



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

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COMMITTEE AGAINST TORTURE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 19 OF THE CONVENTION**

**Fifth periodic reports of States parties due in 2004**

**Addendum\***

**UKRAINE**

[21 July 2004]  
[Original: Russian]

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\* For the initial report of Ukraine, see CAT/C/5/Add.20; for its consideration, see CAT/C/SR.52 and 53 and *Official Records of the General Assembly, Forty-fifth Session, Supplement No. 45 (A/45/44)*, paras. 503-532.

For the second periodic report, see CAT/C/17/Add.4; for its consideration, see CAT/C/SR.125, 125/Add.1 and 125/Add.2 and *Official Records of the General Assembly, Forty-eighth Session, Supplement No. 48 (A/48/44)*, paras. 116-132.

For the third periodic report, see CAT/C/34/Add.1; for its consideration, see CAT/C/SR.283, 284/Add.1 and 287 and *Official Records of the General Assembly, Fifty-second Session, Supplement No. 44 (A/52/44)*, paras. 122-152.

For the fourth periodic report, see CAT/C/55/Add.1; for its consideration, see CAT/C/SR.488, 491 and 499 and CAT/C/XXVII/Concl.2.

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## **Introduction**

1. This report is submitted pursuant to article 19, paragraph 1, of the Convention, which entered into force for Ukraine on 24 February 1987.
2. It has been compiled in accordance with the general guidelines regarding the form and content of reports to be submitted by States parties under article 19, paragraph 1, of the Convention. It covers the period from 2000 to 2003.
3. The report was prepared with due consideration of the recommendations of the Committee against Torture regarding the fourth report of Ukraine on compliance with the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on the basis of information received from the Ukrainian Ministry of Justice, the Ministry of Internal Affairs, the Ministry of Labour and Social Policy, the Ministry of Defence, the Ministry of Foreign Affairs, the Ministry of Family, Children and Youth Affairs, the Security Service, the State Penal Corrections Department, the State Committee for Nationalities and Migration, the State Department for the Protection of the State Border, the State Committee for Religious Affairs, the Office of the Prosecutor General, the Supreme Court and the Commissioner for Human Rights of the Verkhovna Rada [Supreme Council].
4. Ukraine is following an unswerving policy of putting the interests of the individual before those of society, and is working steadily on the creation of a universal legal system for the protection of human rights. The enforcement of universally recognized rules of international law, not least through the performance of obligations assumed under the international treaties to which Ukraine is party, is an important part of the implementation of State policy.
5. The State's penal corrections policy underwent fundamental changes during the reporting period. Ukraine's Criminal Code, which entered into force on 1 September 2001, provides for a number of alternatives to incarceration (short-term rigorous detention, restricted freedom, community service). The list of circumstances under which an act cannot be considered unlawful is considerably broader than the Ukrainian Criminal Code of 1960 and the new Code for the first time includes a stand-alone section on relief from criminal responsibility.
6. The Penal Corrections Code of Ukraine entered into force on 1 January 2004. All articles of the Code are geared to humanizing and democratizing the enforcement and serving of sentences.
7. Penal corrections agencies and institutions are guided by the following fundamental regulatory documents in their operations:
  - The (European) Convention for the Protection of Human Rights and Fundamental Freedoms (the Verkhovna Rada of Ukraine passed a law ratifying the Convention on 17 July 1997, and all protocols to the Convention have by now been ratified);
  - The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ratified by the Verkhovna Rada of Ukraine on 24 January 1997);

- The Convention on the Transfer of Sentenced Persons (ratified by the Verkhovna Rada of Ukraine on 22 September 1995, entered into force for Ukraine on 1 January 1996);
- The European Convention on Extradition (ratified by the Verkhovna Rada of Ukraine on 11 March 1998, entered into force for Ukraine on 9 June 1998);
- The Vienna Convention on Consular Relations (ratified by the Supreme Soviet of the USSR on 23 March 1989, entered into force on 27 May 1989);
- The European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders, 1964 (ratified by the Verkhovna Rada of Ukraine on 22 September 1995), and others.

8. The Ukrainian penal corrections system is guided in its operations by the European Prison Rules which set forth priorities, principles and standards widely followed throughout the world.

9. The reform of the penal corrections system that has been carried out in recent years has permitted substantial moves to humanize the serving of sentences, strengthen the rule of law, and stabilize conditions at custodial institutions.

10. Unfortunately, current law and judicial practice are still geared primarily to handing down sentences that involve incarceration. This seriously exacerbates the problems of housing and employing convicts and detainees in proper conditions in penal correction facilities.

11. To overcome those problems, additional capacity is being installed and brought into use at remand centres and correctional colonies, and four occupational therapy clinics are being converted into correctional labour facilities. Further reform of the penal correction system is primarily geared to a social reorientation of the system in the light of international experience and the principles of humanism, the rule of law, democracy, fairness, and an individualized correctional approach to each convict.

12. To ensure the timely prevention of the spread of infectious diseases, all sentenced prisoners and detainees undergo a mandatory medical examination. Staff responsible for prison amenities, medical personnel and prison guards check constantly to ensure that inmates' food is prepared on time and to a decent standard, that all the food required under the appropriate standards is prepared, and that health and safety standards are maintained.

13. Rooms in correctional labour facilities have been set up for religious worship, and meetings with clergy are arranged at regular intervals.

14. In addition, the cumbersome former numbering system for penal correction facilities has been abolished, and new names based on locations have been assigned. Other measures to improve amenities, medical care, food and employment for sentenced prisoners and detainees and to carry out the recommendations made by Council of Europe experts are being systematically implemented.

15. Work to bring conditions in detention for convicts and detainees into conformity with international requirements and to comply with the core provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is continuing under the constant supervision of senior officials at the Penal Corrections Department.

16. On 22 May 2003, a draft Code of Criminal Procedure was adopted by the Verkhovna Rada in first reading. The draft is now being readied for a second reading.

**I. INFORMATION ON MEASURES AND CHANGES AFFECTING THE IMPLEMENTATION OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT**

17. In the spirit of the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, article 28 of the Ukrainian Constitution states:

“Everyone has the right to respect for his or her dignity. No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment.”

18. This constitutional guarantee, which derives directly from article 2 of the Convention, is directly applicable, and the starting point for further amplification in other Ukrainian legislation.

19. The new Criminal Code of Ukraine, which took effect on 1 September 2001, makes torture a punishable offence (art. 127). The article defines “torture” as intentionally causing serious physical pain or physical or mental suffering by physical abuse, cruelty or other violent means in order to force the victim or other person to perform an act against his or her will.

20. Article 127 stipulates 3 to 5 years’ deprivation of liberty for torture and 5 to 10 years for a repeat offence or for torture committed by a group of individuals by prior agreement. Ukrainian courts convicted 13 individuals of crimes covered by article 127 in 2002, and 8 in the first half of 2003.

21. With the entry into force of the Judiciary Act of 7 February 2002, amendments to the prevailing procedural codes and other laws changed the rules governing pretrial detention as a preventive measure: pretrial detention can be imposed only by court decision, which may be appealed to a higher court. In addition, in keeping with article 2, part 2, of the Convention, article 64 of the Ukrainian Constitution stipulates that a number of human rights and freedoms, including those previously indicated, may not be restricted under any circumstances, even under martial law or a state of emergency.

## II. COMPLIANCE WITH THE FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE AGAINST TORTURE\*

### Paragraph 56 (a)

22. Current Ukrainian criminal and criminal-procedure law makes provision for the detection and investigation of torture during preliminary inquiries and pretrial investigations. Torture by persons not in State employ is punishable under articles 126, "Physical abuse and cruelty", and 127, "Torture", of the Criminal Code. Law-enforcement personnel engaging in such conduct will be held liable under the articles of the Code dealing with official malfeasance (art. 365, "Exceeding authority", and so forth).

23. Prosecutorial authorities receiving reports of torture or cruel treatment take action under the law to bring the culprits to justice. It is an offence under the Criminal Code to coerce someone to give evidence under questioning by illegal means, including the use of force or harassment (art. 373). Under article 112 of the Code of Criminal Procedure, the pretrial investigations in criminal cases involving such crimes are to be conducted by investigators from the prosecutor's office.

### Paragraph 56 (b)

24. A new executive agency - the State Committee on Nationalities and Migration, whose basic functions are to conduct State policy on migration, refugees, inter-ethnic relations and deportees - was established by Presidential Decree No. 836 on 13 September 2001.

