



# ‘NO EVIDENCE OF A CRIME’

PAYING THE PRICE  
FOR POLICE IMPUNITY  
IN UKRAINE

**AMNESTY**  
INTERNATIONAL



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**AMNESTY**  
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*Cover photo:* An anniversary vigil for Ihor Indilo who died in police custody on 17 May 2010. It forms part of the campaign "No Police State", dedicated to victims of police abuse in Ukraine. © Sergei Svetlitsky/Demotix

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# 1. INTRODUCTION

Since gaining independence in 1991 Ukraine has embarked on a process of reforming the country's laws and institutions to enhance the rule of law and better protect human rights. This process has not been without its successes. However, in many areas, there is still a significant gap between the declared intention to better protect human rights and actual practice. Police practice, in particular, does not live up to international standards of accountability and transparency. Torture and other cruel, inhuman or degrading treatment (ill-treatment) continue to be widely employed by police officers, and impunity for such acts remains the norm.

There has been increased coverage of such violations in the media over the last few years and a growing sense of public outrage. The death of a 19-year-old student, Ihor Indylo, in police custody in May 2010 followed closely by the death of Dmitry Yashchuk in June led to nationwide protests.

The Ministry of Interior has not ignored these concerns entirely and has shown a growing awareness that public confidence in the police is at an extremely low ebb. Admissions by senior politicians and police officers of the scale of problem and piecemeal efforts to combat it will not be enough, however, to deliver real change. What is needed is a strong commitment from the government, and from within the police itself, to comprehensive reform that places internal and external accountability at the heart of how the police operate.

Amnesty International's research reveals that there is a culture of effective impunity in Ukraine for the high level of criminal misconduct, including torture and extortion, by the police in the course of their work. Structural shortcomings, high levels of corruption, close functional and other links between prosecutors and police, non-existent or flawed investigations into criminal acts committed by the police even when medical or other credible evidence exists to support the allegations, harassment and intimidation of complainants, and the subsequent low level of prosecutions all fuel this lack of accountability for human rights violations committed by the police. Many of these points are illustrated in the story of Yakov Strogan:

Anna Strogan informed Amnesty International that her husband, **Yakov Strogan**, was detained by police officers from Kievskiy police station in Kharkiv on 16 August 2010 after an argument with a neighbour. He alleged that he was taken to a wood where police officers beat him and subjected him to torture and other ill-treatment. He said that the police electrocuted him and then used smelling salts, not to revive him with the vapour, but by pouring the toxic liquid, containing ammonium carbonate, down his nose and throat. He was then held incommunicado for four days in a flat. Anna Strogan told Amnesty International that when she went to locate her husband, the head of Kievskiy District police station introduced her to a lawyer who offered to secure his release in exchange for \$10,000. Anna Strogan refused to pay, but played for time by engaging in the discussions with the lawyer, because she was advised that the police could only hold him for four days after which they would need to bring him before a judge. She only realised the extent of the ill-treatment that her husband was being subjected to when she was handed his clothing, and she saw it was blood stained, torn, and that he had soiled his trousers.

Yakov Strogan was indeed released after four days, and decided to lodge a complaint about his treatment by police. On 29 October 2010 the regional prosecutor refused to open a criminal investigation into his allegations giving the standard reply that there was “no evidence of a crime”. Subsequently, Yakov Strogan took part in a press conference and publicized his complaint widely including to the Parliamentary Ombudsperson and the Parliamentary Committee on Questions of Legal Support to Law Enforcement Agencies. He was then detained again on 9 December 2010, beaten again by the police and charged with attempted murder. The Kharkiv Human Rights Group believes that his re-arrest is in retaliation for his complaints about police ill-treatment. He is currently being held in the Kharkiv remand prison (SIZO).

The case of Yakov Strogan is not an isolated example. According to some estimates hundreds of thousands of people in Ukraine are victims of human rights violations at the hands of the police each year.<sup>1</sup> These include racial abuse, forced confessions, extortion, torture and other ill-treatment, and wrongful deaths in custody. The pervasive culture of impunity means complaints of such violations are routinely ignored or complainants who make well-founded allegations receive the standard response from prosecutors based on Article 6 of the Criminal Procedural Code, that “there is no evidence of a crime”.<sup>2</sup>

The Council of Europe Committee for the prevention of Torture (CPT) has stated that: “The credibility of the prohibition of torture and other forms of ill-treatment is undermined each time officials responsible for such offences are not held to account for their actions. If the emergence of information indicative of ill-treatment is not followed by a prompt and effective response, those minded to ill-treat persons deprived of their liberty will quickly come to believe – and with very good reason – that they can do so with impunity. Conversely, when officials who order, authorise, condone or perpetrate torture and ill-treatment are brought to justice for their acts or omissions, an unequivocal message is delivered that such conduct will not be tolerated.”<sup>3</sup>

In recent years there have been an increasing number of judgments against Ukraine by the European Court of Human Rights which find that Ukraine has violated its obligations under Article 3 of the European Convention on Human Rights to prevent torture and other ill-treatment. Furthermore, the judgments expose repeated and systematic failures to carry out effective investigations into torture allegations. In none of the cases, in which the Court has found a violation of Article 3, have the perpetrators subsequently been brought to justice, nor have the authorities in Ukraine taken adequate steps to remove the barriers to effective investigation of allegations against police officers. This report proposes some positive steps, including the establishment of independent police oversight and complaints procedures that would assist Ukraine to strengthen the accountability of the police and combat torture and other ill-treatment more effectively.

This is not a new problem. Six years ago Amnesty International published a report, *Time for Action: Torture and ill-treatment in police detention* (Index: EUR 50/004/2005), which documented a pattern throughout Ukraine of complaints against police officers being effectively ignored, or closed without adequate investigation. Six cases of alleged torture or other ill-treatment featured in the 2005 report, but only two of those cases have resulted in the prosecution of some of the police officers alleged to have been responsible. Four of the individuals have faced reprisals from police, since the publication of that report, apparently aimed at dissuading them from pursuing their complaints. Three of the individuals fled Ukraine as a result and sought asylum in other countries.

In the six years since the report was published some significant steps have been taken to bring policing in line with international and regional human rights standards. However, many of the recommendations made by Amnesty International in that report, and by the European Union such as the establishment of a National Preventive Mechanism to monitor places of detention in accordance with Ukraine’s obligations under the Optional Protocol to the Convention against Torture, and the establishment of an independent body to investigate allegations against the police, have gone unheeded. As before, allegations of torture are not investigated effectively and promptly and those who pursue their complaints face years of court battles, and traumatic and invasive investigation methods to bring the perpetrators to justice.

## 2. THE POLICE

To understand why these failings occur, it is helpful to understand the institutional structure and history of the police in Ukraine.

The police force (militsiia) in Ukraine is highly centralized and is directly subordinate to the Minister of Internal Affairs. There are 33 regional police departments each with between 18 and 30 district police departments, as well as local substructures, with a total of 300,000 employees.

Although the stated aim of the police in the Soviet Union was to ensure public order and combat crime, one of its main actual functions was to serve as an instrument of repressive control rather than a body dedicated to serving the community and accountable to the public. In keeping with their role as enforcers of state policy, the police carried out a wide range of functions in addition to the prevention and investigation of criminal activity, many of which they continue to perform. These include technical checks on motor vehicles, the issuing of passports, immigration control, and residence registration.

Since the end of the Soviet Union the Ukrainian Ministry of Internal Affairs has taken significant steps towards adapting to working in a democratic rather than an authoritarian political system. Even before the end of the Soviet Union in 1991, a Law on the Police was passed which stated that the police forces should carry out their duties on the basis of the principles of legality, humanity, respect for the individual, social justice, and cooperation with work collectives and with social organizations and the public. Respect for human rights is not explicitly stated as one of the principles, but the Universal Declaration of Human Rights and other international human rights instruments are referred to as the legal basis for police work along with the constitution and other domestic laws. A new draft Law on the Police drawn up by the police trade union is currently before parliament and proposes to distance the police force further from the Soviet legacy by “reorienting from a punitive repressive strategy to partnership and service to society”.

Since the publication of Amnesty International’s report in 2005, the Ministry of Internal Affairs has demonstrated increased openness. A new Human Rights Directorate was established with a network of human rights advisors, including some with NGO backgrounds, throughout the country; a system of monitoring police detention, known as the “mobile groups”, which included NGO representatives, was introduced in 2004 and carried out 377 inspections in 2008; and a Public Council providing a forum for consultation with civil society functioned regularly from 2005 to 2010. These initiatives ended when Anatoly Mogilev replaced Yuriy Lutsenko as Minister of Internal Affairs in March 2010. A Human Rights Department has replaced the Human Rights Directorate, but no longer has the network of regional human rights advisors that was part of the Human Rights Directorate. The Public Council renewed its activities in January 2011, but has so far only established a Memorandum of Understanding, and it is therefore too early to judge its effectiveness as a way of involving civil society in policing.

Video cameras have been progressively installed in police stations and are now used in police stations in all regions, in the reception areas and in some cells. However, video cameras are



often switched off. For instance it emerged during the course of a trial against Firdovsi Safarov, a Ukrainian citizen of Azeri origin, who reported that he was beaten by police in Mohiliov-Podilsky in March 2011, that the video cameras at the police station had apparently not been functioning.

There has also been an increasing willingness by the Ministry of Internal Affairs to acknowledge the problem of torture and other ill-treatment. On 31 March 2011, the Minister of Internal Affairs issued a Regulation "On additional measures to prevent torture and ill-treatment by police". The Regulation states that "shameful facts of cruel or ill treatment and torture by Militia officers have not been eradicated up to now. Some Authorities and Units cultivate practices of detection of crimes by any, even unlawful, means." Among other measures, the regulation provides for the inspection of all detention facilities by Ministry staff; the installation of video recording in all interrogation rooms; and the issuing of a leaflet to all detainees explaining their rights. It is yet to be seen whether these measures will have any impact.

## PRESSURE TO SOLVE CRIMES

*"They have strict instructions. They have to solve five or six cases and if they get their hands on a young man they will do everything they can to "solve" the case."*

Zoya Karpilenko, mother of torture victim

*"Where does torture come from? The assessment criteria that are used right now for the police – solving crimes – the most important thing is to solve crimes – lead to a situation where police officers are prepared to use torture"*

Anatoly Mogiliov speaking at press conference on 29 April 2011.<sup>4</sup>

One of the legacies of Soviet-style policing is the expectation that the police will solve a very high percentage of crimes. There is an expectation among the political and police hierarchy that Ukrainian police will solve 60 – 70 per cent of crimes. This means that local police chiefs put pressure on their officers who in turn feel considerable informal pressure to achieve the required results regardless of the methods. It is clear from statements by politicians and Ministry officials that the rate of crime solving is still used as a measure of assessment of police work rather than other factors, such as public perception of the police or crime prevention.

Already in 2004, the Ukrainian government acknowledged this problem in its response to a report by the Council of Europe Committee for the Prevention of Torture, stating that:

*'One of the factors of abuse of power by the detective officers of the operative police units is their wrong understanding of the crime detection rate as the main criteria of the efficiency of their work. That is why some officers try to achieve the high crime disclosure rate by any means.'*<sup>5</sup>

Some seven years later, however, the same problem remains, prompting the Minister of Internal Affairs to state during a press conference on 28 April 2011 that a key reason for torture lies in the assessment criteria for police officers, who are encouraged to solve a high number of crimes regardless of the methods used. The Minister compared Ukraine, where police are expected to solve 60 – 70 per cent of all reported crimes, to Poland where the rate is only 40 per cent yet trust in the police is greater because they protect the "rights and

freedoms of citizens". He stated that "no violations of human rights and freedoms could ever be justified, even in solving the worst possible crimes."<sup>6</sup>

Some measures have, however, been taken in an attempt to address this problem. In 2010, two internal directives were passed concerning evaluation of police work: Directive No 197 of 25 May 2010 "On Criteria", and Directive No 279 "On Confirming the assessment system of the activities of the Ministry of Internal Affairs on the basis of new criteria". These two documents introduced new criteria for the assessment of police work. However, according to the Association of Ukrainian Monitors on Human Rights Conduct in Law Enforcement (UMDPL), an NGO, these directives were actually not based on new criteria and "preserved the old model of quantitative standards for crime detection and prevention".<sup>7</sup> The criteria introduced in Directive No 279 to assess police work against various crimes are as follows:

- the number of criminal cases passed to the courts
- the number of suspects arrested
- the number of cases confirmed by the courts and the number of convicted suspects

A new Directive 17, passed in January 2011, proposes introducing new assessment criteria as a pilot project during 2011. It is to be hoped that these criteria will move away from the quantitative approach to the assessment of police work.

Many of the victims of police torture and other ill-treatment and their relatives interviewed by Amnesty International told how they were arrested in the wake of serious crimes and then tortured to force them to confess to the crime.

**Mikhail Bondar** was detained in Sokolets village in Vinnytsya district in 2003 after a murder had been committed in the village. His mother told Amnesty International how he was taken to the police station in the nearest town, Nemirov, where she alleged that he was tortured by being suspended from a bar and beaten, and subjected to electric shocks. The police forced him to confess to the murder, but after 10 days when he was brought before a judge he complained about the torture and he was released on bail on the basis that his confession had been compelled through the use of force and because he had a permanent address. No action was taken against the police officers concerned, and his mother told Amnesty International that he did not pursue a complaint because he was afraid that he would be beaten again if he did. As a result of the torture he is unable to use his right arm. After his mother started a campaign against the head of the village council because of his failure to provide basic services, the investigation into the murder was reopened and Mikhail Bondar was detained again in 2007. He was tried and convicted on the basis of a statement that he was alleged to have signed in 2007 although his mother insists that since he was tortured in 2003 he is unable to write. He was convicted of murder on 25 February 2008 and his appeal against the conviction was rejected by the Supreme Court on 10 July 2008. He is currently serving his sentence in Prison Colony 114 in Mohiliov Podolskiy in Vinnytsya region.

