is precluded. An account of these provisions is given below.

9. The Ukrainian SSR is not a party to any international agreement containing provisions of wider application than the provisions of the Convention against Torture. However, its criminal and criminal-procedure legislation contains provisions covering a wider range of acts that may be described as cruel, inhuman or degrading treatment.

10. There is nothing in the legislation of the Ukrainian SSR to prevent the provisions of the Convention being invoked before the courts or different judicial and administrative bodies. The provisions of the Convention may be applied in the Ukrainian SSR by implementing the provisions in its legislation which reflect the provisions of the Convention.

11. The Ukrainian Code of Criminal Procedure states that regardless of where a crime may have been committed, criminal proceedings relating to it shall be conducted in accordance with the Code of Criminal Procedure (Code, art. 3). The provisions of the Ukrainian Code of Criminal Procedure are applied in criminal proceedings relating to crimes committed by foreigners, except those enjoying diplomatic immunity. They also apply in the case of crimes committed by stateless persons.

12. The questions raised in the Convention concerning observance of the law in inquiries investigations, and judicial proceedings come within the competence of all the law-enforcement organs: the procurator's office, the Ministry of Internal Affairs and the courts. Cases involving breaches of discipline are dealt with by the appropriate authorities in the service concerned.

13. Persons who have received unlawful treatment during investigation and inquiry may, under articles 110, 234 and 235 of the Code of Criminal Procedure of the Ukrainian SSR, lodge a complaint with the procurator, who is required to examine it within three days and inform the complainant of his decision.

14. Should there be indications in an official's actions of a criminal offence, the procurator will initiate criminal proceedings or refer the matter to an investigator, and if it is established that an illegal act has been committed, send the case for trial.

15. When there is evidence that acts have been committed that fall within the definition of torture, criminal proceedings are initiated by the appropriate bodies independently of any complaint from the victim.

16. It should be pointed out that the person subjected to cruel treatment may lodge an appeal against the actions and decisions of the procurator and court with a higher procurator or a higher court.

## II. Information concerning articles 2-16 of Part I of the Convention

### Article 2

17. As stated in section I above, on the basis of the provisions of the Constitution, specific rules which directly prohibit the use of cruel or degrading treatment or punishment are laid down in the criminal, criminal-procedure, corrective-labour and other branches of Soviet law.

18. Recently, the Ukrainian SSR has taken a number of effective legislative, administrative, judicial and other measures to eliminate unlawful conduct such as was permitted in the past, to stamp it right out in the present and to prevent it in the future.

19. Ukrainian legislation does not contain any clauses on the possibility of using torture in exceptional circumstances.

20. Similarly, an order from a superior officer or a public authority may not be invoked as a justification of torture.

#### Article 3

21. Under article 36 of the Ukrainian Constitution, "the Ukrainian SSR grants the right of asylum to foreigners persecuted for defending the interests of the working people and the cause of peace, or for participation in the revolutionary and national liberation movement, or for progressive social and political, scientific or other creative activity". Accordingly, such persons may not be expelled, returned or extradited to any other State.

#### Article 4

22. The Ukrainian Code of Criminal Procedure (art. 22) prohibits the use of force, threats or other unlawful means to obtain statements from the accused and others involved in the case.

23. Thus, under the Code, unlawful means may not be used to obtain statements, not just from the accused, but also from a suspect, victim or witness, or to obtain an opinion from an expert.

24. Public officials and others who obtain statements by coercion may be prosecuted under articles 165, 166, 167, 175 and 180 of the Ukrainian Criminal Code, depending on the nature of their acts. Thus, under article 175 of the Ukrainian Criminal Code, any person carrying out an inquiry or preliminary investigation who uses unlawful means to coerce a person under interrogation into making statements is liable to deprivation of liberty for up to three years. If in committing the offence he uses force against the person under interrogation or seeks to humiliate him, he is liable to deprivation of liberty for from two to eight years.

25. Officials are also liable to prosecution for arresting or detaining someone or compelling him to attend court in the knowledge that those actions are unlawful, instituting criminal proceedings against a person known to be innocent and putting a person known to be mentally healthy in a psychiatric hospital.

26. Furthermore, under article 166 of the Ukrainian Criminal Code, a person who commits acts that are ultra vires is liable to prosecution. In the absence of any aggravating circumstances, the penalty is deprivation of liberty for up to three years. If accompanied by the use of force or of a weapon or by actions that harass or degrade the victim, the offence is punished by deprivation of liberty for from two to eight years.