25. A revised version of the Refugees Act, adopted on 21 June 2002, fully meets the requirements of the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees, agreements to which Ukraine has become a party by virtue of the Convention Relating to the Status of Refugees and Protocol Relating to the Status of Refugees (Accession) Act of 10 January 2002.

26. A 50-bed regional temporary housing centre for refugees has been set up in Odessa province. The expansion of that centre and establishment of a similar one in Kyiv province is under consideration.

### Paragraph 56 (c)

27. Under article 3 of the Refugees Act, a refugee may not be deported or forcibly returned to a country where his life or freedom is imperilled. Individuals whose refugee status is under consideration and individuals appealing denial or deprivation of refugee status before the courts enjoy similar protection.

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\* Report of the Committee against Torture on its twenty-seventh and twenty-eighth sessions, *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 44 (A/57/44)*, paras. 54-58.

28. Within the limits of its jurisdiction, the Procurator-General's Office deals with extradition issues in full accordance with the international agreements applicable to Ukraine, which are part of Ukrainian law.

**Paragraph 56 (e) and (h)**

29. Strict compliance by Ukraine with all its undertakings to the international community, particularly as regards human rights, is an important prerequisite for the country's integration into European and transatlantic structures.

30. This requirement governs a large range of organizational and practical measures designed to prevent improper conduct towards suspects, including unlawful detention for supposed administrative misdemeanours and refusal to allow them to obtain qualified legal or medical assistance or to inform relatives that they have been detained.

31. Particular attention is devoted to preventing detainees from being subjected to physical or mental duress. Unit chiefs, in conjunction with specially created commissions, are obliged to perform careful periodic inspections of official premises to identify objects that could be used in unauthorized methods of inquiry. In addition, unit staff are instructed not to tolerate violence towards crime suspects, and if violence is uncovered, they can be held collectively liable.

32. A member of the Criminal Investigation Department at the Ministry of Internal Affairs has been appointed to keep constant watch over and enforce discipline and compliance with the law among unit personnel, and has been exempted from other official duties to do so.

33. Senior management in the Department has carefully analysed the causes of misconduct and contributing circumstances. Organizational and practical steps to eliminate them are being actively pursued.

34. Malfeasance by criminal investigators arises out of another whole range of problems to do with difficult working conditions and poor welfare provision, which often cause high mental and emotional stress and related adverse effects.

35. Preventing violations of the constitutional rights of citizens suspected of breaking the law thus requires a combination of organizational and practical moves to bolster the human resources of the service by enlisting experienced, mentally and professionally capable experts and providing them with proper working conditions and financial security.

**Paragraph 57 (a)**

36. A study of the subjects of concern to and recommendations of the Committee against Torture and statistics from the procuratorial authorities, the Ministry of Internal Affairs and the State Penal Corrections Department indicates that the Committee's findings relating to torture are based on data from bygone years.

37. The deduction by the Commissioner for Human Rights of the Verkhovna Rada that 30 per cent of prisoners are regularly subjected to cruelty and torture is not cogent, because no specific instances of violations of prisoners' rights are mentioned and there is nothing to indicate on what data or criteria the deduction was based.

38. The statistics in use in Ukraine are not designed to shed light on such matters. Hence the reference by the Committee against Torture to the Commissioner for Human Rights' assertion that 30 per cent of prisoners in penal correction facilities are tortured is not based on objective data.

39. Compliance with the law during pretrial investigations is overseen by the procuratorial authorities: this meets the requirements of the Constitution. Under current criminal law in Ukraine, any official exceeding his authority is liable to measures including incarceration and loss of the right to hold specific offices for a period of time determined by the courts.

40. In 2002, a total of 29 law-enforcement officers were found guilty of using force against offenders and individuals suspected or accused of committing a crime. In most cases, the assaults were committed during apprehension. The victims in these cases were not prisoners, but the offences were classified as torture. In 2002, the Procurator-General's Office received 801 complaints from penal correction authorities about abnormal prison conditions and regimes; only 51 of them related to unauthorized use of force. In the first eight months of 2003 there were 654 complaints, 41 of them about the use of unauthorized force. All the complaints were duly checked and found to be unsubstantiated: no criminal proceedings were instituted.

41. As required by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Ukraine has organized and is setting up a mechanism to protect the rights of detainees and convicts. Article 1 of the Penal Correction Code stipulates that the purpose of penal correction is not to inflict physical suffering or to degrade the individual.

42. Under article 22 of the Penal Correction Code, article 44 of the Office of the Procurator Act and article 22 of the Pre-trial Detention Act, compliance with the law in the enforcement of custodial and non-custodial punishment and at remand centres is overseen by the Procurator-General and the procurators working under him. Their decisions and instructions on compliance with the rules for serving sentences under Ukrainian correctional labour law are binding and must be carried out immediately by the administrators of correctional labour facilities and bodies enforcing non-custodial sentences.

43. Under the Commissioner for Human Rights of the Verkhovna Rada Act, convicts are entitled to submit applications and complaints to the Commissioner. Article 113 of the Penal Correction Code specifies that applications and complaints are not subject to review before being sent out and must be dispatched to their proper destination within 24 hours. Article 13 of the Pre-trial Detention Act makes the same provision for individuals being held at remand centres.

44. Article 21 of the Pre-trial Detention Act also holds employees of the penal correction system liable to disciplinary or criminal penalties. Monitoring of compliance with the law with regard to incarcerated individuals rests with the supervisors of penal correction officers. Staff guilty of unlawful conduct are subjected to prompt and suitable disciplinary measures, including criminal penalties, if necessary.

45. Between 1998 and September 2003, the number of penal correction staff disciplined for misconduct towards detainees and convicts was four:

- In March 1998, the head of the social and psychological department at Michurinsk Correctional Colony No. 57, Donetsk Province, Internal Services Maj. V.A. Dorofeyev, unlawfully altered detention conditions for a convict being held without sufficient grounds in a punishment isolation unit;
- On 20 October 1998, the head of the social and psychological department at Correctional Colony No. 112, Ternopol Province, Internal Services Maj. S.V. Olynyk, unlawfully sent a convict to the punishment isolation unit;
- On 17 October 1998, the head of the social and psychological department at Kopychinsk Correctional Colony No. 112, Ternopol Province, Internal Services Lt. M.M. Vasilevsky, unlawfully sent a convict to the punishment isolation unit.

The above officers received reprimands.

46. In 2000, one penal correction staff member was disciplined - a junior inspector from the supervision and safety division at Ustinov Correctional Colony No. 37, Kirovograd Province, Internal Services Warrant Officer A.O. Vinnik, who in January 2000 unlawfully used physical force against a convict while on duty. He was dismissed.

47. In 1998, three former members of the operations division at Dergachev Correctional Colony No. 109, Kharkiv Province, L.P. Lobanov, E.O. Terekhov and I.V. Chuvakov were prosecuted under article 166, paragraphs 1 and 3, and article 172, paragraph 1, of the Criminal Code (exceeding authority or official powers), for causing serious bodily injury leading to the death of a convict while on duty in October 1996.

48. Throughout this period, not a single member of the penal correction staff was prosecuted under article 373 of the Criminal Code (coercion to give testimony).

49. During the most recent visit by a delegation from the European Committee for the Prevention of Torture to Ukraine (November-December 2002), not a single application or complaint from a convict alleging torture or other violence or inhumane treatment was recorded.

#### **Paragraph 57 (b)**

50. The Committee against Torture refers to the forced deportation of four Uzbek nationals - members of the Uzbek opposition; the extradition (rendition) actually took place as follows.

51. On 16 March 1999, the Procurator's Office of the Republic of Uzbekistan, on the grounds of articles 4-6 of the Minsk Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of 1993, asked the Office of the Procurator-General of Ukraine to provide legal assistance in criminal case No. 20/1184, which was being processed by the Investigations Office in the Uzbek Ministry of Internal Affairs.

52. The Uzbek request sought the rendition to Uzbekistan's law-enforcement authorities of Uzbek citizens Y.P. Ruzimurodov, N.M. Sharipov, M.M. Begzhanov and K. Diyorov. The accompanying papers indicated that the four were wanted by the Uzbek law-enforcement authorities for crimes under article 155, paragraphs 3 (a) and (b), article 158, paragraph 1, and article 159, paragraph 4, of the Criminal Code of Uzbekistan (terrorism, attempt on the life of the President, attempted overthrow of the constitutional order of the State). Duly authorized preventive detention orders were appended.