**Alexander Rafalsky** told Amnesty International that he was tortured by police in Kyiv in June 2001 in the course of a murder investigation. He told Amnesty International that police officers beat him on arrest and then subsequently in the police station where they placed a black plastic bag over his head and repeatedly tightened it around his neck with a belt suffocating him. They then placed a gas mask on top of the bag on his face. On 16 July 2001, without being taken before a judge he was taken to the police cells at Stavishche in the Kyiv region where electric wires were attached to various parts of his body and he was given electric shocks to try to force him to confess. Despite the torture he endured Alexander Rafalsky did not confess and on 30 June

2004 he was sentenced to life imprisonment for murder on the basis of witness statements which had also allegedly been extracted under torture. All his complaints to the police and the prosecutor calling for an investigation into his allegations of torture have been unsuccessful. In a letter to Alexander Rafalsky's parents dated 20 June 2008 the Prosecutor General stated that there was no need to open an investigation into such “minor violations”. There has been no investigation into Alexander Rafalsky's allegations that he was tortured, and the police officers that he alleges tortured him to force him to confess to murder have since been commended for solving the murder and promoted. In 2011, three courts ruled that a criminal investigation should be opened into Alexander Rafalsky's allegations of torture. At the time of writing no investigation has been started.

The Ukrainian authorities must ensure that the new assessment criteria for police work that are being piloted this year are based on respect for human rights and ethical standards rather than on quantitative results.

## POLICE CORRUPTION

*“As far as the traffic police are concerned it is horrifying that over the last few years a system has built up according to which subordinates collect money for their managers and above. This corruption chain must be broken, cut, sawn off.”*

Minister of Internal Affairs<sup>8</sup>

*“There is a department for fighting people trafficking -- they go out to the highway where the girls work and tell them to pay whatever amount of money: “If you don't pay you can't stand here and there will be problems”. The first time they undressed them, took their money and mobile phones and dumped them in the forest. The second time they beat them, took their money again and mobile phones, and the third time they took them to the district police station, also humiliated them as much as they liked – one was raped .....And they wrote them up for Article 303 – that is soliciting”*

Yelena Dorokhova, lawyer working with drug users

Both the UN Code of Conduct for Law Enforcement Officials<sup>9</sup> and the European Code of Police Ethics explicitly call on law enforcement officials not to engage in corrupt practices. The European Code on Police Ethics calls on states to establish “effective measures to prevent and combat police corruption” and for “police personnel to oppose all forms of corruption within the police”.<sup>10</sup>

On 8 June 2011, at a meeting of the National Anti-corruption Committee President Viktor Yanukovich announced that he had signed a set of laws to combat corruption in general and stated that corruption was a systemic phenomenon that threatened the security of the country and led to a yearly loss of 20 billion Hryvna (1.7 billion Euro).<sup>11</sup> However, despite repeated promises by government authorities, corruption continues to permeate Ukrainian society. According to the Transparency International Global Corruption Barometer, in 2010 between 30 and 49.9 per cent of the respondents in Ukraine reported paying a bribe to various service providers in the past year.<sup>12</sup>

Corruption is very widespread within the Ministry of Internal Affairs of Ukraine as in the rest of Ukrainian society, and extortion by the police was alleged in many of the cases that have come to Amnesty International's attention. In a meeting with Amnesty International in March

2011, Anatoliy Onishchuk, the head of the police trade union acknowledged that corruption in the police was rife. Corruption is encouraged by low salaries - the average monthly salary for police officers in Ukraine is 210 Euros<sup>13</sup>- and chronic underfunding of police work. Anatoliy Onishchuk informed Amnesty International that each police station was provided with approximately 40 per cent of the funding that it needed to function from the central budget and had an official “charitable fund” which was part of the official accounting procedures. In 2010, the Accounting Chamber of Ukraine reported that charitable donations amounting to as much as 15 million Hryvnya (1,350,000 Euros) were “directed at creating comfortable conditions for the management, purchase of cars, equipment, computer technology, repairing office premises and holding various ceremonies, competitions, services for banquets”<sup>14</sup> rather than to solve the chronic underfunding. The existence of such charitable funds both at a national and local level opens the way for corrupt practices. In September 2010, Parliamentary Deputy, Gennady Moskal, carried out an investigation into the purchase of a Cadillac for the Minister of Internal Affairs. It was confirmed by the Minister that the car had been bought from “charitable funds”, but stated that it was necessary for meeting foreign visitors.

Police officers themselves often seek to supplement their low salaries by obtaining bribes. For example, Amnesty International was told by organizations working with sex workers that many female sex workers were forced to pay bribes to police to avoid prosecution. In other cases detainees in police custody have had to pay bribes to be released and in some cases the police worked in league with lawyers to extract bribes in exchange for dropping criminal charges or release, as in the case of Yakov Strogan.

**Maxim Slobodyan**, a 19-year-old student, who lives with his disabled mother and younger sister, was allegedly beaten, robbed and detained in December 2010 by police in Kriviy Rig. He was pulled out of a minibus by strangers after an argument with the driver. He called the police, thinking he was being mugged, but the strangers turned out to be police officers. They took him to the nearest police station where his mobile phone was taken away and never returned; he was beaten and then released after 12 hours in custody. During his detention the police had demanded that he contact his estranged father to ask for money to pay the police for his release. He refused and recorded the whole event on a dictaphone that he happened to have on him. The recording was unfortunately unavailable to Amnesty International in April as it had been sent for an expert opinion in connection with a complaint that Maxim Slobodyan had lodged about his treatment by the police. A further recording that had been made by Maxim Slobodyan on an MP3 player was initially included in the case file, but had apparently been mislaid when the Ministry of Interior investigators handed the file over to the Prosecutors. The prosecutor’s office has refused to open an investigation into his complaint giving the standard response that “there is no evidence of a crime”.

Lawyers and journalists told Amnesty International that it is common for police officers to pay their superiors to be appointed to posts with particular potential for obtaining bribes and even possible to get bank loans based on the prospective income from those posts. The police officers are then forced to ensure that they can earn enough to pay off the loans.

Corruption in any institution involved in law enforcement or the administration of justice is always liable to undermine the respect, protection and fulfilment of human rights. Amnesty International is extremely concerned that corruption in the Ministry of Internal Affairs in Ukraine leads to human rights violations by the police when suspects cannot or refuse to pay bribes. Amnesty International calls on the Ukrainian government to take effective measures

to end corruption.

## 3. HUMAN RIGHTS VIOLATIONS BY POLICE

People who come into contact with the police are at risk of suffering a range of human rights violations. The people interviewed by Amnesty International during the preparation of this report revealed a wide range of abuses by police ranging from verbal abuse to serious human rights violations such as torture and other ill-treatment.

Those particularly at risk of human rights violations at the hands of the police are drug-users, sex workers, previous offenders, and visible minorities. Drug users and sex workers are easy targets for the police because they are less likely to lodge complaints, and because they face the threat of prosecution for possession of drugs or prostitution. In a 2006 report focusing in particular on the effect of such abuse in hampering efforts to combat the HIV/AIDS epidemic in the country, Human Rights Watch documented police abuse against drug users and sex workers, whose marginalized status makes them easy targets for police seeking to fulfil arrest quotas.<sup>15</sup> Drug users and NGO employees working with sex workers interviewed by Amnesty International in March and April 2011 reported that they are still being targeted by police. They are often threatened with prosecution unless they pay for release. Those who refuse to pay face prosecution, arbitrary detention, or torture and other ill-treatment.

However, Amnesty International's research has shown that anybody can be targeted; Tetyana Montyan, a lawyer, was detained for attempting to see her client, Sergei Fesik happened to be outside a cafe having a smoke when he was detained, and Gleb Skant, a sports teacher was detained by plain clothes police as he spoke to a neighbour on the landing in his block of flats.

### TORTURE AND OTHER ILL-TREATMENT

*“First they put me on the floor then they stripped me completely naked. They took my arms and tied them and my legs as well. They put wires on my fingers and on my ears, bare wires, and then on my groin and on my legs. They started up the generator on the street – the wires went through the window of the first floor – these wires – lots of wires - were attached to me. I was wet. When they started ..... When the ambulance came they cleaned up the foam from my mouth. My heart couldn't hold out. They did that three times.....I remember the moment when the current chained me down so much that I couldn't breathe I was completely frozen. I remember there was fog in front of my eyes and then sparks and then that was it. I don't remember anything after that. They saved my life three times according to the reports. One doctor came to register my death. I saw two angels. I saw myself - one angel was by my head and one was by my feet.”*

Alexander Rafalsky describing the torture he suffered in Stavyshe police station in Kyiv region in 2001.

Torture and other cruel, inhuman or degrading treatment or punishment are absolutely

prohibited - at all times in all circumstances - under international law. International human rights standards also prescribe measures which states should take to prevent torture and other ill-treatment, to investigate alleged cases, to bring to justice those responsible and to ensure reparation to victims.

Ukraine is party to a number of international human rights treaties which impose obligations upon the Ukrainian authorities to prevent and punish torture and other ill-treatment by its agents and ensure redress and reparation to the victims of such treatment. These treaties include the International Covenant on Civil and Political Rights (ICCPR), the European Convention on Fundamental Freedoms and Human Rights (ECHR), and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

There are a number of provisions in Ukrainian law which prohibit torture and other ill-treatment: Article 28 of the Constitution of Ukraine states “No one shall be subjected to torture, cruel, inhumane, or degrading treatment or punishment that violates his dignity”, and Article 62 states: “An accusation shall not be based on illegally obtained evidence or on assumptions. All doubts in regard to the proof of guilt of a person shall be interpreted in his favour. ” Furthermore, Article 127 of the Criminal Code outlaws torture and defines it as “wilfully causing severe physical pain or physical or mental suffering by way of battery, torment or other violent actions for the purpose of inducing the victim or any other person to commit involuntary actions, also for receiving from this or other person a confession....”. Article 127 does not fully comply with the definition of torture in Article 1 of the Convention against Torture (see p. 39).

#### SCALE OF THE PROBLEM

It is very difficult to measure the scale of the problem of torture and other ill-treatment in Ukraine because of the inadequacy of police recording techniques, the lack of official statistics, and the fact that many people are reluctant to complain about such treatment by the police. The Kharkiv Institute for Sociological Research calculated that as many as 790,000 people in Ukraine may have been victims of torture and other ill-treatment at the hands of police in 2010. This figure is an extrapolation from responses received to a survey of 2,000 individuals in Kyiv, Kharkiv, Lviv, Poltava Regions and the Autonomous Republic of Crimea, including 250 police officers.<sup>16</sup> Of those interviewed 2.1 per cent stated that they or their relatives had been victims of “illegal physical violence” in police stations. Of the police officers interviewed 18.2 per cent stated that they had come across torture and other ill-treatment in police stations in the course of their career, and 7.8 per cent stated that they had come across torture and other ill-treatment in the course of the past year. Interestingly, when asked how widespread “illegal violence” was in the Ukrainian police 58.5 per cent of respondents stated that it was “very widespread”.

The Ombudsperson’s office stated that they received 5,000 complaints about torture and other ill-treatment in the course of 2010.

In its report on its visit in 2009 the UN Working Group on Arbitrary Detentions highlighted “the repetitive and often convincing reports of torture and other forms of ill-treatment by the Militsia throughout the country to extract confessions.”<sup>17</sup>

Svitlana Pomilyaiko and Alyona P.<sup>18</sup> were invited to Ordzhonikidze police station in Kharkiv on 8 November 2008 to be questioned as witnesses to a theft of computers from the tile factory where they worked. Once they arrived at the police station they were interrogated by police investigators as suspects and alleged that they were tortured in an attempt to make them confess to the theft. Both women were taken to separate offices on the third and fourth floors, where they were tortured. Svitlana Pomilyaiko told Amnesty International that she was placed in a chair with her arms handcuffed behind her back and police officers first tried to force her to sign a confession statement by threatening her that something would happen to her 17 year-old son. When she refused to sign, two officers held her down by her shoulders and legs while a third tied a plastic bag over her head to induce suffocation. “I thought I was going to die and I thought how silly to die like this”, she told Amnesty International. She was able to bite through the plastic bag and when the police officers noticed, they beat her and put a second plastic bag over the first. She lost consciousness several times and remembered waking up the last time and seeing a police officer playing a patience game on the computer. Despite the fear and humiliation she was subjected to she refused to sign the statement, and one of the police officers congratulated her at the end for her endurance. Before leaving the police station, officers threatened to torture Svitlana Pomilyaiko again and leave her in a cell with homeless people, unless she signed a statement that she had no complaints about her treatment, - which she subsequently did. Once she returned home she began to feel unwell and called an ambulance. Alyona P. alleged that she had been taken to an office on the third floor of the police station, ordered to remove her upper clothing and strapped to a chair with her hands handcuffed behind the chair. Police beat her, partially suffocated her with a plastic bag, and then standing behind her twisted her nipples with pliers. Svitlana Pomilyaiko reported hearing Alyona P.’s screams when she was in the police station, and later she was taken into a room where she saw Alyona P.’s handbag and other personal belongings. Both women subsequently lodged complaints against the police officers. (For details of measures taken in response to Svitlana Pomilyaiko’s complaint, please see p. 38)

In recent years there has been a growing willingness on the part of the authorities to admit to the problem of torture and other ill-treatment in police custody. On 30 March 2011, the General Prosecutor held a meeting of the Advisory Conference (Kollegiya) of the General Prosecutor’s Office. At the meeting, which was attended by the Minister of Internal Affairs, the Parliamentary Ombudsman and others, the Prosecutor General made an unprecedented admission that the number of reported cases of torture and other ill-treatment was growing and that Prosecutors were failing to take adequate measures to investigate such abuses. He also expressed concern at the growing number of deaths in custody.<sup>19</sup>

Admitting the existence and indeed the scale of torture and other ill-treatment is one of the crucial first steps to combating impunity for such crimes, and the Ukrainian authorities should build on this by ensuring that every allegation of torture is promptly and effectively investigated. They should also publish annually data on the number and type of complaints received about police misconduct in Ukraine, and how these complaints were dealt with by the police disciplinary system, and by the courts.

## VIOLATIONS OF THE RIGHT TO LIFE

“He was a strong boy, but unfortunately the price was high. He didn’t sign that piece of paper.” Dmitry Yashchuk, father of Dmitry Yashchuk who died in custody.