27. Under article 19 of the Ukrainian Criminal Code, persons who are indirect participants or accomplices in such offences are also liable to prosecution.

#### Article 5

28. Under article 4 of the Ukrainian Criminal Code, all persons who commit crimes in the territory of the Ukrainian SSR are liable to prosecution under the laws in force in the Republic.

29. Under article 5 of the Ukrainian Criminal Code, citizens of the USSR who commit crimes outside the boundaries of the USSR are liable to prosecution under the law in force in the Republic if proceedings are brought against them or they are committed for trial in the territory of the Ukrainian SSR.

30. Stateless persons in the territory of the USSR who have committed offences outside its boundaries are similarly liable.

31. If the persons in question have been punished abroad for the offences committed, the court may either reduce the penalty imposed on them accordingly or waive it altogether.

32. Foreign citizens are liable under Soviet criminal law for offences committed outside the boundaries of the USSR in cases covered by international treaties.

33. There is no general principle in the existing Ukrainian legislation establishing the criminal jurisdiction of the Ukrainian SSR in cases in which an offence is committed abroad against the life, health, honour, dignity or other rights and legal interests of Soviet citizens (including the offences referred to in article 4 of the Convention).

#### Article 6

34. As already pointed out, irrespective of where an offence is committed, criminal proceedings in the territory of the Ukrainian SSR are conducted in accordance with the Ukrainian Code of Criminal Procedure.

35. Ukrainian procedural jurisdiction covers citizens of the USSR, foreign nationals (apart from persons enjoying diplomatic immunity) and stateless persons (Ukrainian Code of Criminal Procedure, arts. 1, 3).

36. The court, the procurator, the investigator and the body responsible for the inquiry are required, within the limits of their competence, to institute criminal proceedings whenever indications of an offence are discovered and to take all measures required by law to establish the occurrence of the offence, to identify the persons guilty of committing it and to ensure their punishment (Ukrainian Code of Criminal Procedure, art. 4). The investigation of offences covered by articles 165, 166, 167, 175 and 180 of the Ukrainian Criminal Code is carried out by the investigators of the procurator's office (Ukrainian Code of Criminal Procedure, arts. 111, 112). Accordingly, in their investigation they have the obligations laid down in article 4 of the Code of Criminal Procedure. These obligations include keeping the accused in custody with the approval of the procurator (Ukrainian Code of Criminal Procedure, arts. 148 and 155) or taking any other measures of preventive restriction to ensure that the person in question does not escape investigation and trial (Ukrainian Code of Criminal Procedure, arts. 148-154). On the basis of article 12 of the Statute on Preliminary Custody, persons in custody may be allowed by the administration of the place of custody to receive visits from relatives or other persons provided that the official or body handling the case gives permission.

#### Article 7

37. Articles 32 and 154 of the Ukrainian Constitution establish the equality of citizens before the courts and the law. Article 35 of the Constitution guarantees citizens of other countries and stateless persons the rights and

freedoms provided by law, including the right to apply to a court and other State bodies for the protection of their personal, property, family and other rights. Since the procedural jurisdiction of the Ukrainian SSR extends to such persons, the provisions of the Ukrainian Code of Criminal Procedure that specify the rights and duties of those involved in proceedings and guarantee fair treatment at all stages in the proceedings are fully applicable to them.

38. Persons serving any form of sentence have the obligations and enjoy the rights established by law for citizens of the Republic, with some limitations strictly regulated by laws and other instruments. The legal rights and interests of those serving sentences are protected by a whole range of safeguards of an economic, political and legal nature.

#### Article 8

39. The range of extraditable offences is determined by the punishment that the court may impose for their commission (under the law of both contracting parties). As a rule, this punishment is deprivation of liberty for a period of more than one year or a heavier sentence. The criminal penalties under articles 165, 166, 167, 175 and 180 of the Ukrainian Criminal Code show that the offences they cover are extraditable.

#### Article 9

40. Legal assistance is rendered to other States in criminal cases, including cases connected with the acts referred to in article 4 of the Convention, in accordance with the international agreements concluded.

#### Articles 10 and 11

41. Standards for the humane treatment of offenders are embodied in the criminal, criminal-procedure and corrective-labour legislation of the Ukrainian SSR. These and other instruments categorically forbid officials to carry out any of the acts mentioned in article 1 of the Convention. The observance of these rules is continuously monitored by the judicial authorities, the procurator's office and government departments.