53. While the application was reviewed in the Ukrainian Procurator-General's Office, the individuals were kept in detention in the holding facilities at the Central Administration of the Ukrainian Ministry of Internal Affairs, in Kyiv.

54. The material received from the Uzbek Procurator's Office and a check by the Ukrainian Ministry of Internal Affairs revealed nothing that would preclude rendition of the detained Uzbek citizens. Thus, pursuant to article 56 of the Minsk Convention, which requires one Party, when requested by the other Party, to render individuals within its territory to face prosecution or serve sentence, the Ukrainian Procurator-General's Office honoured the request from the Procurator's Office of the Republic of Uzbekistan.

55. Responsibility for arranging the transfer of the four men to the Uzbek law-enforcement authorities was assigned to the Ukrainian Ministry of Internal Affairs, which reports that they were turned over to the Uzbek authorities at Borispol Airport on 18 March 1999 and returned to Uzbekistan on a Kyiv-Tashkent flight that same day.

56. While the question of rendition was being decided there was no information to suggest any real threat that the men would be ill-treated.

57. Hence the issue of the rendition to the Uzbek law-enforcement authorities of Uzbek citizens Y.P. Ruzimurodov, N.M. Sharipov, M.M. Begzhanov and K. Diyorov was resolved by the Ukrainian Office of the Procurator-General in full compliance with the Minsk Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of 1993 and the national laws of Ukraine.

#### **Paragraph 57 (c)**

58. Presidential Decree No. 561 of 26 November 1993 established a Coordinating Committee against Corruption and Organized Crime, which is still in operation today. The membership of the Committee is approved by presidential decree; never once in the lifetime of the Committee has the membership included judges.

59. No such committees exist at the provincial or district levels. Under current law, crime-fighting activities by law-enforcement authorities at those levels are coordinated by the procuracy under regulations approved on 17 July 2000 by the Coordinating Committee against Corruption and Organized Crime.

60. The regulations allow law-enforcement authorities to work with the courts in certain approved ways:

- Exchanging information on crime and judicial practice, and, by mutual consent, performing joint analyses;
- Working together on regulatory instruments to govern crime-fighting;
- Running joint seminars and conferences, and detailing expert staff to help enhance skills of staff in law-enforcement and judicial bodies.

61. It is noteworthy that collaboration of this kind respects the principle of the independence of the judiciary.

**Paragraph 57 (d)**

62. There is nothing in Ukrainian criminal law at present that would permit a person to be found guilty of a crime on the strength of a confession alone. Article 22 of the Code of Criminal Procedure flatly prohibits the extraction of testimony under duress or by other unlawful means, and under articles 43 and 263 of the Code, the accused (the defendant) is always entitled to refuse to testify.

63. Under article 67 of the Code, no evidence, confessions included, is to be regarded by the courts, the procuracy, investigators or persons conducting preliminary inquiries as plainly established.

64. To demonstrate guilt, the court must investigate and indicate other evidence in its judgement; a judgement based solely on a confession will be overturned on appeal since article 323 of the Code of Criminal Procedure requires the courts to make a full, thorough and objective review of all the circumstances of a case together.

65. The allegation that many convictions are based on confessions is not supported by the facts; if such cases are identified, the procuratorial authorities will call for a review.

66. How investigators are rated does not depend on the number of crimes they solve, and they have no incitement in law or practice to try to win a confession from detainees or suspects.

67. The State Investigations Office at the Ministry of Internal Affairs keeps no statistics on confession-based convictions. In addition, under article 124 of the Constitution, justice in Ukraine is administered exclusively by the courts, which is to say that evaluating the evidence collected in a criminal case is a matter for the courts.

68. The assertion that investigators are rated by the number of crimes they solve, and that this may prompt the torture or brutal treatment of detainees or suspects with an eye to forcing a “confession”, is at odds with the truth. That criterion has never been used in rating the work of investigation units.

**Paragraph 57 (e)**

69. In the event that such reports come in, the authorities that conduct the preliminary inquiry and pretrial investigation take steps to conduct prompt, objective, exhaustive investigations into the allegations with a view to prosecuting and punishing the culprits. All such reports are fully, thoroughly, and objectively checked, as the law requires.

70. If such reports are received while a case is under judicial consideration, the State prosecutors themselves initiate the investigation, thus helping to ensure the impartiality of the proceedings and a lawful judgement.

**Paragraph 57 (f)**

71. The assertion that relatives are not informed is not true: Ukrainian law clearly specifies the right of detainees to have access to a lawyer and sets out a procedure for informing relatives when people are detained. Under article 29 of the Constitution, anyone arrested or detained must be immediately informed of the reasons for his arrest or detention, apprised of his rights, and given the opportunity as soon as he is taken into custody to defend himself personally and to have the legal assistance of counsel. The relatives of anyone arrested or detained must be informed immediately of the arrest or detention.

72. We would point out that the Committee against Torture's remarks about reports of relatives and lawyers being informed of an arrest only after the individual concerned was transferred from the police station to a remand centre (essentially, after at least two weeks) may relate to specific cases that were not cited at the time; we cannot comment on such cases.

73. Under article 21 of the Code of Criminal Procedure, suspects, accused persons and defendants are guaranteed a right of defence. Before a suspect, an accused person, or a defendant is questioned, the individual conducting the preliminary inquiry, the investigator, the prosecutor, the judge, and the court are required to explain that he has a right to have defence counsel, and must place the fact on record.

74. It should also be noted that, under article 161 of the Code, the investigator must inform a suspect's or accused person's spouse or other relative and his place of work of the person's arrest and whereabouts. If the accused is a foreigner, the arrest order is sent to the Ministry of Foreign Affairs.

75. Article 106, paragraph 5, of the Code establishes the clear rule that when anyone suspected of a crime is detained, the agency conducting the preliminary inquiry must immediately notify one of the suspect's relatives. Under article 106 of the Code, a record is kept of every detention of a suspect indicating the grounds and reasons, day, time, year, month, and place of detention; any explanation offered by the detainee; the time the record was drafted; and that the suspect has had explained to him his right to meet with defence counsel the moment he is detained. The record is signed by the individual who drafted it and by the detainee. A copy, with a list of rights and obligations, is immediately given to the detainee and also to the prosecutor. One relative of the suspect is immediately informed of the detention.

76. It is also unjustified to consider that current Ukrainian law contains no provision governing when a detainee can exercise his rights to defence and medical care and the right to inform his family of his detention.

77. Under article 43 of the Code of Criminal Procedure, individuals detained on suspicion of having committed a crime, and individuals subject to preventive measures pending charges, are regarded as suspects. A suspect has the right to know what he is suspected of; to testify or refuse to do so or answer questions; to have a defence counsel and to meet with that counsel before first being questioned; to provide evidence; to file petitions and challenges; to require the court or procurator to verify the lawfulness of his detention; to file complaints about the actions and decisions of the person conducting the preliminary inquiry, the investigator and the procurator and, if there are appropriate grounds, to seek protection. That the suspect has been apprised of his rights is noted in the detention record or in the decision to apply preventive measures.

78. Article 43 of the Code defines the right of a suspect to defence counsel and his right to meet with that counsel before first being questioned. Since a suspect is a person who has been detained on suspicion of having committed a crime or person subject to preventive measures pending charges, the right to the assistance of a lawyer applies from the moment of detention.

79. Article 107, paragraph 2, of the Code stipulates that, if a suspect is detained or taken into preventive custody, he is to be questioned immediately or, if that is not possible, no later than 24 hours after being detained. When such a suspect is questioned, the presence of defence counsel is mandatory unless the suspect refuses counsel and his refusal is accepted.

80. Articles 44-48 of the Code define the rights and obligations of defence counsel and the procedure for appointing or designating counsel. They stipulate that counsel may be brought in at any stage of the proceedings, and from that time onwards can meet in private with the suspect or accused before the suspect or accused is first questioned and to have similar meetings after the initial questioning, with no restriction on the number or duration of such meetings.