The right to life is guaranteed under Article 6 of the ICCPR and Article 2 of the ECHR. The

European Court of Human Rights has underlined that the obligation to respect the right to life means that states must take appropriate steps to safeguard life. States have an obligation to respect the right to life - that is, to ensure that their own agents do not act in a way which endangers life -- as well as an obligation of due diligence to protect the right to life against actions by third parties. It is particularly important in cases of deaths in custody that there should be a prompt, independent and thorough investigation.

States have a clear obligation to respect and ensure the right to life of people in custody. The controlled nature of the custodial environment ought to enable the state to closely control the conduct of its officials and prevent them from committing violations of the rights of people for whom it has assumed a duty of protection by taking them into custody. The duty of care which is owed by the police to people in their custody includes the responsibility to ensure the safety and physical integrity of detained persons, and, by implication, to be alert to any potential for self-harm.<sup>20</sup>

The state's heightened duty and capacity to fulfil these obligations when they have deprived a person of their liberty means that when someone dies in custody the burden of proof is on the state to show that it is not responsible. In the absence of such proof the state has an obligation to make reparations to the victim's family, even if the precise cause of death and the individuals responsible cannot be identified.<sup>21</sup> The European Court has stated:

“It considers that, where an individual is taken into police custody in good health but is later found dead, it is incumbent on the State to provide a plausible explanation for the events leading to his death, failing which the authorities must be held responsible under Article 2 of the Convention.”<sup>22</sup>

There are no official statistics on the number of deaths in custody, but in a letter to Amnesty International in July 2011 the Ministry of Internal Affairs stated that 40 cases concerning deaths in custody were considered by prosecutors in 2010. Of these 16 resulted in prosecutions. According to an NGO, the Ukrainian Helsinki Union, 51 people died in custody in 2010.

Amnesty International is not familiar with all 51 cases, but in the cases of Dmitry Yashchuk and Ihor Indilo the state has failed to provide any adequate explanation for the death of the young men which has caused anguish to the relatives who have been left extremely distressed and without redress.

**Dmitry Yashchuk** died in Svyatoshynskiy police station in Kyiv on 13 June 2010. According to the Ministry of Internal Affairs, he hanged himself with the cord from his shorts. Dmytry Yashchuk was detained on suspicion of possession of narcotics on 12 June. He had been a drug user and had come to the attention of the police in the past, but according to the forensic report carried out after his death he had been drug free for two to six months. When the police narcotics squad came to detain him on 12 June they searched the family home and, according to Dmitry Yashchuk's father, found some green tea and used syringes on the balcony.

Dmitry's older brother Vasily Yashchuk was at home at the time and was detained along with Dmitry. He told Amnesty International that he lent Dmytry his own shorts to wear and that those shorts did not have a removable cord. At the police station Vasily was left waiting in the corridor and could hear the conversation taking place between the police officers and his brother behind closed doors. He told Amnesty International



that he heard a police officer say: “Dyma [short form of Dmitry] sign this – say you beat out his spleen and you will get two years for hooliganism. Don’t sign and you will get 12 years for heroin trafficking. We know how to fix it.” Dmitry Yashchuk was found dead in his cell on 13 June. Police later released a video recording from the camera in the cell which appeared to show him committing suicide. His parents were immediately informed of the death of their son, and police officers from Svyatoshynskiy police station offered to pay from the funeral and to find a plot in a cemetery for his body. Dmitry Yashchuk’s father refused because he wanted a second autopsy to be carried out on the body. Three months after Dmitry Yashchuk’s death, the first autopsy report was released which revealed that there were injuries on his body consistent with a hanging that coincided with the period when he had been in police custody, but there were also bruises on other parts of his body.

The police have insisted that Dmitry Yashchuk committed suicide and the second autopsy report appears to confirm this, but questions still remain about whether Dmitry Yashchuk committed suicide, and if he did whether he was driven to it by police ill-treatment. The clothing that he was reportedly wearing has never been examined and the question remains about where the cord he hanged himself from came from if the shorts he was wearing did not have such a cord (for details of the investigation see p. 34 ).

Nineteen-year-old student, **Ihor Indilo**, died in Shevchenkovskiy police station in Kyiv on 17 May 2010 - the day before his 20<sup>th</sup> birthday. He had been celebrating his birthday in the student hostel with a friend and, according to the police, was very drunk and started to pick a fight with the security guard. A police officer who happened to live in the hostel took Ihor Indilo and his friend to Shevchenkovskiy police station at about 8.40pm. Ihor was interrogated and at 8.52pm an ambulance was called to the interview room because he was unconscious. The attending doctor said that Ihor was unresponsive until they touched his head, at which point he became defensively aggressive. The ambulance crew left after Ihor regained consciousness, but without examining him thoroughly.

At 9.49pm CCTV shows police officers dragging Ihor into a cell and leaving him on the floor. At 4.20am on 18 May doctors confirmed that he was dead. His parents were informed of his death later that morning and asked to collect his body from the morgue. Police told them that he had choked to death, but when they saw his body they noticed numerous bruises and damage to his fingernails. The autopsy report revealed Indilo died as a result of a fractured skull and internal bleeding, and that the injuries were the result of contact with a blunt object. The police then claimed that there had been no ill-treatment and that Ihor Indilo died as a result of falling because he was drunk. Police officers and witness Oleksandr Khomenko reported that at 9pm he fell from the bench he had been sitting on. He subsequently fell twice more while in the cell. The bench he fell from was approximately 50 cm from the floor.

His lawyer has told Amnesty International that there are many questions still left unanswered even after a second autopsy report was carried out. It is unclear what exactly could have caused the injuries that led to his death, in the video recording at the time of his arrival at the police station, he does not appear very drunk, he was able to pass the turnstile at the entrance with no difficulty and put both hands on the pockets of his jeans without losing his balance. The blood tests done shortly after his death show moderate levels of alcohol, that do not correspond to the degree of inebriation described by the police. Video footage of him a few hours after he entered police custody shows a radical deterioration in his condition, which is unexplained. Furthermore, it was revealed during subsequent court hearings that the pulse and breathing rates presented as having been taken by ambulance personnel who were called out were not readings of his pulse and breathing, but estimates.

Ukraine has failed to carry out prompt and effective investigations into these two deaths in

custody, and must ensure that if a crime is found to have been committed that the perpetrators are prosecuted and the families offered redress or reparation, and in the case of a failure by police officers to protect the detainees then disciplinary measures should be taken.

## VIOLETIONS OF THE RIGHT TO LIBERTY AND SECURITY

Article 9 of the ICCPR provides for the right to liberty and security of person and prohibits arbitrary arrest or detention. It stipulates that no one shall be deprived of their liberty except on such grounds and in accordance with procedures established by law. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against them. According to Article 29 of the Ukrainian Constitution: “Every person has the right to liberty and personal inviolability. No one shall be arrested or held in custody except under a substantiated court decision and on the grounds and in accordance with the procedure established by law.”

Under the Code on Administrative Offences, detainees may be held up to three hours at a police station. If after three hours the police consider that they have enough information to start a criminal investigation, the suspect is then officially placed under arrest, and transferred to a temporary isolation centre (ITT) under the control of the Ministry of Internal Affairs, where they can be held up to 72 hours before being brought before a judge. According to Article 106 of the Criminal Procedural Code, after the 72-hour period has elapsed police investigators must a) free the detainee if the suspicions have not been confirmed, b) let him/her out on bail or c) bring him/her before a judge. The judge may prolong the detention by up to 15 days or have the detainee transferred to a remand prison (SIZO). The SIZOs are under the control of the Department for the Enforcement of Punishments.

In Ukraine very high numbers of people are held in pre-trial detention – according to the Ombudsperson’s office up to a million people a year. The Criminal Procedural Code lays out three non-custodial measures or bail conditions that can be applied by judges: a personal guarantee not to leave the town of residence, a guarantee by another individual or an organization, and a bail deposit. In practice, these alternative measures are very rarely applied and a very high percentage of suspects are detained.

People awaiting trial on criminal charges should not, as a general rule, be held in custody. In accordance with the right to liberty and the presumption of innocence. As their guilt is not established, they are in principle to be regarded as innocent.<sup>23</sup> International standards explicitly recognize that there are, however, circumstances in which the authorities may impose conditions on a person’s liberty or detain an individual pending trial. Such circumstances include when it is deemed necessary to prevent the suspect from fleeing, interfering with witnesses or when the suspect poses a clear and serious risk to others which cannot be contained by less restrictive means.

Amnesty International has come across many cases where people have been detained in violation of the Criminal Procedural Code, through misuse of the Administrative Code and without being promptly registered in the police station. These violations are not administrative oversights, but are often explicitly aimed at circumventing the protections in international and national law against unlawful or arbitrary detention in order to extort money for corrupt purposes, illegally obtain information or force confessions. Lack of such

protections, including failure to keep proper custody records, can also facilitate violations such as torture or other ill-treatment.

**Natalya Isaeva** works with sex workers in Kirovograd for the NGO “Return to Life”. She described how in the course of this work she was detained by police from the Anti-Trafficking squad in 2009. She had been called by a man she thought was a client of one of the sex-workers, and asked to direct him to where he could have an HIV test. She was stopped by police officers when she was in his car on the way to the testing centre. The police officers detained her and took her to the police station, but did not register her presence in the police station or offer her the assistance of a lawyer. She was threatened with prosecution for prostitution and held for three hours while police copied the contents of her mobile phone without a warrant, seemingly with the purpose of gathering evidence against sex workers in Kirovograd region. Police officers were also rude and insulting throughout her period of detention.

The following day she phoned the Ministry of Internal Affairs hot line and was invited for an interview to give evidence. She also complained to the local Prosecutor’s office. However, the Department of Internal Security declined to carry out an investigation as there was no record of her presence in the police station, and the prosecutor replied to her complaint stating that there was “no evidence of a crime”.

She subsequently spoke publicly about her experience at a round table in the presence of police officers at which the director of the local police station stated that the officers concerned had apologised, although Natalya Isaeva had not received any such apology. Following the round table, Natalya Isaeva became aware that police officers had publicised her HIV status and told sex workers not to associate with her because she had AIDS. Although no action was taken to investigate her case, the Head of the Anti-Trafficking squad was replaced in 2010 and the other members of the squad were transferred to other positions – one in the Narcotics Squad.

In other cases people may be invited to the police station as witnesses to a crime only find themselves being interrogated as suspects. Svitlana Pomilyaiko was invited to Ordzhonikidze police station in Kharkiv to give information as a witness to a theft. However, she told Amnesty International that once at the police station she was tortured in an attempt to make her confess. The police claimed that she had been held for the legally permitted 3 hours only, however, it was discovered by the investigator from the prosecutor’s office that the police document recording her leaving the police station had been made on the computer considerably later and back dated.

#### MISUSE OF THE ADMINISTRATIVE CODE

The Administrative Code provides a loophole for police to detain suspects in the absence of sufficient evidence for a criminal prosecution. In some cases people are detained under the Administrative Code by the police as a way of gaining time or to have the opportunity to forcibly extract statements purportedly confessing to more serious offences, or to gather information for a criminal prosecution. The Administrative Code covers misdemeanours such as “Failing to obey the lawful instructions of a police officer” (Art. 185), “Public calls to disobey a policeman or other official” (Art. 185.7), “Prostitution” (181-1), and “Possession of small quantities of narcotics” (Article 44). Such misdemeanours are punishable by a fine or by 10 – 15 days’ detention. There is a lower standard of proof in administrative cases, and there is no requirement for the detainees to be provided with legal defence.

In April 2011, Amnesty International was contacted by the relatives of **Rostislav Chapran**, a drug user, who had already served a prison sentence for a drug related offence. He went to Lviv police station of his own accord on 4 April 2011 after being told that the police were looking for him. Once at the police station he was detained, charged with the administrative offence of failing to obey the instruction of a police officer, and sentenced by a judge to 15 days' administrative detention. On 19 April, at the expiration of his administrative sentence, he was accused of attempted murder in connection with a fight he had been involved in, in 1999, and detained under the criminal charge. Also on 19 April, his mother and stepfather, who live and work in Belgium, received a text message telling them to call the number to discuss their son. When they phoned the number, they were told that they were speaking to a police investigator. They told Amnesty International that the investigator asked for 3,000 Euros to release their son. At the time of writing he remains in detention charged with attempted murder. Amnesty International is concerned that he was arbitrarily detained on 4 April on a trumped up charge to enable the police to gather evidence for the criminal charge.

The practice of detaining people under trumped up offences under the Administrative Code provides the police with the opportunity to force confessions. Ukraine must ensure that this opportunity is not available by carrying out a review of the provisions of the Administrative Code to ensure that administrative detainees are at least provided with the same safeguards as those detained for offences under the Criminal Code.

#### FAILURE TO KEEP PROPER CUSTODY RECORDS

In many cases, people may be held in police stations or other locations without their presence ever being recorded. The failure to keep proper custody records greatly facilitates the ability of law enforcement officers to act unlawfully, including in the use of torture and other ill-treatment. When Natalia Isaeva was taken to a police station in Kirovograd and searched by police officers her presence in the police station was not recorded. When Gleb Skant was taken to a police station in Kharkiv, he was taken directly up to the third floor, without being registered, where he was threatened with rape and imprisonment. Firdovski Safarov was taken to Mohiliov Podilsky police station and his presence was not recorded. He was beaten and racially insulted for several hours. When the judge asked the Director of the police station during a hearing on the administrative case against Firdovski Safarov, to produce the custody records, the Director of the police station claimed that the custody records had been burned because they had been attacked by mildew. Yakov Strogan alleged that he was tortured in a forest and then in a flat in Kharkiv without his presence in police custody ever being recorded.