42. One of the prerequisites for observance of the Convention in practice is the system for training law-enforcement, teaching and medical personnel concerned in the custody and interrogation of persons held under any form of arrest, detention or imprisonment or having dealings with such persons.

43. The curricula of schools of law and medicine that provide training for staff of law-enforcement bodies and of the medical and psychiatric establishments concerned include the subjects of observance of the law and rules for the treatment of persons involved in criminal proceedings.

#### Article 12

44. Implementation of the requirements set forth in this article is implicit in the fact that Ukrainian criminal-procedure legislation calls for the rapid and full investigation of offences and conviction of the guilty, in the duty of law-enforcement bodies to initiate criminal proceedings within the limits of their competence in every instance where they discover indications of an offence and to take all measures required by law to establish the occurrence



of the offence, identify the persons guilty of committing it and ensure their punishment and in the obligation laid upon those bodies to ensure a thorough, complete and objective investigation of the circumstances of the case.

45. The Supreme Court of the Ukrainian SSR takes all measures within its power to prevent the use of unlawful methods of inquiry and investigation.

46. To that end the courts have, in particular, been instructed that any statement by an accused person, victim, witness or other person involved in the case about the use of unlawful methods of investigation against him should be examined with all possible thoroughness and measures taken to prosecute the person guilty of such unlawful methods of investigation.

47. On 27 December 1985 the Ukrainian Supreme Court adopted a decision of the Plenum on judicial practice in cases involving action taken ultra vires, which clears up any doubtful aspects of the application of article 166 of the Ukrainian Criminal Code.

#### Article 13

48. On the basis of the requirements of article 56 of the Ukrainian Constitution, actions by officials that contravene the law or exceed their powers and infringe the rights of citizens may be appealed against in a court in the manner prescribed by law. Citizens of the Ukrainian SSR also have the right to compensation for damage resulting from unlawful actions by State organizations and public organizations, or by officials in the performance of their duties.

49. The specific ways in which citizens exercise their right to obtain protection from the courts are set forth in detail in Ukrainian legislative instruments, and in particular in the Code of Criminal Procedure.

50. On the basis of the provisions set forth in articles 95 and 96 of the Ukrainian Code of Criminal Procedure, a suspect, accused person, defendant, convicted person, victim, witness or any other citizen who considers that he is the victim of torture or other cruel, inhuman or degrading treatment or punishment is entitled to submit a written or oral application for the institution of proceedings to the procurator, investigator, inquiry organ or judge, either personally or through his lawyer.

51. In accordance with the requirements of article 97 of the Ukrainian Code of Criminal Procedure, once the persons in question have received such an application, they are required, within three days, to take one of the following decisions: to initiate criminal proceedings; to refuse to initiate criminal proceedings; to forward the application or a report to the appropriate authority. At the same time they are obliged to take all possible measures to prevent or stop the offence. Refusal to institute proceedings can be appealed against by the applicant to the appropriate procurator or higher court.

#### Article 14

52. The legal system of the Ukrainian SSR ensures implementation of this article of the Convention. Full compensation is provided for moral, material and other damage caused to the victims of torture and to citizens who have been illegally prosecuted or suffered from the illegal use of remand in

custody as a preventive measure or the legal imposition of administrative penalties in the form of arrest or corrective labour, irrespective of the guilt of officials of the organs of inquiry or preliminary investigation, the procurator's office or the court. Compensation for the above-mentioned forms of damage and full rehabilitation must especially be granted to citizens when the illegal acts were the result of criminal behaviour by officials coming under article 1 of the Convention.

53. Under article 53 of the Ukrainian Code of Criminal Procedure, "the inquiry organ, investigator, procurator and court are required ... to take the measures provided for by law to compensate a citizen for damage suffered by him as a result of illegal conviction, illegal prosecution or illegal remand in custody as a preventive measure".

54. In the event of the citizen's death in such circumstances, the right to compensation passes to his heirs.

#### Article 15

55. Under article 65 of the Ukrainian Code of Criminal Procedure, no factual material can have validity as evidence in criminal proceedings unless it was obtained lawfully, which is a most important guarantee of its reliability. It follows from this legal requirement that evidence obtained from accused or other persons through the use of force or other impermissible methods of investigation has no validity as evidence.

#### Article 16

56. Ukrainian legislation and its practical application are wholly designed to prevent other cruel, inhuman and degrading forms of treatment or punishment not covered by the definition of torture in article 1 of the Convention.

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