### **Paragraph 57 (g)**

81 The duration of periods in custody, how to calculate it and how to extend it is set forth in article 156 of the Code of Criminal Procedure, which stipulates that a person may not be held in custody for more than a total of two months. Detention in custody may be extended only if the case cannot be fully investigated in two months and there are no grounds for rescinding the preventive measure or applying a less stringent one:

- To four months, upon application agreed with the procurator who is overseeing compliance with the law by the investigating authorities or application by the procurator and judges of the court that originally ordered the preventive measure;
- To nine months, upon application agreed with the deputy Procurator-General of Ukraine, the procurator of the Autonomous Republic of Crimea, the procurators of the provinces and cities of Kyiv and Sevastopol and other procurators assimilated to them, or application by those procurators in cases involving serious or very serious crimes, or by appeal court judges;

- To 18 months, upon application agreed with the Procurator-General of Ukraine or his deputy, or application by those procurators in especially difficult cases involving very serious crimes or by Supreme Court judges.

82. It should be noted that administrative detention for up to 15 days is an administrative sanction - short-term confinement imposed exclusively by the court for different administrative offences, as prescribed by the Code of Administrative Offences. Thus, the manner in which administrative detention is applied does not violate international conventions on human and civil rights and freedoms.

83. The detention for up to 30 days of individuals suspected of vagrancy is an administrative measure carried out by the militia with procuratorial approval under article 11 of the Militia Act.

84. This procedure is not contrary to article 5, paragraph 1 (e), of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950. Nonetheless, in the light of paragraph 4 of that article, and article 29 of the Ukrainian Constitution, there are plans to amend current Ukrainian law so as to permit judicial review of the lawfulness of detention for vagrancy.

#### **Paragraph 57 (i)**

85. According to reports from regional procurators, the internal affairs authorities started investigations into over 130 crimes against journalists in 2001 and 2002. There are no grounds, however, for linking the crimes to the journalistic activity of the victims; they were thefts of personal property (about 50 cases), robberies (about 30), disorderly conduct (about 20), thefts from newspaper offices and print shops (about 10), robbery with violence (about 10) and offences including traffic accidents, destruction of or damage to property, and actual bodily harm.

86. Of those criminal investigations, about 10 were closed on various grounds, more than 60 cases went to court (the overwhelming majority of them resulted in convictions), and the remainder are with the internal affairs investigation authorities or investigation has been suspended on grounds specified in the Code of Criminal Procedure.

87. Criminal cases that were under way or had been suspended or closed were studied in 2003 by the Office of the Procurator-General to check the status of the investigations and the legality of the decisions taken in connection with them.

88. The procuratorial authorities uncovered no cases in 2002 of harassment, threats or brutality against independent journalists or other individuals who had witnessed official malfeasance. Since the Committee against Torture has not produced any specific reports of threats or harassment, we cannot attempt to account for particular cases.

89. In July 2002, the Procurator-General received two messages from V.V. Vorotnikov, the editor of the newspaper "Grani", reporting what was, in Mr. Vorotnikov's opinion, criminal conduct by employees of the National Security and Defence Council and asking for protection. When checked, those reports, including Mr. Vorotnikov's claim that law-enforcement authorities

had ignored his request for help, proved to be untrue. In a handwritten statement, Mr. Vorotnikov indicated that his life, health and safety were not under threat and he did not require protection. An application to open an investigation into the material uncovered by the check was turned down on 23 August 2002 under article 6, paragraph 2, of the Code of Criminal Procedure.

**Paragraph 57 (j)**

90. The crime rate in Ukraine has dropped over the last 10 years, but remains fairly high. Despite steps to expand living quarters beyond the health and safety standard established in current law (2.5 square metres per person), therefore, the country's remand centres and prisons still hold some 5,400 inmates. That, however, is half as many as in previous years.

91. A quicker solution to the problem of housing inmates properly in appropriate health and safety conditions is precluded at the moment by the State's limited financial and economic capabilities. A number of practical measures have been taken in recent years; in particular, a State programme to control tuberculosis is under way and has substantially improved medical care for inmates and reduced the number of tuberculosis patients among them.

**Paragraph 57 (k)**

92. More attention has recently been paid to training junior prison officers. Training takes place at staff colleges in Dniprodzerzhinsk and Bila Tserkva. The Dniprodzerzhinsk college trains guards who work in remand centres and with juveniles. The Bila Tserkva college offers basic and advanced training for junior officers with supervisory responsibilities. The training courses and curriculums are being developed and tested, and teaching staff at the Bila Tserkva college are being trained with Swiss assistance under a general "Model Institutions" programme. Five training seminars for Bila Tserkva instructors have been held since April 2002, with Swiss experts in attendance.

93. As recommended by the Committee against Torture, the training curriculums at the institutions have been reviewed and completely reworked. Much training time is devoted to learning about the legal system and to psychological and social training and developing interpersonal skills. The curriculum includes international law as it relates to the treatment of prisoners.

94. International legal texts published by the United Nations and the Council of Europe which regulate convicts' legal status and civil-society involvement in penal enforcement are used in both institutions to study criminal law, prison theory and policy and the Ukrainian prison system, the principles of international law, prison education and other disciplines.

95. To upgrade job skills at the workplace, the training scheme includes classes on the international standards governing the observance of human rights and the treatment of prisoners, and handbooks produced for penal correction system personnel include those standards. Examples include: "Evaluation and further reform of the prison system of Ukraine" (I.V. Shtanko and V.A. Levochkin) and "Making standards work: A practical guide for effective application of the international prison rules" (Donetsk Memorial).

**Paragraph 57 (l)**

96. The undesirable practice of hazing does still crop up in the armed forces, but is gradually being suppressed through constant efforts. A total of 312 breaches of regulations were recorded in 1999; the corresponding figures were 222 in 2000 and 125 in 2002, which was 8 per cent lower than the figure for 2001 (147).

97. Looking at these breaches of regulations, one sees that they arose in response to particular situations; there is no reason to regard them as dangerous social phenomena.

98. Institutional, legal and preventive measures to uphold the constitutional rights and freedoms of every member of the armed forces are a priority for senior staff at the Ministry of Defence and the General Staff of the Armed Forces, the different branches of the armed forces and the various military units and organizations, the aim being to prevent breaches of regulations.

**Paragraph 58 (a)**

99. A confession does not in itself constitute evidence in criminal proceedings. Ensuring absolute, practical respect for the principle that a confession given under torture is inadmissible is one objective of the general principle of lawful legal proceedings. The procuratorial authorities accomplish this by overseeing compliance with the law by the bodies performing preliminary inquiries and pretrial investigations and by State prosecutors during court proceedings or criminal cases.

**Paragraph 58 (c)**

100. Under article 3 of the Refugees Act of 21 June 2002, a refugee may not be expelled or forcibly returned to a country where his life or freedom might be in peril. The same applies to people whose applications for refugee status are pending, and people challenging a denial (loss) of refugee status before the courts.

**Paragraph 58 (e)**

101. We consider article 43-1 of the Code of Criminal Procedure makes it plain that a suspect or accused person has a right to the participation of an attorney and a right, from the moment he or she is detained, to have and meet with defence counsel before first being questioned. If this rule is not complied with, the individual can file a petition or a report with the authorities who handle such matters, and they must settle the issue in accordance with article 97 of the Code.

102. In the light of worldwide experience with protecting the rights of people suspected of or charged with a crime, it would be advisable to add to the existing Code of Criminal Procedure a separate rule specifying that an individual has a right to obtain the assistance of defence counsel as soon as he is declared a suspect, charged or arrested (detained, subjected to any preventive measure) and before first being questioned, and specifying how long after arrest that right is to be ensured through the detainee's own choice of defence counsel or the provision of defence counsel by the State.

**Paragraph 58 (g)**

103. The problem of assuring the independence of judges and attorneys and the impartiality of procurators in conformity with international standards is being addressed in Ukraine through judicial and legal reform.

104. The thrust of reform was defined by the Master Plan for Judicial and Legal Reform in Ukraine approved by resolution of the Verkhovna Rada No. 2296 on 28 April 1992 and by the Constitution adopted on 28 June 1996, whose provisions governing the work of the criminal justice authorities fully comply with international legal standards.

105. To develop on those provisions, a number of laws were passed on 12 July 2001 as part of the so-called minor judicial reform, designed to ensure the independence of the courts and judicial protection for human and civil rights and liberties. The next step was the adoption on 7 February 2002 of the Organization of the Judiciary Act.

106. The Procurator-General has raised the issue of a Master Plan for the reform of the procuratorial authorities and a new law to govern the procuracy, so as to bring the work of the procuratorial authorities into line with international legal standards, including the “Guidelines on the Role of Prosecutors” adopted in September 1990 by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, and Recommendation (2000) 19 on the role of the public prosecutor’s office in the criminal justice system made to member States of the Committee of Ministers of the Council of Europe on 6 October 2000.