Accurate record-keeping helps to ensure that proper procedures are followed and that police officers can be held accountable for their actions. Principle 12 of the UN Body of Principles requires that accurate records should be taken of: (a) The reasons for the arrest; (b) The time of the arrest and the taking of the arrested person to a place of custody as well as that of his first appearance before a judicial or other authority; (c) The identity of the law enforcement officials concerned; (d) Precise information concerning the place of custody. The CPT has stressed the importance of a single and comprehensive custody record for reinforcing the fundamental safeguards granted to individuals in police custody, on which would be recorded all aspects of their custody and action taken regarding them (for example, when and for what reasons they were deprived of liberty, when they were told of their rights; signs of injury, mental illness; and when transferred or released, etc.), and that the detainee's lawyer should

have access to such a custody record.<sup>24</sup>

Article 106 of the Ukrainian Criminal Procedural Code requires that a report should be drawn up about every detention which includes the reason, date, and time of arrest, place of detention, time of writing the report and other facts, but it does not specify when the report is to be drawn up.

The Ukrainian authorities must ensure that procedures relating to custody records are scrupulously followed and that disciplinary measures are brought against police officers who fail to comply with this requirement. Those who commit criminal acts must face criminal sanctions

## OBSTRUCTION OF ACCESS TO LEGAL COUNSEL

Everyone in detention or facing a possible criminal charge has the right to the assistance of a lawyer, or to a lawyer of their choice to protect their rights. The right of access to a lawyer is a fundamental safeguard against ill-treatment and this right should apply from the outset of custody.

Principle 17 of the Body of Principles on Detention states: "A detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it."

The Human Rights Committee in its general comment 32 has stated that "The right to communicate with counsel requires that the accused is granted prompt access to counsel. Counsel should be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications."<sup>25</sup> The CPT has repeatedly stated that the right of access to a lawyer is a fundamental safeguard against ill-treatment: "the period immediately following deprivation of liberty is when the risk of intimidation and physical ill-treatment is greatest. Consequently, the possibility for persons taken into police custody to have access to a lawyer during that period is a fundamental safeguard against ill-treatment."<sup>26</sup>

The right to legal defence is set out in Ukrainian legislation. Article 59 of the Ukrainian Constitution states that "Everyone shall have the right to legal assistance", Article 21 of the Criminal Procedural Code of Ukraine states that detainees have the right to legal defence. However, Amnesty International is concerned that the law is not clear enough about when a person should be granted access to a lawyer. The Criminal Procedural Code requires investigators, prosecutors and judges to make suspects *aware* of their right to legal defence *before the first interrogation*. The Law on the Police states that detainees are entitled to a lawyer *from the moment of being detained*. However, there is a lack of clarity in the legislation as to when detention actually occurs – whether it is when a suspect is apprehended by police or when the detention is registered in the police station. Certainly, if Ukraine is to abide by international standards on this matter all detainees should be given access to legal defence from the moment they enter a police station.

Many of the people that Amnesty International has interviewed told how their requests for a lawyer were ignored by police officers. Yakov Strogan reported that he was abducted by police

officers in August 2010 in violation of all safeguards including the right to a lawyer, and taken to a wood out of town where they tortured him. Dmitry Yashchuk did not see a lawyer between the time of his detention on 13 June 2010 and his death that night.

Amnesty International has also come across a case where police physically tried to prevent a lawyer from seeing her client.

On 21 October 2010, lawyer **Tetyana Montyan**, was detained for one and a half hours by police officers at Podilskiy District police station in Kyiv when she attempted to see her client, who had phoned her in alarm when she had been detained by plain-clothes police from Kherson in Southern Ukraine who did not explain who they were. Tetyana Montyan feared that her client would be transported to Kherson where it would be harder for her to defend her. When she arrived at the police station she saw police officers pulling her client through the turnstile at the entrance to the station; saw her falling to the floor, and then saw a police officer attempting to pull the woman by the legs down the corridor towards the door. She ran after the police officers demanding to be with her client, but the Deputy Head of the police station reportedly told her: "Leave now bitch or I will put you in the cage." She showed her lawyer's identity documents, but was detained and charged with the administrative offence of "failing to obey the instructions of a police officer". The charges were later dropped, but the prosecutor has refused to start an investigation into the actions of the police officers on the basis that "there is currently no reason for the prosecutor to take action".

Ukraine must review legislation to clarify that all detainees have the right to be assisted by a lawyer of their choice from the moment they enter a police station. Furthermore, this right must be enforced in all cases without exception, and disciplinary action must be taken against police officers who deny this right.

## DISCRIMINATION AND RACIST ABUSE

The idea that human rights are enjoyed without distinction as to race, sex, language, ethnic origin, nationality or religion is a fundamental principle of international human rights law, and racism is an attack on the very notion of universal human rights. It systematically denies certain people their full human rights because of their colour, race, ethnicity, descent, religious beliefs or national origin.

The prohibition against racial discrimination is set out in a number of human rights treaties that Ukraine has ratified, including the ICCPR and the ECHR. Ukraine is also a party to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which defines racial discrimination as: "... any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

The ICERD places an obligation on states to ensure that their agents do not engage in racial discrimination, as well as an obligation to prohibit and eliminate racial discrimination by private persons, groups or organizations. With regard to the police specifically, the European Code of Police Ethics<sup>27</sup> provides that police training shall take full account of the need to challenge and combat racism and xenophobia.

In Ukraine, anyone who belongs to an ethnic minority or who looks “different” is liable to be stopped for their documents to be checked by the police. These checks are carried out ostensibly to control irregular migration, but they can lead to arbitrary detention, extortion or other abuses at the hands of the police.

Ethnic or racial profiling occurs when the police include criteria such as skin colour, language, religion, nationality or ethnic origin in identifying individuals who they intend to question or arrest. While the use of such criteria in law enforcement activity does not always amount to discrimination, it is discriminatory if it has no reasonable or objective justification. According to Article 11 of the Law on the Police of Ukraine, the police are authorised to ask for identification documents from any person they suspect of having committed a crime, but many people are stopped by the police simply because of their appearance. Refugees and asylum-seekers are particularly vulnerable to such discriminatory treatment, which is often accompanied by racist abuse, and are less likely to lodge complaints because of their insecure legal status. Amnesty International has previously documented cases of extortion and racial abuse by police against Somali asylum-seekers in Vinnytsya,<sup>28</sup> and racial profiling of Ukrainian citizens of non-Ukrainian ethnic origin.

Many foreign nationals with residence permits in Ukraine are market traders and they are frequently targeted by police for document checks because of their colour or appearance. In November 2010, the Kyiv Post reported that police were detaining hundreds of market traders at Troyeshchyna Market in Kyiv. They were packed onto buses and forced to spend the night in police stations for minor infringements of the law or pay bribes to be released.<sup>29</sup> One Afghan market trader told Amnesty International that document checks at the market are carried out daily. When asked how often he is stopped by the police and asked for his documents he replied: “It is almost every day. More often on weekends.” He explained that requests for documents are usually accompanied by racial remarks and “if you don’t have your documents either you come to an agreement – which means you pay – or they detain you, and the conditions there are horrible.”

However, Ukrainian citizens of non-Ukrainian ethnic origins are also susceptible to racist abuse at the hands of the police:

**Firdovsi Safarov** told the Vinnytsya Human Rights group that he was beaten by six police officers from Mohiliov Podilsky police station on 26 March 2011 in what appears to have been a racist attack. Firdovsi Safarov is a Ukrainian citizen of Azeri ethnic origin, who has been living in Ukraine since 1985 and runs a grocery shop in Krychanovka, a village near Mohiliov Podilsky in Vinnytsya Region. He is married with two children and has no criminal record. On 26 March he was driving with his wife and three-year-old daughter accompanying a vehicle that was taking his old car to a scrap yard when the vehicle was stopped by five police officers including the Director of the police station in Mohiliov Podilsky.

According to Firdovsi Safarov, the Director of the police station asked who the old car belonged to and when Firdovsi Safarov replied that it was his car, the Director punched him in the head and said: “Black arsehole. What are you doing here?”<sup>30</sup> He was taken to the police station where police officers continued beating him intermittently until 1am when he was released. He described to a local human rights group how he was handcuffed and the Director beat him on his spine and head with a police baton with all his strength while insulting him using derogatory names for foreigners. When he grew tired the other police officers would take over. Firdovsi Safarov stated that at one point the Director took him into a separate room away from the other

police officers and asked him to pay \$3,000 to be released. When Firdovsi Safarov said he didn't have the money, he was beaten again. At one point he was forced to sit at a desk and his head was banged repeatedly on the desk. He was forced to strip naked four times for a strip search in the presence of witnesses. Natic Soltaov, the owner of a water company and a prominent figure in the Azeri Community in Mohiliov Podilsky came to the police station at about midnight and saw Firdovsi Safarov in the presence of the Director of the police station. He stated to Vinnytsya Human Rights group that the Director of the police station was drunk and that when Firdovsi Safarov begged him in Azeri not to leave him in the police station, he witnessed police officers beating Firdovsi Safarov.

Firdovsi Safarov finally signed a statement saying that he had arrived at the police station already beaten and with torn clothing, and he also signed two other blank sheets of paper. He was hospitalized for two weeks as a result of the injuries he suffered and continued, four months later, to suffer headaches and difficulty in walking. After his release he was charged with the administrative offence of resisting police officers, but was acquitted on 25 June 2011. Unusually for an administrative case, the trial was conducted with great attention to detail by the judge who questioned the police closely on all violations of procedure. Firdovsi Safarov lodged a complaint about the ill-treatment, and after two refusals to open a criminal case a court ordered the prosecutor's office to open an investigation in July 2011, the investigation is now pending.

The Ukrainian authorities must take measures to eradicate discriminatory practices in the police particularly in relation to document checks, and ensure that any complaints of discriminatory behaviour are investigated thoroughly and effectively and that police officers found to be responsible for discriminatory treatment or racist abuse are subjected to disciplinary and criminal proceedings as appropriate.



## 4. LACK OF ACCOUNTABILITY

The UN General Assembly Resolution adopting the UN Code of Conduct for Law Enforcement Officials emphasises accountability to the community as a whole, accountability to the law, internal discipline and the need for thorough monitoring. It states:

“... like all agencies of the criminal justice system, every law enforcement agency should be representative of and responsive and accountable to the community as a whole;

Police accountability includes accountability for acts of misconduct and crimes that have been committed, however, it also implies direction, control or diligence exercised before or during any operation to ensure that it is carried out according to the law and policies in use and with respect for human rights.<sup>31</sup> Effective accountability requires a combination of internal and external oversight, backed up by an effective system for receiving complaints, and a competent judicial system.

### INTERNAL OVERSIGHT

*The key elements of internal accountability within the police are management supervision and oversight, and internal investigation and disciplinary mechanisms. Combating impunity must start ... within the agency ... concerned. ... Positive action is required, through training and by example, to promote a culture where it is regarded as unprofessional – and unsafe from a career path standpoint – to work and associate with colleagues who have resort to ill-treatment.*

Committee for the Prevention of Torture, Combating Impunity, 14<sup>th</sup> General Report<sup>32</sup>

The Ukrainian Police Code of Ethics recognizes the need for the police to change their relationship with the population from one of “confrontation to one of partnership” in order to build trust and respect on both sides. It also calls for respect for international standards for policing. A disciplinary code adopted by law in 2006 states that service discipline requires among other things, transparency and objectivity in the performance of duty, observance of the law and statutes, ensuring social justice and legality, and lays out a series of sanctions for disciplinary violations: an oral or written remark (замечание), a reprimand, a strict reprimand, a warning, demotion, and dismissal. However, neither the Police Code of Ethics nor the Disciplinary Code explicitly prohibits torture and other ill-treatment or calls for respect for human rights.

In order for ethical codes to be effective in regulating police conduct, they need to be consistently applied at all levels within the police, as a guide to the conduct of police operations and in monitoring and assessing performance. Ensuring that ethical codes are reflected in police working methods requires a continuity of approach with senior and experienced officers passing on their experience to junior colleagues. .

However, in an interview with Amnesty International in March 2011 police trade union officials complained of a very high turn-over of staff within the police force. According to the

police trade union, over 200,000 employees have left the police over the past 10 years. A high staff turn-over leads to loss of continuity, and loss of experienced officers.

## EXTERNAL OVERSIGHT

The UN General Assembly Resolution adopting the UN Code of Conduct for Law Enforcement Officials states that " ... *every law enforcement agency ... should be held to the duty of disciplining itself in complete conformity with the principles and standards herein provided and that the actions of law enforcement officials should be responsive to public scrutiny, whether exercised by a review board, a ministry, a procuracy, the judiciary, an ombudsman, a citizens' committee or any combination thereof, or any other reviewing agency*".

Human rights oriented policing requires police, both as individuals as well as the institution as a whole, to recognize the importance of being accountable to, and where appropriate, challenged by the public. Such public scrutiny and effective, independent monitoring is a precondition for legitimacy.<sup>33</sup>

The office of the Parliamentary Commissioner for Human Rights (Ombudsperson) was established in 1998. According to Article 101 of the Constitution of Ukraine, "the Ukrainian Parliamentary Commissioner for Human rights exercises parliamentary control over the observance of constitutional human and citizens' rights and freedoms."

According to the Statute of the Ombudsperson's Secretariat, the office may "take measures aiming at eliminating human rights violations and ensuring that such measures are carried out", and it may comment on legislation and legal acts proposed by the President, and other government bodies. The Ombudsperson is also empowered to visit places of detention under the jurisdiction of the Ministry of Internal Affairs and the Department for the Execution of Sentences.

A system for regular and unannounced visits to places of police detention by independent observers is a key element of external oversight of the police. Torture and other ill-treatment is more likely to take place when the perpetrators feel confident that they are not being monitored. Such a mechanism of independent experts is provided for under the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment (OPCAT), which Ukraine ratified in September 2006. The OPCAT requires states parties, within one year of ratification, to set up independent National Preventive Mechanisms (NPMs) for the prevention of torture, with unhindered access to all places of detention and detainees, and in particular with powers to make regular and unannounced visits to places of police detention. However, despite being among the first countries to ratify OPCAT, Ukraine has not yet lived up to its obligation to establish an NPM.