**Paragraph 58 (i)**

107. Under the new Penal Corrections Code of 11 July 2003 (which entered into force on 1 January 2004), convicts have the right to address requests, claims, and complaints to the management of penal correction bodies and institutions and their parent bodies, the Commissioner for Human Rights of the Verkhovna Rada, the courts and procuratorial authorities, other State authorities, local government bodies, and civic associations. Such communications are not subject to vetting and must be sent out within 24 hours.

108. Foreign convicts also have the right to maintain contact with the diplomatic representatives of their States. Stateless persons and citizens of States with no diplomatic or consular office in Ukraine can seek assistance from the diplomatic missions of States which have undertaken to protect their interests or to international bodies and organizations. These matters lie within jurisdiction of the State Penal Corrections Department and are governed by instructions entitled “Notification procedures for penal correction bodies and institutions regarding foreigners in custody and convicted foreigners” of 27 May 2002, which have been cleared with the Ministry of Internal Affairs and the Procurator-General’s Office.

109. Under the Penal Correction Code, every convict is guaranteed the right to legal assistance, which can be exercised by making use of the services of attorneys and other legal specialists who are entitled, under the law to provide legal advice.

110. Current Ukrainian law adequately regulates the procedure for dealing with applications from citizens. In our opinion, the procedure established under current law for handling applications from citizens and organizations challenging official and court decisions ensures that applications are fully and impartially verified.

111. The Committee against Torture cites no instance of any difficulties in the full, prompt and independent review of complaints, including the numerous detailed allegations that come in from national and international non-governmental organizations.

112. Since the State Penal Correction Department was removed from the control of the Ministry of Internal Affairs, complaints of brutality in penal correction institutions have become exceptional. All such complaints are painstakingly reviewed, and, if failings or violations that could result in inhumane treatment are identified, steps are taken to eliminate them.

113. The mechanism for the submission and consideration of claims and complaints from arrested, incarcerated and other individuals is meticulously regulated by penal correction law and departmental regulations. Applications to procurators or the Commissioner for Human Rights of the Verkhovna Rada are sent out sealed and are not subject to vetting by prison officials. Every month, procurators personally meet and interview detainees and convicts, checking that the administration of the institution concerned is complying with the Civic Appeals Act of 2 October 1996. This procedure ensures full, prompt, and independent consideration of claims and complaints.

114. The Civic Appeals Act stipulates a procedure for considering appeals filed by national and international non-governmental organizations on behalf of detainees or convicted prisoners. By law, such appeals can be entertained only if the individual concerned has authorized them. In practice, given the urgency of the issues raised, their appeals are handled irrespective of any such authorization.

115. Chapter 22 of the Code of Criminal Procedure adequately covers the submission of complaints by parties to criminal proceedings and their resolution by the procurator. Specifically, a procurator must consider a complaint within three days of receiving it and report his conclusions to the filer. If the complaint is dismissed, reasons must be given. Should the results of a review by a procurator be considered unacceptable, his actions may be appealed in court.

116. The mechanism and institutional arrangements for reviewing the handling of complaints about violations of civil rights are regulated by the Public Applications Act, which sets out clear rules for filing and considering such applications. Ukraine also has institutions such as the personnel and internal security inspectorate, which are directly responsible for checking such reports.

117. Under this Act and the presidential decree 13 August 2003 on additional measures to guarantee the constitutional right of appeal, the Central Investigation Department impartially considers and painstakingly checks all incoming applications and complaints. Every allegation of irregular conduct by an investigator is officially checked, and if the contentions are fully or partially vindicated, the culprits are held liable under current Ukrainian law.

118. Each internal affairs office has a book in which citizens can at any time enter complaints and suggestions; there are also hotlines to the Ministry of Internal Affairs and the Central Investigation Department for reporting illegal conduct by militia officers.

119. In compliance with Ministry of Internal Affairs directives prohibiting internal affairs offices and militia units from abusing their power over citizens, each city and district office keeps a log of individuals who are asked to come in for investigative purposes, establishing a report and so forth. After visiting militia units, citizens can personally add to those logs any claims they have against militia personnel.

120. Individual claims and media and Internet reports of brutality or other illegal conduct by internal affairs personnel are referred immediately to senior department officials.

121. The management of medical facilities and forensic medical offices are on notice that information about citizens presenting with bodily injuries that they say have been inflicted by internal affairs personnel is to be forwarded immediately to the duty sections at the Central Internal Affairs Administration and city and district offices.

122. Any such reports are officially investigated within three days of receipt and, if necessary, appropriate action is taken against the culprits.

123. Special care is taken over public and confidential reviews of reports of illegal conduct by internal affairs personnel agencies and steps to prevent and discover crimes committed by personnel on duty.

#### **Paragraph 58 (j)**

124. If conditions in prisons and remand centres are known to be poor - overcrowding, prisoners without beds to themselves, poor ventilation, poor diet, poor sanitary conditions - more space is created by building additional living quarters and renovating existing space. Every detainee is given a bunk. Living conditions and food are monitored daily by prison medical personnel, and any shortcomings are promptly rectified.

125. All remand centres now have working ventilation systems.

126. Reports of unsatisfactory living conditions in remand centres (prisons) are carefully checked by the central or regional offices (divisions) of the State Penal Correction Department; if they are confirmed, immediate action is taken to rectify the problems identified. If there is a shortage of beds, additional bunks are installed. Unfortunately, Ukrainian law does not set a limit on the number of detainees who may be held at remand centres (prisons).

127. Health matters and disease control in prisons are regulated by the Health-care Disease Control Act of 24 February 1994; the Prevention of Acquired Immunodeficiency Syndrome (AIDS) and Public Welfare Act of 3 March 1998; the Protection against Infectious Disease Act of 6 April 2000, and Tuberculosis Control Act of 5 July 2001; also by a joint order of the State Penal Correction Department and the Ministry of Health of 18 January 2000 approving regulations on health services for individuals held at State Penal Correction Department remand centres and correctional labour facilities.

128. Health conditions in prisons are monitored by the local health and disease control services of the State Penal Correction Department and the Ministry of Health.
129. To improve the health situation, prisons are improving living conditions and arranging the necessary lighting and ventilation in living quarters.
130. The State Penal Correction Department has developed and is implementing programmes to control tuberculosis and prevent HIV infection in penal correction facilities.
131. With support from the World Health Organization and the Ministry of Health, penitentiaries in Donetsk province are conducting a pilot tuberculosis control project (DOTS strategy).
132. For the timely detection of tuberculosis, all detainees entering remand centres undergo a mandatory fluorographic examination; thereafter they are examined once a year. In the interim, tuberculosis cases are identified by clinical signs. Tuberculosis patients are treated in 10 tuberculosis hospitals for prisoners, and all are given the necessary drugs.
133. To prevent HIV infection, penitentiary facilities conduct information campaigns among staff and prisoners. They offer confidential HIV counselling.
134. HIV-positive pregnant women receive specific care under a project to prevent mother-to-child HIV transmission, backed by Doctors Without Borders (MSF) and the Ukrainian Centre for AIDS Prevention and Control. All HIV-positive prisoners serve their sentences in the usual way.
135. Improving conditions for special categories in prisons and remand centres is still a matter of some urgency but depends primarily on budget appropriations. Local visiting commissions and juvenile services, the Commissioner for Human Rights of the Verkhovna Rada and the procuratorial authorities are empowered to conduct independent inspections of pretrial detention and prison facilities. It should also be noted that orders and instructions from a procurator to remedy violations of the law are binding on facility officials.
136. Juvenile holding and sorting centres where certain categories of minors between the ages of 11 and 18 who need to be isolated can be kept temporarily, are subordinate to the Criminal Militia Department for Juvenile Affairs within the Ministry of Internal Affairs.
137. The Central Administration of Internal Affairs is currently operating 21 such centres, designed to accommodate a total of 1,500 inmates; they house an average of 90 adolescents every day. The centres are staffed by 306 militia officers.
138. The Ministry of Internal Affairs is working to improve conditions in custody in special militia facilities. The Kharkiv Juvenile Holding and Sorting Centre for Juveniles has undergone renovation and major repairs this year, substantially improving the conditions in which juveniles are held.