A proposal for a "Public Commission for the Prevention of Torture" is currently under discussion and in a meeting in January 2010 the Deputy Minister of Justice informed Amnesty International that it would be functional by January 2012. The Public Commission is to be set up within the Presidential Administration; the Director will be appointed by the President, and the seven members of the Commission will be approved by the President. There will also be a paid Executive Secretary. The Commission will have the tasks of exposing facts of torture and other ill-treatment, and of proposing suggestions to improve legislation to prevent torture and other ill-treatment. In the pursuance of these goals the Commission will be empowered to visit places of detention both run by state bodies and privately run, according to a plan and also ad hoc. While the Public Commission does not fulfil the requirements of an NPM in accordance with OPCAT because of its lack of independence from

state bodies, it is none-the-less, an important step towards fulfilment of Ukraine’s obligations in this regard.

The Ukrainian government must set up an NPM as soon as possible, and ensure that the mechanism is fully in line with the requirements of the OPCAT by guaranteeing its functional independence and the independence of its personnel, ensuring that the experts have the required capabilities and professional knowledge, and making available the necessary resources for it to function.

## 5. INEFFECTIVE COMPLAINT MECHANISMS

Ukraine is party to a number of international human rights treaties which impose obligations on it to prevent and punish torture and other ill-treatment by its agents and ensure redress and reparation to the victims of such treatment. These treaties include the International Covenant on Civil and Political Rights (ICCPR), the European Convention on Fundamental Freedoms and Human Rights (ECHR), and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Article 2(3) ICCPR provides that states are obliged:

- (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
- (c) To ensure that the competent authorities shall enforce such remedies when granted.

The Human Rights Committee has elaborated on what this obligation means in practice. States must ensure that individuals have accessible and effective remedies to vindicate their rights and should establish appropriate judicial and administrative mechanisms for addressing claims of rights violations. In particular there should be administrative mechanisms to give effect to the general obligation to ensure that allegations of violations are investigated promptly, thoroughly and effectively through independent and impartial bodies. In this context the Committee has stressed the importance of bringing to justice the perpetrators of torture and other ill-treatment and violations of the right to life, noting that the problem of impunity for these violations may well be an important contributing element in their recurrence.<sup>34</sup>

The first stage in ensuring the right to a remedy is to provide victims of human rights violations by the police with the possibility to lodge a complaint.

*“An independent and effective complaints system is essential for securing and maintaining public trust and confidence in the police, and will serve as a fundamental protection against ill-treatment and misconduct.”*

Opinion of the Commissioner for Human Rights concerning Independent and Effective Determination of Complaints against the Police.<sup>35</sup>

The UN Human Rights Committee has stated that: “The right to lodge complaints against maltreatment prohibited by Article 7 must be recognized in the domestic law. Complaints must be investigated promptly and impartially by competent authorities so as to make the remedy effective.”<sup>36</sup>

The Council of Europe Commissioner for Human Rights has stressed the importance of an independent and effective police complaints system for the operation of a democratic and accountable police service:

"A complaints system must be capable of dealing appropriately and proportionately with a broad range of allegations against the police in accordance with the seriousness of the complainant's grievance and the implications for the officer complained against."<sup>37</sup>

If Ukraine is to combat the types of violations by police officers that have been documented in the previous chapter, it must ensure that complainants are provided with clear avenues for complaint, and those complaints must be investigated effectively, leading to appropriate disciplinary measures and prosecution against the perpetrators, and redress for the victims.

Currently in Ukraine there is a confusing array of possible avenues of complaint for victims of human rights violations by police. A notice that appeared on the Ministry of Internal Affairs website in March 2011, listed nine possible recipients for complaints against the police: the offending policeman's immediate superior, the Minister of Internal Affairs, the Department for Internal Security of the Ministry of Internal Affairs, the Public Council of the Ministry, the Cabinet of Ministers, the General Prosecutor's Officer, the President, the Ombudsperson, international "judicial organizations", and other international organizations.<sup>38</sup>

## MINISTRY OF INTERNAL AFFAIRS

The Ministry of Internal Affairs runs a hotline for complaints against the police which is widely publicized on the website, and encourages victims of police misconduct to complain to the superior officers of the perpetrators or to the Internal Security Department of the Ministry.

There are two bodies within the Ministry of Internal Affairs that carry out investigations into police misconduct – the Internal Security Department and the Staff Inspectorate. Both bodies are represented at the regional level and there is a daily report system whereby any cases of misconduct are reported by police chiefs to the regional headquarters and to central headquarters in Kyiv. The Staff Inspectorate will tend to be involved in any serious crimes such as torture, or murder committed by police officers. The Internal Security Department will investigate prolonged complex cases such as cases of corruption. The Head of the regional police headquarters will decide which body investigates each case. Once the Internal Security Department or Staff inspectorate have finished their investigation they will decide on disciplinary measures, and if they find that a crime has been committed they will hand over the materials to the General Prosecutor's office.

Many of the victims of torture and other ill-treatment who spoke to Amnesty International complained that the measures taken by these bodies were frequently inadequate and failed to satisfactorily address human rights violations or other misconduct by the police.

When Natalya Isaeva phoned the hotline after she had been arbitrarily detained by the police she was immediately called for an interview, but her complaint has only resulted in one of the officers concerned being transferred to another unit within the police.

**Gleb Skant** was attacked by approximately four unknown assailants as he was standing outside the entrance to his flat in Kharkiv at 8pm on 18 October 2008. He only realised that they were police officers when they forced him into a police car and took him to Moskovskiy District Police station in Kharkiv. One of his neighbours phoned the police when she saw Gleb Skant being beaten up and heard his screams. The neighbour reports that they continued beating him outside the police station and threatened to charge him with theft; they bashed his head against the door of the police station and then dragged him up to the third floor. According to Gleb Skant the police made no attempt to register him at the reception area of the police station.

He told Amnesty International that, as they were trying to open the door to an office on the third floor one of the offices threatened to rape him, and said that he could face years of prison. The prospect of imminent rape and repeated rape in prison drove Gleb Skant to jump from the third floor window in an attempt to escape. He suffered a spinal injury and is now disabled. An investigation was started by the Internal Security Department, and police investigators ordered a psychiatric examination of Gleb Skant. Gleb Skant told Amnesty International that he felt the whole investigation was aimed at proving that he was to blame for having thrown himself from the third floor, and the actions of the police officers were not being investigated. In the end, the Head of the police station was found guilty of neglect because no bars had been put on the window. Window bars have subsequently been installed.

Amnesty International is concerned that no investigation has been opened into Gleb Skant's allegations of ill-treatment by the police, the fact that he was detained for no apparent reason, and the fact that his presence in the police station was not recorded. It would seem from this example that internal investigations sometimes fail to discipline officers for significant failings.

According to a letter received from the Ministry of Internal Affairs in April 2011, in 2010 51,749 police officers were disciplined for various offences, including illegal refusal to open a criminal case, concealment of a crime, use of illegal investigative methods, violation of investigation deadlines, falsification of materials, and illegal detention. However, it would seem that the number of cases that are passed to the General Prosecutor for prosecution are low compared to the estimated levels of human rights violations by police officers. In 2010, 1,394 cases were passed to the Prosecutor General's office in 2010 by the Ministry of Internal Affairs and of these 297 were forwarded by the Internal Security Department. In 2010, 133 police officers were sentenced by the courts to prison terms (three for torture, 88 for abuse of power, and 42 under other articles of the Criminal Code).

## PROSECUTOR GENERAL'S OFFICE

The Prosecutor General's Office (Procuracy) is the only external body empowered to carry out criminal investigations into human rights violations by the police, and to prosecute them before the courts. It is a powerful institution that not only carries out prosecutions in court on behalf of the state, and supervises the observance of laws by the police, but also has the task of "supervision over the observance of human and civil rights and freedoms and over the observance of laws regulating these issues by executive power bodies, by local self-government bodies, their officials, and officers."<sup>39</sup> The General Prosecutor is appointed and dismissed by the President. The Prosecutor General's Office is structurally independent from the Ministry of Internal Affairs, but as will be seen in Chapter 5 below, it is not functionally independent.

Article 12 of the Law on the Procuracy provides that the Prosecutor will receive statements and complaints alleging violations of the rights of citizens and is empowered to investigate complaints against all public officials and authorities.

In reality, victims find it difficult to lodge complaints with prosecutors, to get their complaints investigated promptly, independently and impartially (see Chapter 6), and to obtain justice through those responsible being disciplined or prosecuted. In the first place a high percentage of complaints are rejected with the standard response that there is no evidence of a crime.

In a letter to Amnesty International dated 15 July 2011, the Prosecutor General's Office stated that it had received 6,817 complaints against police officers in 2010: of these only 167 resulted in criminal investigations, of which 21 were subsequently closed for lack of evidence. It would seem from these figures then that 6,650 complaints were rejected at the first instance as unfounded.

In almost all the cases that feature in this report, complainants received an initial refusal from prosecutors to open a criminal investigation into their allegations. Alexander Rafalsky alleges that he was tortured by police officers in Kyiv Region in 2001 (see his description on p. 13), and his parents have been fighting for justice for 10 years. All their complaints to the Prosecutor General calling for an investigation into the allegations of torture have been unsuccessful. In a letter to Aleksandr Rafalsky's parents dated 20 June 2008 the Prosecutor General stated that there was no need to open an investigation into such “minor violations”. When Yakov Strogan complained about the torture he suffered at the hands of police officers from Kievskiy police station in Kharkiv (see p. 6), the regional prosecutor refused to open a criminal investigation into his allegations giving the standard reply that there was “no evidence of a crime.” Natalia Isaeva's allegation that she had been arbitrarily detained by police officers in Kirovograd (see p. 22) was similarly turned down because there was “no evidence of crime”. Firdovsi Safarov's complaint that he was subjected to beating and racial abuse (p. 26) was turned down twice on the same grounds before he successfully appealed to a court against the refusal to open a criminal case.

### **PARLIAMENTARY COMMISSIONER FOR HUMAN RIGHTS (OMBUDSPERSON)**

The office of the Parliamentary Commissioner for Human Rights was established in 1998 and has been occupied since its foundation by Nina Karpacheva. According to Article 55 of the Constitution of Ukraine everyone has the right to appeal for the protection of his or her rights to the Ukrainian Parliamentary Commissioner for Human rights, and according to Article 101: “The Ukrainian Parliamentary Commissioner for Human rights exercises parliamentary control over the observance of constitutional human and citizens' rights and freedoms.”

The Ombudsperson's office has a staff of 120 and a yearly budget of almost 20 million UAH (1,751,000 Euro). The office is empowered to visit places of detention under the jurisdiction of the Ministry of Internal Affairs and the Department for the Execution of Sentences, however it is not empowered to carry out investigations into allegations. The Ombudsperson can only pass on complaints to the General Prosecutor's office. In a situation where the Prosecutor General's offices refuses to investigate a very high number of allegations this serves little purpose.

In March 2011, Amnesty International enquired what action was being taken regarding the

torture allegations that had been submitted to the Ombudsperson's office regarding Alexander Rafalsky. Members of staff informed Amnesty International that the complaint had been forwarded to the Prosecutor General whose office had replied that there were no grounds to open an investigation into the allegations of torture: “And we believe the Prosecutor General”.

However, the political influence of the Ombudsperson has resulted in action being taken to investigate other cases, that may otherwise have been ignored. In May 2010 the Ombudsperson sent a representative to Lviv to investigate allegations that Rostislav Chapran had been arbitrarily detained and that police had attempted to extort money from his relatives. As a result the Lviv Regional Prosecutor has opened an investigation into the allegation of extortion.

Despite the existence of various avenues for complaint, as will be seen from the following chapters, it is very difficult for victims of human rights abuse by police officers to obtain redress. Many of the avenues listed on the Ministry of Internal Affairs website are either not empowered to take action or ineffective.



## 6. FLAWED INVESTIGATIONS

*“From the beginning I didn’t believe the version that he had committed suicide. Prove it to me. Show it to me. Show me my child. As it turned out there was something to hide. There had been beating.”*

Dmitry Yashchuk, father of Dmitry Yashchuk who died in police custody.

The Prosecutor General’s office and the internal police complaints mechanisms are all too often failing to carry out investigations effectively and promptly in accordance with international standards. This increases distrust in the system on the part of victims and relatives, and leaves the perpetrators unpunished. This can do nothing to establish public confidence in the rule of law.

International human rights law places an obligation on states to carry out prompt, thorough, impartial and independent investigations into allegations of torture and other ill-treatment, and cases of death in custody.

The ICCPR codifies the right to life and the prohibition of torture and other ill-treatment in Articles 6 and 7 respectively. In its General Comment No. 20, the Human Rights Committee has clarified that: “It is not sufficient for the implementation of Article 7 to prohibit such treatment or punishment or to make it a crime... Complaints must be investigated promptly and impartially by competent authorities so as to make the remedy effective.”

Article 12 of the UN Convention against Torture requires states to carry out “a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed”.

The European Court of Human Rights has underlined that where an individual is taken into police custody in good health and is found to be injured on release, it is incumbent on the state to provide a plausible explanation of how those injuries were caused. The obligation on the authorities to account for the treatment of an individual in custody is particularly stringent when that individual dies.

The European Court has clarified that, to comply with the requirements of the ECHR, investigations into allegations of human rights violations must meet the following criteria:

**Impartial and independent:** Persons responsible for carrying out the investigation must be impartial and independent from those implicated in the events. In addition to practical independence there should be no institutional or hierarchical connection between the investigators and the officer complained against. An investigation where the evidence is collected by police officers in the same unit in the same city as those under investigation would not meet these criteria.<sup>40</sup>

**Adequate and thorough:** The investigation should be capable of gathering evidence to determine whether the police behaviour complained of was unlawful and to identify and punish those responsible. The authorities must have taken the reasonable steps available to

them to secure the evidence concerning the incident, including, inter alia, eyewitness testimony, forensic evidence and, where appropriate, an autopsy.<sup>41</sup>

The investigation should be comprehensive in scope and address all of the relevant background circumstances and be capable of identifying any systemic failures that led to the violation. This requires the taking of all reasonable steps to secure relevant evidence such as identifying and interviewing the alleged victims, suspects and eyewitnesses; examination of the scene of the alleged violation for material evidence; as well as gathering forensic and medical evidence by independent specialists.