139. The Militia Administrative Services Department within the Ministry of Internal Affairs runs 511 remand facilities accommodating 13,400 inmates, 42 holding and sorting centres for vagrants designed to hold 2,000 individuals, and 35 special holding centres (capacity 1,300) for individuals under administrative detention. The daily population of Ukraine's special facilities is more than 9,000.

140. Under current Ukrainian law, detainees and individuals taken into custody may be held for up to 10 days in remand facilities, up to 30 days in holding and sorting centres with a procurator's approval, and up to 15 days in special holding centres with a court order.

141. The Ministry of Internal Affairs carried out renovations and major repairs in 43 remand facilities in 2003 to improve the conditions for detainees, arrestees, and convicted prisoners. Routine repairs were performed in 120 remand facilities, 12 holding and sorting centres for vagrants, and 7 special holding centres for individuals under administrative detention. Another 33 remand centres meeting modern requirements are under construction.

142. Departmental building codes are being developed that will make it possible to provide every special facility with sewers, water supplies, ventilation systems and exercise yards. Cells will have separate lavatory facilities and individual bunks, with at least 2.5 sq. m. of space per person (not counting the space for the lavatory) and at least 4.5 sq. m. for a pregnant woman or a woman who has children with her; medical holding cells will have 7.0 sq. m. per person.

143. Nevertheless, for objective reasons - primarily, the State's difficult economic situation and resultant shortage of funds - physical and technical standards at special facilities cannot quickly be raised to international levels.

144. The increased influx of people (illegal migrants) seeking refuge from countries of Central Asia is also having an effect. This year alone, over 6,000 such persons have been held in Ukrainian facilities.

#### **Paragraph 58 (k)**

145. The 72-hour detention period is set by article 29 of the Constitution and other statutes. The procedure governing detention is laid down in the Pretrial Detention Act of 30 June 1993, which requires individuals taken into custody to be kept in cells for few inmates or larger common cells. Exceptionally, to keep an investigation confidential, protect prisoners from possible attempts on their lives or prevent them from committing another crime, or on medical grounds, they can be held in isolation cells on the strength of a reasoned decision by the person handling the case or by the head of the pretrial detention facility which has been endorsed by a procurator.

146. The State Penal Correction Department has decided to make a special priority, in efforts to ensure that criminal investigation units respect the law, of preventing violations of constitutional rights and liberties during preliminary investigations and routine crime prevention and control.

**Paragraph 58 (I)**

147. The State Penal Correction Department is devoting considerable attention to studying national and international regulations on human rights and the treatment of prisoners and applying them in its day-to-day operations.

148. The instructors at Chernigov Juridical College, with the support of the human rights organization Donetsk Memorial, have produced a collection of the fundamental United Nations and Council of Europe texts on the treatment of prisoners. This is widely used in training officers for the penal correction system. The topic is covered in a special section of the course on penal correction law. The requirements of international regulations on human rights and the treatment of prisoners are studied in the training programmes (both initial and advanced) for junior commanders in all categories at penal correction system training centres. The State Penal Correction Department has developed procedural recommendations and instruction booklets for penal correction system personnel which take into account the requirements of the above-mentioned texts.

149. The issues are on the course schedules for study and practice during official on-the-job training for staff members.

150. The Ministry of Internal Affairs and its local offices are constantly taking organizational and practical action to tighten discipline, entrench compliance with the law among staff and prevent violations of citizens' constitutional rights and freedoms.

151. These questions have been repeatedly discussed by senior officials at the Ministry of Internal Affairs and by managers and at routine meetings of regional and transport offices, which have devised specific measures to improve performance in this area.

152. A number of steps were taken over the course of 2002 to work better with staff, tighten discipline, entrench compliance with the law and stamp out criminal behaviour, the last of which was a State-wide operation called "Clean Hands", which began in October 2002 in regional and transport offices.

153. The Ministry of Internal Affairs will continue working to prevent internal affairs employees from violating citizens' constitutional rights and to identify employees who are violating those rights. Research fellows at the Ministry's training institutions have also been enlisted in this task.

154. The State Border Service Administration and other central government agencies have taken a series of organizational and practical steps towards better regulation of the detention in custody of foreigners and stateless persons who have broken Ukrainian law.

155. To reduce the time foreign lawbreakers are kept in custody, the Act of March 2003 amending the Foreigners (legal status) Act assigned responsibility for deporting foreigners and stateless persons detained in controlled border districts to the State border protection authorities.

156. Pursuant to article 32 of the Foreigners and Stateless Persons (legal status) Act, State Border Service Administration has drafted regulations to govern the deportation of foreigners and stateless persons who have broken Ukrainian law and been detained in controlled border

districts. Between March and September 2003, the State border authorities deported nearly 1,700 foreign offenders, of whom more than 1,000 were from countries that represent a migration risk. Experts at the German Embassy to Ukraine who have come across the procedure for documenting and deporting Chinese citizens from Ukraine give high marks to the organization of the process.

157. A shortage of funds in the State Border Service budget in 2003 for expelling illegal migrants caused certain difficulties.

158. The problem is that those difficulties can be addressed solely if the funds are in the State budget. The State Border Service Administration submitted proposals to the Ministry of Economics for 8 million hryvnya to build temporary holding stations for illegal migrants and 1 million hryvnya to deport foreigners who have broken Ukrainian law to be included in the "Funding amounts and sources" section of the Programme for the Social-Economic Development of Ukraine for 2004. The proposals were included in the draft of the programme.

159. At the initiative of the Ministry of Internal Affairs State Border Service Administration, on 17 July 2003 the Cabinet of Ministers adopted a resolution endorsing standardized regulations for stations for the temporary holding of foreigners and stateless persons illegally in Ukraine; these define the legal status and operating rules of such stations, and set a maximum period of six months for holding individuals who lack the proper documents. The implementation schedule for that resolution calls for three such stations with a capacity of up to 350 individuals each, to be built in Ukraine, in Transcarpathia, Kyiv and Kharkiv provinces.

160. On 26 September 2003, temporary holding stations were housing 434 individuals from countries representing a migration risk, of whom 421 had been held for more than 10 days and were by official order to be held pending a decision on whether to deport them. The State Border Service and accredited foreign diplomatic missions in Ukraine are taking due action to document and identify those individuals, because most were detained without identity documents. The process is lengthy - three to six months. Thanks to productive cooperation between the State Border Service Administration and foreign embassies, about 700 foreigners were returned to their home countries in 2003.

161. In addition, in 2003, nearly 800 offenders were handed over by the State border authorities to the Ministry of Internal Affairs, and more than 100 individuals were referred to the migration services to be granted refugee status in Ukraine.

#### **Paragraph 58 (m)**

162. The efforts of interested parties to prevent and combat the shameful spread of human trafficking are coordinated by a council in the office of the Commissioner for Human Rights of the Verkhovna Rada (hereinafter: the Council). The Council has been actively supported by the International Organization for Migration's field mission in Ukraine and the Organization for Security and Cooperation in Europe's Ukraine mission and Office for Democratic Institutions and Human Rights (ODIHR/OSCE). In addition to international organizations, the Council's membership includes representatives of a number of Ukraine's central government agencies able to take action against human trafficking: the Ministry of Internal Affairs, the National Central Bureau of Interpol, the Ministry of Foreign Affairs, the Ministry of Labour and Social Policy, the

Ministry of Family, Children and Youth Affairs and the State Border Service Administration. There are also representatives of non-governmental human rights organizations that are involved in preventing trafficking in women, specifically, La Strada-Ukraine.

163. The Council made substantial modifications to the Programme to Counter Human Trafficking for 2002-2005, and an interdepartmental commission in the Cabinet of Ministers has been entrusted with monitoring and coordinating programme implementation.

164. A question that remains important today is that of national law-enforcement agencies working together to ensure that neither “live commodity suppliers” nor “buyers”, that is, individuals who find people in their home countries to be trafficked will escape punishment. Ukraine ratified the United Nations Convention against Transnational Organized Crime and the related Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children by Act of 4 February 2004. The Protocol provides a definition of trafficking in persons that is standard for all States. Ratification entails incorporation of the provisions of the Convention into national law and action to prosecute individuals associated with trafficking in every State.

165. Trafficking in women and other criminal acts against women are criminal offences under a whole series of articles of the Criminal Code, among them article 146 “unlawful deprivation of freedom or kidnapping”, article 149 “trafficking in persons or other unlawful transaction involving persons”, article 152 “rape” and article 154 “coercion into sexual relations”.