**Prompt:** Fair and effective investigations must be carried out promptly and expeditiously. The passage of time will inevitably erode the amount and the quality of the evidence available, and where there are delays the appearance of a lack of diligence will cast doubt on the good faith of the investigative efforts.<sup>42</sup>

**Public scrutiny:** There must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory, maintain public confidence in the authorities' adherence to the rule of law and prevent any appearance of collusion in or tolerance of unlawful acts.<sup>43</sup>

**Victim involvement:** In all cases, the victim or next-of-kin of the victim must be involved in the procedure to the extent necessary to safeguard their legitimate interests.<sup>44</sup>

Investigations into allegations of human rights violations by police officers in Ukraine do not fulfil these requirements for effectiveness, and as a result Ukraine is failing to live up to its international human rights obligations.

## LACK OF INDEPENDENCE

The General Prosecutor's office is structurally independent of the Ministry of Internal Affairs, however, in carrying out general criminal investigations, prosecutors have close functional links with police officers. As a result, it is often difficult for prosecutors to impartially investigate crimes allegedly committed by police officers (who they may well know personally). The Council of Europe's Venice Commission has criticized the potential for a conflict of interest in the role of the Prosecutor's office:

“the procuracy which, while carrying out its tasks in the field of criminal law, obviously has to ensure that the rights of individuals are respected - seems a body ill equipped to actively protect the rights of individuals. It has as a main task to protect the state and public interest and will always be tempted to give preference to the public interest and not to the interest of the individual. Moreover, it is involved in criminal prosecution and has ties with the police. These are particularly sensitive areas for the protection of human rights and the procuracy is bound to be faced by conflicts of interest.”<sup>45</sup>

In a letter to Amnesty International dated 15 July 2011, the General Prosecutor's Office stated that: “there are situations when procuracy officials show bias and a lack of objectivity when checking complaints and statements (against police officers).” The letter goes on to say that at a meeting on 29 March 2011 the Board of the General Prosecutor's Office met to discuss ways of improving the work of prosecutors investigating torture and other ill-treatment. In particular, “it is strictly forbidden to replace cooperation with law-enforcement officials on a strictly legal basis, with mutual agreements to suppress evidence of torture and

other acts of cruelty”. Amnesty International welcomes the openness of the General Prosecutor’s office in recognizing such problems, but it is not clear how the problems of bias and suppression of evidence in cases against police officers will be solved.

Many of the cases that Amnesty International has documented illustrate the very close links that exist between prosecutors and police officers:

**Sergei Fesik** told Amnesty International that he was detained by police officers at 10pm on 12 January 2009. He had been at a cafe with friends in Kharkiv. When he went out to smoke a cigarette he was stopped by police officers who asked him for his ID. As he didn’t have his internal passport on him he was taken and detained in a police cell. He had been there three hours when he tried to call his family from his mobile phone to ask them to bring his ID. When the police officers caught him using his mobile phone they dragged him out of the cell, handcuffed him and forced him to lie on his stomach in the reception area with his legs spread out. They allegedly beat him repeatedly over a period of about three hours.

The police finally called an ambulance and he was treated in hospital for his injuries. He had a dislocated shoulder, numerous bruises and has suffered from chronic prostatitis ever since which he believes is a result of the beating. On 14 January, after his discharge from hospital, he complained to the Moskovskiy District Prosecutor in Kharkiv. On 19 January the prosecutor initiated a criminal case against the officers concerned for misuse of office. On 12 September 2009 Sergei Fesik was called to an interview at the prosecutor’s office. The investigator from the prosecutor’s office typed up the notes of the “interview” in front of Sergei Fesik without asking him any questions, and without Sergei Fesik saying anything. He then claimed that his printer did not work and asked Sergei to come with him to the police station next door to print the report. At the police station Sergei Fesik was presented with a report stating that he had been beaten by unknown people on the street and that he had only accused the police because he was drunk. He refused to sign the statement, and the police officers present started to shout and threaten him. Fearing that the beating he had experienced on 12 January would be repeated he signed the report.

On 28 September he wrote a complaint to the prosecutor of a different district in Kharkiv describing the events that had taken place on 12 September and asking for the dismissal of the Moskovskiy District Prosecutor. On 28 December he put in a claim for damages against the Moskovskiy district prosecutor’s office. The case is ongoing, but Sergei Fesik has received no information regarding the case since December 2009.

In Ukraine, the lack of functional independence of the Prosecutor General’s Office means that cases against police officers are inadequately investigated, delayed or stalled, or are not opened at all.

## INADEQUATE INVESTIGATIONS

The European Court of Human Rights has stated:

“The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including, inter alia, eyewitness testimony, forensic evidence, and so on. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard, and a requirement of promptness and reasonable expedition is implicit in this context.”<sup>46</sup>

Furthermore, the CPT has stated:

"The credibility of the prohibition of torture and other forms of ill-treatment is undermined each time officials responsible for such offences are not held to account for their actions. If the emergence of information indicative of ill-treatment is not followed by a prompt and effective response, those minded to ill-treat persons deprived of their liberty will quickly come to believe, and with very good reason, that they can do so with impunity. All efforts to promote human rights principles through strict recruitment policies and professional training will be sabotaged."<sup>47</sup>

European Court of Human Rights decisions have often found that investigations into torture allegations in Ukraine were inadequate because they frequently excluded vital evidence, or failed to collect vital evidence because of massive delays.

In April 2002, Yevgeniy Bocharov was beaten by police officers from Kharkiv City Police Department in a forest to force him to confess to storing weapons and ammunition. Later the police took him to the Kharkiv City Police Station, where they beat him again and put a gas mask on him to induce suffocation. He complained about his ill-treatment to the Kharkiv City Prosecutor's Office, but the prosecutor refused to open an investigation on the grounds that there was no evidence of a crime. In August, when the forensic report of his injuries became available, the prosecutor then started an investigation, but interviewed officers from the Moskovskiy District Police Station, and two witnesses who had been present at the weapons seizure, who denied that they had witnessed any violence. The European Court of Human Rights found that there had been a failure to investigate the allegations effectively:

"the Court notes that the delays in securing medical evidence and furthering the course of the investigation, as indicated by the applicant, affected the effectiveness of the investigation. In particular, despite the applicant's clear complaints, the investigation was directed against the wrong police department, the officers indicated by the applicant as the perpetrators had been questioned almost nine months after the alleged beatings and the confrontation between them and the applicant had been conducted more than a year after the alleged beatings took place. The Court further notes that despite the accuracy of the applicant's diagnosis, which ought to have played a key role in the investigative process, it does not appear from the case file that any of the medical staff who examined the applicant shortly after his release were ever questioned."<sup>48</sup>

Yevgeniy Bocharov has received the compensation awarded him by the Court, but no other form of redress.

In the case of Dmitry Yashchuk, the poor quality of the first autopsy, carried out immediately after his body was found in his cell, left many questions unanswered, and gave rise to deep distrust of the investigation on the part of the relatives. Dmitry Yashchuk was found dead in his cell at Svyatoshynsky police station in Kyiv on 13 June 2010. According to the official version of events he hanged himself using the cord from his shorts. A video that was running in the cell does not show the top part of his body, but only shows his feet suspended and convulsing before the body falls to the floor hitting the radiator on the way. The first autopsy describes bruising and marks on the body: scratches to the back, two parallel bruises on the left arm, and a bruise on the right leg, but does not explain the origins of the marks found on the body. Professor Nikolai Tagaev, who carried out the second autopsy four months after the

death, told Amnesty International that he believes these bruises were caused when the body dropped after the cord broke, and fell against the radiator. This sequence of events was clear in the video recording from the cell. The first autopsy report describes Dmitry Yashchuk as wearing blue shorts, when in fact he was wearing his brother's bright green shorts, the cord of which was not removable. His clothing has disappeared and has not been subject to any expert examination. For the family, these unanswered questions and mistakes appear to point to the fact that the authorities are trying to cover up for the police, and they refuse to accept the official verdict that he committed suicide.

## DELAYED INVESTIGATIONS

The European Court has found in many cases that delayed investigations into torture allegations have meant that the investigations were ineffective because eyewitnesses could no longer remember the events and medical evidence was no longer reliable.

In the case of Ivan Samardak who alleged that he was tortured by police officers from Lychakivsky District Police Station in Lviv in April 2002, the European Court found that: "The resulting investigation, which has lasted more than eight years, has not established the circumstances in which he sustained the injuries and has not held accountable those (if any) responsible for them."<sup>49</sup> In common with many other cases, the investigation was closed and reopened several times on a court order, and each time the Prosecutor would appeal against the decision to open a criminal investigation and the judge would quash the decision. In one decision the Lychakivsky Court found that the investigating authorities were manifesting "*stubborn unwillingness*" to determine the real circumstances of the case.

In many of the cases that have come to the attention of Amnesty International investigations into torture allegations are delayed by lengthy court battles as complainants attempt to appeal against the refusal of prosecutors to carry out criminal investigations into their complaints.

According to a letter received from the Prosecutor General's office on 15 July 2011, when prosecutors receive a complaint they are required within three days to:

- i) initiate a criminal case,
- ii) deny the initiation of a criminal case, or
- iii) send the complaint to a third body.

Prosecutors may check a complaint for up to 10 days before responding in which case they may speak to the complainant, or the police officer concerned or ask for further documentation. Most of the complainants interviewed by Amnesty International for this report received a refusal to initiate a criminal case on the basis that "there is no evidence of a crime" without any request for further information. In such cases the only recourse for the complainants is to appeal to a court against the prosecutor's decision. It is common for the prosecutor to then lodge appeals against a court decision to open an investigation. Svitlana Pomilyaiko has gone through four court battles to have her complaint investigated.

**Svitlana Pomilyaiko** and her colleague alleged that they were tortured in November 2008, and both women initially complained to the Ordzhonikidze region prosecutor’s office. The Prosecutor asked the police to investigate and the case was investigated by both the Internal Security Department and the Staff Inspectorate. The pliers that had been used to torture Alyona P. (see p. 15) were found in the police station. On 26 December 2008, the Head of the Kharkiv Regional Police dismissed three senior officers, including the Head of the police station, who had been in command of the three police officers suspected of torturing the women. However, none of the police officers faced a criminal prosecution, and the three alleged perpetrators continue to work in the police to this day. It was not until 12 January 2009 that the investigators from the prosecutor’s office started to investigate, and by that time the pliers could not be found. After the closure of the case against them the three officers who had been dismissed applied successfully to a court to be reinstated. The former Head of the police station was promoted to head of Kharkiv Regional Police Administration.

On 22 April 2009, the decision to start the investigation was cancelled by the district court. Svitlana Pomilyaiko appealed and on 29 May 2009 the court upheld the decision to not start a criminal case. On 25 June 2009 the appeal court overturned the decision not to start a case but in February 2010 the prosecutor stopped the criminal case on the basis that there was no evidence of a crime. In October 2010, two of the police officers who had been dismissed sued for damages against the then Minister of the Interior, the Kharkiv city police authority and the Ministry of Internal Affairs Human Rights Directorate Regional Representative. Finally, in December 2010, the Ordzhonikidze district Court ordered the prosecutor to reopen the investigation into the torture allegations. Svitlana Pomilyaiko was only informed in June 2011 that the investigation had been restarted, and she was asked to a face to face interview with the three police officers she has accused of torturing her in the police station where the events took place.

As a result of such lengthy court battles, forensic examinations are often carried out months after the crime has been committed or, as in the case of Svitlana Pomilyaiko and her colleague, important physical evidence goes missing, such as the pliers that were used to torture Alyona P.

## LACK OF VICTIM INVOLVEMENT

In Ukraine, victims are not kept adequately informed of the actions that are being taken on their cases. The European Court has found that “the notion of an effective remedy in respect of allegations of ill-treatment entails also effective access for the complainant to the investigation procedure”.<sup>50</sup>

The UN Principles on the Investigation of Torture state that “Alleged victims of torture or ill-treatment and their legal representatives must be informed of, and have access to, any hearing as well as to all information relevant to the investigation and must be entitled to present other evidence.” Furthermore, according to Principle 6 of the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, the needs of victims should taken into account by “Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information.”

In many of the cases that Amnesty International has dealt with, the authorities have often failed to inform victims of the progress of the investigation into their complaint, the results of court proceedings relating to their complaint, or have refused them access to information

vital for them to appeal against decisions not to open a criminal investigation. They are frequently not informed fully of the reasons why investigations are not opened into torture cases, and may be kept waiting for months to be given the reasoning behind court decisions on whether to open investigations or not. Such reasoning is often not given at court sessions. Their access to key information is hampered by the fact that there are no clear procedures for keeping victims informed of the progress and outcomes of investigations and for determining what is the information they are entitled to have and what information might not be divulged in order to protect the fair trial rights of the person under investigation.

Oleksiy Zakharkin was beaten by police officers in Ivano-Frankivsk region in May 2003 to force him to confess to a series of burglaries. He was allegedly hung over a horizontal crowbar when handcuffed and with his head pointing downwards; when he was in that position his head was beaten with a plastic bottle filled with water and his feet with a wooden bat; a gas mask filled with liquid was placed over his head, which made it impossible to breathe. The European Court of Human Rights found that there had been a failure to investigate the allegations thoroughly. In particular, Oleksiy Zakharkin was refused a copy of the decision taken in his case in September 2004 not to institute criminal proceedings against the police officers concerned, which had hampered his efforts to appeal that decision.<sup>51</sup>

When a criminal investigation was opened into the allegations that Sergei Fesik had been tortured by police officers in Kharkiv, (see p.35) he struggled to find out any information about the progress of the investigation. After two months he wrote to the Regional Prosecutor to enquire about progress and was sent a copy of the original letter ordering the investigation. Three months later he had still not received any information and wrote again, and it was only after he had written a complaint to the General Prosecutor's office that he was called for an interview by the Moskovskiy District Prosecutor which resulted in him being threatened with further ill-treatment.

Dmitry Yashchuk's family do not believe the official version that he committed suicide. Their distrust has been increased by the way they have been treated by the authorities. They did not receive any information about the progress of the investigation into his death for four months despite repeated requests for information. They were not able to see the body until four months after his death. When they asked to see the video recording that was running in the cell when he died, they were told that there was no recording, yet months later, the film of his last moments was suddenly released.

In order to provide victims with an effective right to a remedy the Ukrainian authorities must ensure that they can not only lodge a complaint, but that they are also kept fully informed as to the progress of that complaint, all decisions regarding the complaint and the reasoning behind them.

## **HARASSMENT AND INTIMIDATION OF COMPLAINANTS**

Article 13 of the UN Convention against Torture requires that complainants and witnesses in torture cases should be protected against ill-treatment or intimidation as a result of their complaint. Amnesty International has come across several cases where victims and complainants have been pressurized to give up their complaints or even subjected to further ill-treatment by police officers attempting to cover up their crimes.

At the beginning of 2010, prosecutors started a criminal case against police officers from the drugs squad in Kyiv who had allegedly beaten **Anton Zhiginas** in custody. As a result of the beating Anton Zhiginas was hospitalized and his spleen was removed. Anton Zhiginas was charged with using narcotics, but the charges against him were dropped on 10 June 2010. The day he was released from custody he was detained again by police who allegedly planted drugs on him and beat him to force him to sign a statement that he had been beaten by Dmitry Yashchuk and not by police officers. Just a few days later Dmitry Yashchuk was detained and died in police custody.

Roman Zuiyev faced threats from police officers for pursuing his complaint, and has still not received the compensation owing to him:

**Roman Zuiyev** told Amnesty International that he was beaten up in his own home on 24 January 2010 by an off duty police officer in Donetsk in retaliation for the fact that the officer's brother had earlier been beaten up outside a club where a gay event was taking place. Roman Zuiyev was punched in the face until he fell down and then kicked in the head several times. Throughout the beating the police officer used homophobic terms of abuse. Roman Zuiyev's computer was also damaged during the beating.

After Roman Zuiyev had complained the following day to his local police station, the police officer who had beaten him offered to repair his computer if he withdrew his complaint, and suggested that Roman Zuiyev come to his home to discuss matters. When Roman came to his house he found that he was accompanied by two of his colleagues from the police station who showed him their IDs. They threatened to find a way of putting him in prison by planting narcotics on him if he did not withdraw his complaint. Roman Zuiyev promised to withdraw his complaint, and they retained his passport, keys and two mobile phones as a guarantee. The next day Roman Zuiyev phoned the Deputy Director of the police station, explained what had happened, and was asked to come to the police station. The officer who had beaten him and confiscated his belongings was summoned and returned his possessions.

On 30 January, the internal police investigation was closed and the decision was taken not to start a criminal investigation because “the conflict had arisen out of personal dislike”. Roman Zuiyev only found out about this several weeks later by chance, and then on 22 March complained to the district prosecutor's office. On 30 March 2010, Roman Zuiyev was informed that a criminal case had been opened against the police officer concerned for “intentional bodily injury of medium gravity”. In October 2010, the officer was sentenced to two years of restricted freedom requiring him not to leave the country during that time, and to report regularly to the police. He was also required to pay Roman Zuiyev 1,695 Hryvna (150 Euros) in material damage and 10,000 Hryvna (884 Euros) in moral damages. He left the police force of his own accord before the sentence was pronounced. Roman Zuiyev never received the compensation owed to him and he is now bringing another case against the police for discrimination against him as a gay man.

Svitlana Pomilyaiko told Amnesty International that the police officers who tortured her repeatedly phoned her trying to convince her not to pursue her complaint. Yakov Strogan reports how he was detained and accused of attempted murder after he had made public his complaint against the police officers who tortured him, in an attempt to withdraw his complaint.

Ukraine must take immediate measures to ensure that victims of police crimes are protected from reprisals, threats and any form of pressure by the perpetrators.

Victims of torture or other ill-treatment and the families of those who have died in custody



have suffered physical and mental trauma as a result of their experiences or deep distress and anguish as a result of the death of a family member. It is therefore very important that they should be treated with sensitivity during the investigation into their complaints.

Many of the victims that Amnesty International spoke to complained that they were subjected to invasive and insensitive questioning which made them feel that they, and not the police officers they were complaining about, were the perpetrators. Svitlana Pomilyaiko, told Amnesty International that during the investigation into her complaint of torture by police officers: "I felt as if I was the one who had committed the crime."

Gleb Skant was subjected to lengthy psychological tests to determine his sanity when he complained about the ill-treatment and threats that he suffered in Moskovskiy District Police Station in Kharkiv that drove him to throw himself from the third floor window of the police station. He told Amnesty International that he felt he was being investigated for a crime rather than the police officers.

A year after Svitlana Pomilyaiko complained about the torture she was subjected to in Ordzhonikidze police station in Kharkiv she was asked to take a lie detector test during which she said that she was made to relive the entire experience, yet to every question she was only permitted to reply "yes" or "no". She felt that the questions had been inappropriate. For instance she was asked: "Did you force Alyona P. (her colleague who was tortured along with her) to complain about the police". The police officers who tortured her refused to take the lie detector test. In June 2011, almost three years after the torture, she was invited to a face to face meeting with the three policemen who tortured her, in the police station where she was tortured.

The Ukrainian government must ensure that victims of torture and other ill-treatment are treated sensitively and that they are not forced to suffer further trauma because of the way the investigation is carried out.

These cases where police officers bring pressure on complainants illustrates the importance of the provision in the UN Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, that "[t]hose potentially *implicated in torture or ill-treatment shall be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as those conducting the investigation.*"<sup>52</sup> The suspension should be without prejudice to the outcome of the investigation: suspension does not mean that the official is presumed to be guilty, it is a measure to enable complaints to be dealt with properly and to protect the complainants.

In Ukraine police officers under investigation for torture and other ill-treatment and other crimes frequently continue to work in the same positions. A criminal investigation into neglect by police officers that led to the death of Dmitry Yashchuk was started on 23 June 2010 and is continuing. However, the police officers who detained Dmitry Yashchuk are still working at Svyatoshynskiy Police Station despite the investigation that is being carried out into their conduct.

Ukraine must ensure that all allegations of torture and other ill-treatment and other violations by police officers are subject to prompt, thorough and impartial investigations. Amnesty

International believes that the best way to ensure this is to set up a fully resourced independent agency to investigate all allegations against police officers. Ukraine must ensure that witnesses are protected from harassment, and in all cases where police officers are under investigation for human rights violations that are serious crimes, that they are suspended for the duration of the investigation.

## 7. FAILURE TO PROSECUTE AND BRING DISCIPLINARY MEASURES

An essential element of the right to a remedy is to bring to justice the perpetrators of torture and other ill-treatment and violations of the right to life. The problem of impunity for these violations is an important contributing element in their recurrence.<sup>53</sup>

The CPT has stated:

"...when officials who order, authorise, condone or perpetrate torture and ill-treatment are brought to justice for their acts or omissions, an unequivocal message is delivered that such conduct will not be tolerated. Apart from its considerable deterrent value, this message will reassure the general public that no one is above the law, not even those responsible for upholding it. The knowledge that those responsible for ill-treatment have been brought to justice will also have a beneficial effect for the victims."<sup>54</sup>

The CPT standards also stress the importance of disciplinary proceedings:

"Disciplinary proceedings provide an additional type of redress against ill-treatment, and may take place in parallel to criminal proceedings. Disciplinary culpability of the officials concerned should be systematically examined, irrespective of whether the misconduct in question is found to constitute a criminal offence."<sup>55</sup>

### FAILURE TO PROSECUTE

The UN Convention against Torture obliges states to make all acts of torture, as well as attempted torture or complicity or participation in torture, criminal offences punishable by appropriate penalties which take into account their grave nature (Article 4).

The UN Human Rights Committee has stated that acts of torture or other ill-treatment must be punishable under the criminal law and that individuals who violate the prohibition "whether by encouraging, ordering, tolerating or perpetrating prohibited acts, must be held responsible".

There are a number of provisions of the Ukrainian Criminal Code under which police or other law enforcement officials can be prosecuted for ill-treatment. Article 127 covers the crime of torture, and carries a maximum sentence of 10 years, but it refers to torture as a general crime that can be committed by anyone and does not specifically refer to state actors as perpetrators. In order to be in line with the definition of torture in the Convention against Torture, it should state that torture can be committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In 2009, the reference to torture committed by public officials as an aggravating factor was removed from the Criminal Code and replaced with torture committed "for reasons of race, national or religious intolerance". The government needs to address this inconsistency as priority and ensure that Article 127 is in line with the definition of torture in the Convention against Torture.

Very many incidences of serious crimes amounting to torture or other ill-treatment by police are prosecuted under Article 365 of the Criminal Code ("Exceeding authority or official powers") which carries a sentence of three to 10 years depending on the gravity of the offence. Any prosecutions under other articles, however, are not recorded as prosecutions for torture or other ill-treatment, thus concealing the scale of the problem. Furthermore, all these articles fall under the statute of limitations, and complainants who have battled for years to have their allegations of torture investigated and brought to court, such as Alexander Rafalsky, therefore run the risk that the cases may not be heard because the torture took place over 10 years before.

The percentage of allegations of torture or other ill-treatment that result in criminal prosecutions is unacceptably low. In a meeting in March 2011 Amnesty International was informed by the Ombudsperson that only 60 cases of torture or other ill-treatment by police officers had been passed to the courts by the prosecutor general's office in 2010. As stated above, a very high number of complaints to the General Prosecutor's Office are rejected at the first instance and the possible perpetrators, therefore, never answer for their crimes.

According to the Prosecutor General's Office,<sup>56</sup> 133 police officers were sentenced by the courts in 2010 for torture and other ill-treatment, and of these three were sentenced under Article 127 for torture, a further 88 were sentenced under Article 365 (Abuse of Office), and the rest under other articles of the Criminal Code.

Some police officers who torture or ill-treat detainees never face disciplinary or criminal proceedings, because of flawed investigations. In the case of Svitlana Pomilyaiko, it has taken her almost three years to fight to have a criminal investigation opened, and the three police officers who had tortured her have still not been disciplined or prosecuted in any way. The internal inquiry resulted in the dismissal of their superior officers, but the three perpetrators continue to work in the police force, and one has since received a service medal.

In some cases the sentences handed down are not commensurate with the crime. For instance, the police officer who beat up Roman Zuiyev in his own home merely because he was present at an LGBT event at which the policeman's brother was attacked, was sentenced to two years restricted freedom in October 2010. The sentence requires him not to leave Ukraine during those two years. He was also ordered to pay material and moral damages to Roman Zuiyev, but he has not yet done so. In the case of Ihor Indylo who died in custody in Shevchenkivsky police station in Kyiv in May 2010 two police officers have been charged, but the charges relate to lesser offences and not to the death. Sergei Prihodko is charged under Article 365.2 (Abuse of power that results in pain or derogates a person's dignity) for effecting an arrest while off duty and for dragging Ihor Indilo along the floor. Sergei Kovalenko is charged under Article 367.1 (neglect of official duty without grave consequences) for allowing Sergei Prihodko to carry out these actions.

According to the Prosecutor General's Office,<sup>57</sup> of the 133 police officers sentenced by courts in 2011 for torture and other ill-treatment, 76 were sentenced to prison terms, 52 were given terms of probation, four were sentenced to restricted freedom, and one was fined.

## FAILURE TO TAKE APPROPRIATE DISCIPLINARY ACTION

As stated above, the internal disciplinary measures taken by the Ministry of Internal Affairs frequently fail to address obvious violations by police officers and thus contribute to impunity for such acts. For instance, when Gleb Skant was dragged up to the third floor of a police station in Kharkiv (see p. 30), without any attempt to register him, and then threw himself out of the window to escape, the internal disciplinary measures addressed the issue of missing bars on the windows, but not the fact that he was detained for no apparent reason, beaten up and then held in a police station without registration.

When Natalia Isaeva was questioned in a police station and held without registration, the Department for Internal Security refused to initiate an investigation on the grounds that there was no record she had ever been held in a police station.

In some cases, even where police officers have been dismissed from their posts because of serious offences, they have been reinstated when they appealed to the courts, thus reinforcing impunity for torture and other ill-treatment.

Following Yevgeniy Bocharov's complaint that he had been tortured on 11 April 2002 by officers from the Kharkiv Regional Police Department (see p. 36) an internal inquiry was conducted by the Kharkiv regional police department and two police officers were dismissed and one officer was subjected to other disciplinary sanctions. The dismissed police officers later appealed to a court against their dismissal and were reinstated.

The senior officers in charge of the three officers who tortured Svitlana Pomilyaiko were dismissed in December 2008 six weeks after the torture, following an internal inquiry by the police Personnel Department. In 2010, however, after the prosecutor's office dropped criminal investigation into the torture allegations, two of these officers applied to a court and were reinstated. Two of them are currently suing the former Minister of Internal Affairs, the former Head of the Regional police department and the former human rights representative of the Ministry for defamation.

Ukraine must ensure that any police officer reasonably suspected of responsibility for torture and other ill-treatment or other violations is prosecuted for an appropriate offence, and if proved guilty, an appropriate sentence should be imposed. All misconduct by police officers should also be subject to disciplinary proceedings which taken into account the gravity of the offence and impose appropriate disciplinary measures.

## 8. CONCLUSION AND RECOMMENDATIONS

In the 20 years since it has gained its independence Ukraine has made considerable progress towards establishing the rule of law and bringing its legislation and practice in line with international human rights standards.

Despite this progress, large numbers of people face arbitrary detention, torture and other ill-treatment, and other human rights violations at the hands of the police. Failures in effectively investigating allegations of such violations and in bringing disciplinary and criminal proceedings against those responsible has led to a climate of impunity, undermining the principle that no one, including the police, is above the law, and leaving victims without an effective remedy and reparation. The extent of the problem can no longer be ignored and the authorities now recognize that impunity for human rights violations and misconduct by the police have seriously undermined public trust in the Ministry of Internal Affairs and the police.