166. Every allegation by a victim of unlawful action taken against him or her is checked, and an appropriate decision is taken: criminal proceedings are initiated if the allegation is found to be true.

167. In 2002 alone, the internal affairs authorities uncovered 150 instances of Ukrainian citizens being moved out of the country for payment, primarily women for sexual exploitation. Each gave rise to criminal proceedings, and an appropriate decision was made on the findings of the investigation. The status of investigations covered by article 149 of the Criminal Code was studied in 2002 by the Office of the Procurator-General. Shortcomings were pointed out to local procurators, and most of the investigations are now being monitored.

168. The Criminal Investigation Department and its local branches are taking steps to prevent and uncover crimes involving trafficking and other forms of violence against women.

169. Over the first eight months of 2003, the Department took a series of organizational and practical steps to implement Presidential Decree No. 143 of 18 February 2002 on measures to further strengthen law and order and protect civil rights and freedoms. The Decree makes combating human trafficking a priority for Ukraine’s law-enforcement authorities, the Integrated Programme to Counter Human Trafficking for 2002-2005 and managerial decisions and routine meetings of the Ministry of Internal Affairs.

170. Detective work, some done in collaboration with the law-enforcement authorities of foreign States, has enabled the internal affairs authorities to uncover 166 human-trafficking-related crimes this year, which is 55.1 per cent more than in the same period last year.

171. Over 170 individuals, Ukrainian and foreign, have been brought to justice. More than 300 human trafficking victims, including 20 minors, have been returned to Ukraine. Illegal proceeds from such transnational organized crime totalling 10,000 hryvnia and US\$ 1,500 have been seized.

172. The action taken has enabled the internal affairs detective and investigative services to identify and eliminate 10 organized-crime groups involved in “people-trafficking”.

173. Since human trafficking was made a crime (March 1998), Ukrainian law-enforcement authorities have identified 480 crimes of this category (2 in 1998; 11 in 1999; 42 in 2000; 90 in 2001; 152 in 2002; and 166 in the first eight months of 2003).

174. During the reporting period this year, 142 crimes covered by article 302 of the Criminal Code (setting up or maintaining dens of vice and prostitution), often a cover for human trafficking, have been uncovered, as have 151 crimes covered by article 303 of the Criminal Code (prostitution or coercing or luring individuals into prostitution), including 29 of pimping or participation in organized groups.

175. To identify and prevent attempts to recruit individuals whose behaviour puts them at risk and renders them vulnerable to human trafficking, the internal affairs authorities keep records of over 5,300 individuals who engage in prostitution, and has taken administrative action against 1,500 of them.

176. Steps have also been taken to enlist a number of State and non-governmental organizations in preventing and halting human trafficking; to establish ties and cooperation with law-enforcement agencies in other States; and to get local militia units more involved in combating this type of organized crime.

177. The results of these efforts are constantly being reported in the media. For example, thanks to productive cooperation between representatives of the law-enforcement agencies of the United Kingdom of Great Britain and Northern Ireland and the Procurator-General of Ukraine, the Ukrainian Ministry of Internal Affairs has developed recommendations for Ukrainian law-enforcement personnel on the identification, exposure and investigation of human-trafficking-related crime; the recommendations take account of best international practice.

178. Trafficking in women and children is comparatively new in Ukraine. It emerged as a result of growing unemployment and cuts in appropriations for social safety-net programmes. Low wages and welfare-payment arrears remain the most severe of Ukraine’s economic and social problems. As a result, “people trafficking” especially in women, girls and children, has reached menacing proportions.

179. The adoption of the Integrated Programme on 5 June 2002 represented a new, weighty contribution to the creation of effective mechanisms for countering human trafficking: the upgrading of the law, the enhancement of public awareness, the strengthening of the law-enforcement and judicial authorities’ capacity to prosecute criminals, the return of victims to the homeland, and the implementation of a victim reintegration programme.

180. Under article 52 of the Code of Criminal Procedure, parties to criminal trial proceedings, victims particularly, are entitled to protection if there is a real threat to life or limb or to their homes or property.

181. On receiving a claim or a report that someone's safety is at risk, the body conducting the preliminary inquiry, the investigator, the procurator or the court is required to check the claim (report) and decide within no more than three days - immediately in an emergency - whether to give or deny the person protection. Based on their decision, they forward a reasoned ruling or determination to the body responsible for security measures for execution. That ruling or determination is binding.

182. Guided by the specific circumstances and the need to eliminate the risk, the body responsible for security measures establishes a list of necessary measures and means of implementing them. The person receiving protection is apprised of the security measures, the terms on which they are provided and the rules governing the use of property or documents issued for security purposes.

183. The body responsible for security measures notifies the body conducting the preliminary inquiry, the investigator, procurator, court or judge handling the case in writing of the measures taken and their results.

184. The President of Ukraine signed a decree on 18 February 2002 ordering action to improve the work of the law-enforcement and other government authorities in upholding human rights, protecting life and limb and boosting crime control. The decree emphasizes that fighting human trafficking is a priority for Ukraine's law-enforcement authorities.

185. The decree also orders a study of international experience in providing protection for victims and witnesses in criminal proceedings and the development of machinery to execute the Parties to Criminal Proceedings (protection) Act.

186. Educational and public-information campaigns against human trafficking are being widely introduced both by the State and by international and non-governmental organizations. Several films have been made - "*If I don't return*", "*Victim*", "*Ukrainian export*", "*Victims of silence*" and "*Sandcastles*" - and pamphlets and brochures are being published in large print-runs. A teaching aid, "*Prevention of human trafficking*", has been prepared for teachers and distributed to every secondary school. A textbook, *Activities of Internal Affairs Agencies to Prevent Human Trafficking*, has been produced for lecturers at law schools, students and law-enforcement officials, and a four-volume work on "*Human Trafficking and Illegal Migration*" has been published.

187. The problems of preventing human trafficking and violence against women are reflected in the National Plan of Action to improve the Status of Women and Promote Gender Equality in Society, 2001-2005. They were also discussed at the Second All-Ukraine Congress of Women, which took place from 24 to 26 October 2001, and where two ad hoc groups worked on documents on the subject. One of the texts the Congress adopted was the All-Ukraine Declaration against Violence.

188. On 15 November 2001, Ukraine adopted a law on the prevention of violence in the family. To create the machinery for implementing it, the Ministry of Family, Children and Youth Affairs, pursuant to an order of the Prime Minister, dated 21 December 2001, drafted rules to govern the consideration of claims and reports of violence or threatened violence in the family.

189. The creation of a network of special facilities for victims of domestic violence - crisis centres and safe houses for battered women and medical and social rehabilitation centres for victims of domestic violence - has begun in the various regions of the country.

190. Until recently, such facilities were set up and run by voluntary organizations with backing from international funds. Only in Kyiv is the safe house for battered women supported by the Kyiv municipal government. The adoption of the Prevention of Domestic Violence Act is making it possible to create such centres with support from local budgets.

191. In a cooperative endeavour by the Ministry of Family, Children and Youth Affairs and UNICEF, five crisis centres (safe houses) are to be opened every year in 2002-2005 with partial funding from UNICEF and financing from local government agencies. In the regions, youth social-service centres and public organizations and funds are working to overcome domestic violence by means of education and counselling, telephone hotlines, seminars, training sessions, dialogues and lectures. A great deal of attention is being focused on the creation of public coalitions and on cooperation and work with the militia.

192. The Ministry of Family, Children and Youth Affairs is collaborating on this topic with the United States Agency for International Development and Winrock International. Winrock International has helped to create a network of information and counselling "Woman for Woman" centres which are successfully operating in seven provincial centres (Donetsk, Dnipropetrovsk, Ivano-Frankivsk, Zhytomyr, Rovno, Kherson and Chernivtsi), and three regional centres under a project entitled "Public Initiatives to Overcome Domestic Violence and Human Trafficking". The centres focus on the acutest problems that primarily affect women. They offer anonymous counselling and legal services for battered women, conduct training sessions and they operate telephone helplines.

193. In 1998-2000, with United States support through Project Harmony, public coalitions to prevent domestic violence were created in three provinces (Odessa, Lviv and Transcarpathia). A similar coalition was created in Zhytomyr province by public initiative.

194. An experiment has been under way since 2001 in Lviv, Dnipropetrovsk, and four districts of Zhytomyr province to forestall domestic violence (introducing special cards); besides the militia, representatives of voluntary organizations and local authorities are involved.

195. Between 25 November and 10 December 2001, at the urging of women from all regions, the first-ever nationwide "16 Days without Violence" campaign was held: there were events on presenting and overcoming domestic violence, public information drives against violence, and telephone hotlines were in operation. This large-scale campaign was reported in the media: programmes were broadcast on radio and television, special press-club meetings were set up for journalists, and training sessions and seminars were arranged for citizens and for representatives of the militia and members of the teaching and medical professions.

196. The national “16 Days against Gender Violence” campaign in 2002 was conducted on an even broader scale. It was initiated by the Women’s Consortium of Ukraine, which represents 167 voluntary organizations, and was conducted in conjunction with the Ministry of Family, Children and Youth Affairs and with backing from Winrock International. It sought to attract public attention to two urgent problems: human trafficking and domestic violence. One of its primary objectives was also to step up efforts by voluntary organizations and State agencies to overcome violence and protect women’s rights in Ukraine and foster an ethos of non-violence. In the regions there were mass events and public hearings culminating in a round-table discussion in the Ukrainian Parliament.

197. The Verkhovna Rada, the Cabinet of Ministers, the Office of the Procurator-General, the Ministry of Justice and the Ukrainian office of the International Organization for Migration have helped to organize and run 4 international workshops, 5 international conferences and 12 assemblies, meetings and round tables.

198. Altogether 69 articles on the fight against human trafficking and prostitution were published in the media and on the Internet; 27 television and 8 radio interviews were given; 21 lectures were given to workers at enterprises, institutions and organizations, students in secondary-school grades 9-11 and university students; and 1,000 booklets of key facts on human trafficking were distributed to militia investigation units.

199. Compliance with the Cabinet of Ministers order No. 18862/23 of 28 January 2002 and No. 10432 of 5 March 2003 and minutes No. 8 of 25 April 2003 and No. 17 of 16 September 2003 of the meetings of the Cabinet of Ministers Committee on Defence, the Military-Industrial Complex and Law Enforcement Operations on the preparation of the bills necessary to ratify the additional protocols to the United Nations Convention against Transnational Organized Crime entailed amendments to articles 149 and 303 of the Criminal Code, the final wording of which was cleared on 23 September 2003 with the Supreme Court, the Procurator-General’s Office and the Ministry of Justice.

200. To step up action against human trafficking, a series of police operations were conducted between 1 and 19 September 2003 at the initiative of the Southeast European Cooperative Initiative (SECI) Regional Centre under the international MIRAGE 2003 operation to identify criminal groups and individuals affiliated with human trafficking and block off routes for taking Ukrainian citizens out of the country.

201. Efforts to prevent violations by criminal investigation staff of the constitutional rights and freedoms of citizens suspected of committing crimes are constantly monitored.

#### **Paragraph 58 (n)**

202. Article 11 of the Democratic Civilian Control of the Military Law-Enforcement Authorities Act of 19 June 2003 allows the Commissioner for Human Rights of the Verkhovna Rada more influence over the eradication of hazing in the uniformed services. The Act requires changes to the Disciplinary Regulations of the Armed Forces and a number of Ministry of Defence and other regulations. Above all, a mechanism must be established enabling a serviceman to bypass his immediate superiors and address complaints and appeals directly to the Commissioner if his rights and freedoms have been violated.

203. In recent years there has been a steady decline in hazing thanks to action by military procurators and commanding officers.

204. The efforts of the Military Judicial Service, which was created by the Act of 7 March 2002 and is now being set up, are perceived as having a positive influence on this problem. This Service is a special law-enforcement unit intended to prevent crime and other offences in the Armed Forces and to protect the lives, health, rights and lawful interests of military servicemen, reservists on active duty, and employees of the Armed Forces.

205. Service units are not subordinate to but independent of the local command. Once up and running, the Service will, in fact, take investigative authority from the commanders of military units who have an interest in concealing crimes committed by the troops subordinate to them and thereby creating the false impression that the law is being observed. It will also be possible for military servicemen to have their appeals properly considered without risking reprisals from their commanding officers and to report hazing and brutality.

206. The better to prevent breaches of the regulations governing relations between servicemen, it seems advisable:

- For cases where conduct unbecoming does not have serious consequences, to introduce a summary-charge-type presentation (by the appropriate Military Judicial Service units) of the case material so as to allow a faster, more telling comeback against the culprits. This will require amendments to current criminal procedure law;
- To foster a climate intolerant of conduct unbecoming in military units, procurators should propose to try cases in this category more often with unit personnel present.

Thought should also be given to the creation of an effective, professionally trained psychology service in military units.

### **Paragraph (p)**

207. The tuberculosis epidemic that has engulfed certain Eastern European countries and reached Ukraine in 1995 has adversely affected the health situation in penal correction facilities. An increase in the number of tuberculosis cases at detention facilities was noted in 1991-1995, when infected individuals began turning up in remand centres. In 2002, the number of individuals found to have active tuberculosis on admission to remand centres was five times as high as in 1993 (940 cases in 1993, 4,415 in 2002).

208. The diagnosis, prevention, and treatment of this dangerous disease have improved since the beginning of the epidemic. Today the Ukrainian penal correction system has a network of 10 tuberculosis clinics (with a physiotherapy/surgery unit at Kherson Provincial Tuberculosis Hospital) for active tuberculosis patients; three of those hospitals have 3,000 beds, and were opened in response to the spread of the disease. All are staffed with qualified medical personnel: a total of 406 physicians and 1,168 mid- and junior-level medical personnel.

209. Thanks to a presidential decree of 20 August 2001 announcing a national programme of tuberculosis control for 2002-2005 and the adoption of the Tuberculosis Control Act, and with active support from the Ministry of Health, the penitentiary system has since mid-2000 widely used new, standardized methods of treatment, x-ray and bacteriological diagnosis, and strengthened disease control.

210. Given the speed with which tuberculosis was spreading in the State and, consequently, in penal correction facilities, emergency measures were necessary to stabilize the epidemiological situation.

211. Professional health-care managers studied national tuberculosis-control standards and international experience, in particular the experience of the World Health Organization, in the matter.

212. A programme of integrated tuberculosis-control measures in Ukrainian penal correction facilities for 2002-2005 was developed and approved on the basis of World Health Organization recommendations for national tuberculosis programmes and national standards.

213. Where tuberculosis care is concerned, the main tasks of the prison medical service are:

- Prevention;
- Timely identification of individuals with active tuberculosis in remand centres and correctional colonies;
- Standardized treatment of individuals with active tuberculosis.

214. The State budget has included funds for caring for tuberculosis patients in penal correction facilities since 2002. Tuberculosis hospitals for prisoners have incorporated elements of the DOTS strategy that are not at variance with national standards, namely:

- Assignment of patients to treatment categories;
- Standardized, supervised treatment;
- Mandatory sputum-smear microscopy, looking for evidence of infection;
- Standardized statistical forms for reporting and cohort analysis, by agreement with regional health-care bodies;
- Centralized, uninterrupted availability of tuberculosis-control tools.

215. Since early 2002, the penitentiary system facilities in Donetsk province have been participating in the Effective Strategy for Tuberculosis Control in Donetsk Province project run by the European Office of the World Health Organization in Ukraine. Under this project, 82 medical workers have been trained in DOTS at various Donetsk health-care institutions. To learn about other States' experience in introducing the DOTS strategy into penitentiary facilities,

professional staff from the regional office of the State Penal Corrections Department have twice visited Russian penitentiary facilities (in the City of Orel). The participating facilities have been given eight binocular microscopes, an ambulance, bacteriological laboratory equipment worth 140,000 hryvnya, laboratory furniture worth 39,000 hryvnya, office equipment worth 8,000 hryvnya and laboratory expendables.

216. The effectiveness of the project and the possibility of extending it to facilities in other regions will be reviewed after project completion in 2004.

217. Together, the steps taken to control tuberculosis have stabilized the morbidity rate (6,828.0 per 100,000 population in 2000; 5,764.2 in 2001; and 4,587.1 in 2002).

218. To attract the additional funds needed for measures to control tuberculosis and HIV/AIDS, the State Penal Correction Department has used a World Bank loan to contribute to the feasibility study for a tuberculosis-and HIV/AIDS-control project in Ukraine.

219. If financed, that project will boost the skills of medical workers, improve medical care for tuberculosis patients, provide modern medical equipment for treatment and diagnosis, and heighten awareness of disease prevention and treatment among correctional-facility personnel and inmates.

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