Ukraine must carry out a radical reform of police practice to ensure greater accountability of individual police officers and of the institution of the police as a whole. As a priority Ukraine must establish effective police complaints procedures, and ensure that every complaint is investigated promptly, independently, impartially and thoroughly. Police officers responsible for torture or other ill-treatment must be held accountable through disciplinary and criminal proceedings. Effective internal disciplinary investigations, as well as investigations by independent bodies, are an important means of identifying and rectifying systemic failings which facilitate torture and other ill-treatment.

Amnesty International proposes the following recommendations to assist Ukraine in overcoming the problem of impunity for human rights violations by the police and in fulfilling its international human rights obligations.

### **International obligations:**

- Article 127 of the Ukrainian Criminal Code should be amended so as to ensure that it accurately reflects all elements of the definition of torture as set out in Article 1 of the Convention against Torture;
- Ensure that Ukraine fulfils its obligations as a state party to the Optional Protocol to the UN Convention against Torture by setting up a National Preventative Mechanism (NPM) to monitor places of detention; the NPM should be established through a transparent process including broad consultation with civil society; it should be functionally independent, include relevant experts and be adequately funded; it should have the mandate to make regular and unannounced visits to all places of detention.

### **Combating impunity**

- The government and senior police officers must explicitly and unequivocally condemn torture and other ill-treatment, and must make clear to their subordinates that

torture and other ill-treatment is absolutely prohibited in all circumstances and will be subject to criminal and disciplinary investigation and penalties. This prohibition must be reflected in police training;

- Any police officer or other law enforcement official reasonably suspected of responsibility for torture or other ill-treatment should be prosecuted for an appropriate offence and, if proved guilty, the sentence imposed should be commensurate with the gravity of the offence;
- Any police officer or law enforcement official who is under investigation for acts of torture or other ill-treatment should be suspended from active duty for the duration of the investigation;
- Publish annually data on the number and type of complaints received about police misconduct in Ukraine, and how these complaints were dealt with by the police disciplinary system, and by the courts;
- Take steps to ensure that victims of human rights violations are not discouraged from filing a complaint and ensure that appropriate disciplinary, and where necessary criminal, measures are taken against law enforcement officials who harass or intimidate individuals making a complaint about alleged criminal offences by police
- Publish the report of the Council of Europe Committee for the Prevention of Torture on their most recent visit in 2009.

#### **Investigations:**

- The government should give active consideration to establishing a fully resourced independent agency to investigate all allegations of human rights violations by law enforcement officers including the police, as recommended by the Commissioner for Human Rights of the Council of Europe. Such an agency should:
  - Comply with the five principles of independence, adequacy, promptness, public scrutiny and victim involvement, as elaborated by the European Court of Human Rights;
  - Have no hierarchical or institutional links with the police and operate completely independently from the government, and the police;
  - Be adequately resourced and staffed, including with its own body of independent expert investigators, and headed by individuals of acknowledged competence, expertise, independence, impartiality, and integrity;
  - Be mandated to investigate all allegations of serious human rights violations by law enforcement officials, including deaths in custody, torture and other ill-treatment, and racial discrimination, including investigations on their own initiative in the absence of a specific complaint;
  - Have all necessary powers, including that of immediate access to police premises or other relevant locations and the power to summon witnesses and to order the production of evidence and documents;
  - Refer matters to the criminal prosecutor and/or to the police internal disciplinary body, as appropriate, and have the power to order the initiation of disciplinary proceedings and to require the disciplinary body to report back to it on the outcome of such proceedings;
  - Recommend appropriate action in respect of the police system overall.
- Ensure that all allegations of ill-treatment or torture by the police are subject to prompt, thorough and impartial investigation, including interviewing the victim and any witnesses;
- Ensure that those who are making a complaint about any form of police misconduct are kept informed about the progress of the investigation and the results of ensuing disciplinary proceedings.

**Police procedures:**

- Review the Code of Ethics and the Disciplinary Code so as to bring them fully into line with international human rights law and standards, including the European Code of Police Ethics. In particular they should include specific prohibition of the use of torture and other ill-treatment, and on racial discrimination, and extortion;
- Review police procedures and guidelines and their implementation in relation to identity checks to ensure that they are not carried out in a discriminatory manner, and investigate and prosecute all allegations of police extortion which exploits a person's lack of appropriate documentation;
- Review the assessment criteria for police work and ensure that they are no longer based on quantitative standards for crime detection, but on qualitative standards;
- Human rights standards, including in particular the prohibition of torture and other ill-treatment and of discrimination, should be an integral and compulsory part of the initial and ongoing training of all police officers.

**Safeguards for detainees:**

- In accordance with the right to liberty and the presumption of innocence people awaiting trial on criminal charges should not, as a general rule, be held in custody;
- Detailed individual custody records must be kept by custody officers in police stations and pre-trial detention facilities, including information with regard to the individual's safety and well being and medical needs;
- All people deprived of their liberty should be informed at the outset of their custody of their rights to a lawyer of their choice, a doctor and to have their relatives informed of their whereabouts, and all detainees should be guaranteed prompt and regular access to lawyers (including the right to talk to a lawyer in private) and doctors (including a doctor of their choice);
- A lawyer should always be present during police interrogations unless a detainee waives the right to a lawyer, and all interrogations should be recorded accurately, preferably with the use of video/audio equipment;
- Review the provisions of the Administrative Code to ensure that all detainees have immediate access to a lawyer in accordance with international standards;
- Video and audio recording equipment should be installed in all areas of police stations where detainees are held except where this would violate detainees' right to privacy or to consult a doctor or lawyer in private. The equipment should be inspected regularly to ensure it is maintained in working order. Recordings should be kept in a secure facility for a reasonable period so they are available for viewing by investigators if required.



## ENDNOTES

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- <sup>1</sup> Kharkiv Institute for Social Research, Monitoring nezakonnogo nasil'stva v militsii – 2010: Resultaty sotsiologichnogo doslidzhennya, <http://www.khisr.kharkov.ua/index.php?id=1296465173>.
- <sup>2</sup> за відсутністю в діянні складу злочину
- <sup>3</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Law enforcement agencies, CPT standards, 2010 edition, CPT/Inf/E (2002) 1 - Rev. 2010, para 25. [www.cpt.coe.int/en/documents/eng-standards.pdf](http://www.cpt.coe.int/en/documents/eng-standards.pdf), Referred to below as CPT Standards.
- <sup>4</sup> “Mogilyov priznal primenenie pytok v militsii”, correspondent.net, 29 April 2011, <http://korrespondent.net/video/ukraine/1212585-mogilev-priznal-primenenie-pytok-v-milicii>
- <sup>5</sup> CPT response
- <sup>6</sup> “Mogilyov priznal primenenie pytok v militsii”, korrespondent.net, 29 April 2011, <http://korrespondent.net/video/ukraine/1212585-mogilev-priznal-primenenie-pytok-v-milicii>
- <sup>7</sup> Association of Ukrainian Monitors on Human Rights conduct in Law Enforcement, Права людини в діяльності Української міліції —2010, <http://www.umdpl.info/index.php?id=1292003204>
- <sup>8</sup> “Mogilyov priznal chto gaishchniki zdayut dengi rukovodstvu”, Gazeta.ua, 20 August, 2010, <http://gazeta.ua/ru/post/351385>
- <sup>9</sup> UN Code of Conduct for Law Enforcement Officials, Article 7, [www2.ohchr.org/english/law/codeofconduct.htm](http://www2.ohchr.org/english/law/codeofconduct.htm)
- <sup>10</sup> The European Code Of Police Ethics, Recommendation Rec(2001)10 adopted by the Committee of Ministers of the Council of Europe on 19 September 2001, Articles 21 and 46, [polis.osce.org/library/view?item\\_id=2687&attach\\_id=500](http://polis.osce.org/library/view?item_id=2687&attach_id=500)
- <sup>11</sup> “Президент Украины признал, что страна ежегодно теряет около 20 млрд грн из-за коррупции”, Korrespondent, <http://korrespondent.net/business/1226707-prezident-ukrainy-priznal-chto-strana-ezhegodno-teryaet-okolo-20-mlrd-grn-iz-za-korruptcii>
- <sup>12</sup> Creative Union “Toro”, Transparency International National Contact in Ukraine, *National Integrity System Assessment: Ukraine 2011*, [http://www.transparency.org/news\\_room/in\\_focus/2011/ukraine\\_nis\\_2011](http://www.transparency.org/news_room/in_focus/2011/ukraine_nis_2011)
- <sup>13</sup> While the average salary in Ukraine is currently slightly over this, most people agree that it is particularly difficult to live in cities on this amount of money.
- <sup>14</sup> Item on the website of the Accounting Chamber of Ukraine, 8 September 2010, “Mersedesi, kadilaki,....za rakhunok blagodiynitstva”, <http://www.ac-rada.gov.ua/control/main/uk/publish/article/16730851>
- <sup>15</sup> Rhetoric and Risk: Human Rights Abuses Impeding Ukraine’s Fight Against HIV/AIDS, Human Rights Watch, March 1, 2006, <http://www.hrw.org/en/reports/2006/03/01/rhetoric-and-risk-0>
- <sup>16</sup> This was an extrapolation from a survey carried out among 2,000 people in 5 regions of Ukraine by the Kharkiv Institute for Social Research, Monitoring nezakonnogo nasil'stva v militsii – 2010: Resultaty sotsiologichnogo doslidzhennya, <http://www.khisr.kharkov.ua/index.php?id=1296465173>.
- <sup>17</sup> Report of Working Group on Arbitrary Detentions: Mission to Ukraine, A/HRC/10/21/Add.4, 9 February 2009 <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/106/64/PDF/G0910664.pdf?OpenElement>
- <sup>18</sup> The name has been changed to respect this person’s desire for anonymity.
- <sup>19</sup> Letter to Amnesty International from the Prosecutor General dated 15 July 2011.

<sup>20</sup> The CPT has emphasized that for many people, the fact of having been detained by the police will be a highly stressful experience and that, in view of this, police officers should ensure that people who are newly detained do not have ready access to means of harming themselves (such as belts, ties, broken glass, etc.). Report to the Estonian Government on the visit to Estonia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 27 April 2005, para. 19.

<sup>21</sup> Extrajudicial, summary or arbitrary executions: Interim report submitted to the UN General Assembly by the Special Rapporteur, UN Doc. A/61/311, 6 September 2006, paras. 51-54.

<sup>22</sup> European Court of Human Rights, *Velikova v. Bulgaria*, no. 41488/98, § 70, quoted in *Matushevskyy and Matushevskya v. Ukraine* (Application no. 59461/08) 23 June 2011

<sup>23</sup> Comment by the Council of Europe Commissioner for Human Rights, Excessive use of pre-trial detention runs against human rights, 18 August 2011, [http://commissioner.cws.coe.int/tiki-view\\_blog\\_post.php?postId=169](http://commissioner.cws.coe.int/tiki-view_blog_post.php?postId=169)

<sup>24</sup> See for example, CPT, Law Enforcement Agencies, CPT standards, 2010 edition, CPT/Inf/E (2002) 1 - Rev. 2010, p. 7, para 40

<sup>25</sup> Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, para 34

<sup>26</sup> CPT standards, p. 8, para 15.

<sup>27</sup> THE EUROPEAN CODE OF POLICE ETHICS, Recommendation Rec(2001)10, Adopted by the Committee of Ministers of the Council of Europe on 19 September 2001, [www.polis.osce.org/library/view?item\\_id=2687&attach\\_id=500](http://www.polis.osce.org/library/view?item_id=2687&attach_id=500)

<sup>28</sup> “Put deeds before words”: Deliver human rights for Ukraine, AI Index: EUR 50/004/2010, p. 11.

<sup>29</sup> “Police hassle merchants at Troyeshchyna market: racism, corruption seen”, Svitlana Tuchynska, Kyiv Post, November 5, 2010, <http://www.kyivpost.com/news/nation/detail/88819/print/>

<sup>30</sup> “Черножопы. Что ты здесь делаешь.”

<sup>31</sup> See *Understanding Policing: A Resource for Human Rights Activists*, Anneke Osse, Amnesty International Nederland 2007, p. 186, <http://www.amnesty.nl/documenten/rapporten/Understanding%20Policing%202007%20Full%20text.pdf>

<sup>32</sup> CPT/Inf(2004) 28, para 26

<sup>33</sup> *Understanding Policing*, p. 186

<sup>34</sup> UN Human Rights Committee, General Comment No. 31, UN Doc. CCPR/C/21/Rev.1/Add.13, paras. 15-18.

<sup>35</sup> Council of Europe: Opinion of the Commissioner for Human Rights concerning Independent and Effective Determination of Complaints against the Police, CommDH(2009)4, 12 March 2009, <https://wcd.coe.int/wcd/ViewDoc.jsp?id=1417857&Site=CommDH>.

<sup>36</sup> General Comment 20 on Article 7 of the ICCPR, <http://www.unhcr.ch/tbs/doc.nsf/0/6924291970754969c12563ed004c8ae5?Opendocument>

<sup>37</sup> Opinion of the Commissioner for Human Rights concerning Independent and Effective Determination of Complaints against the Police, 12 March 2009 CommDH(2009)4 <https://wcd.coe.int/wcd/ViewDoc.jsp?id=1417857&Site=CM>

<sup>38</sup> Ministry of Internal Affairs Website, <http://www.mvs.gov.ua/mvs/control/main/uk/publish/article/512685;jsessionid=72CF4D1D7E86C4EC474FEE26AF8F06F1>

<sup>39</sup> Article 121 of the Constitution of Ukraine.

<sup>40</sup> European Court of Human Rights, *Ramsahai v. the Netherlands* [GC], 15 May 2007. para. 341.

<sup>41</sup> General Comment, 15 May 2007, para. 324; *Kelly and others v. the United Kingdom*, 4 May 2001, para. 96; *Anguelova v. Bulgaria*, 13 June 2002, para. 139.

<sup>42</sup> See *Yasa v. Turkey*, 2 September 1998, paras. 102-104, *Çakici v. Turkey* [GC], 8 July 1999, paras. 80, 87 and 106; *Tanrikulu v. Turkey*, [GC], 8 July 1999, para. 109; and *Mahmut Kaya v. Turkey*, 28 March 2000, paras. 106-107.

<sup>43</sup> European Court of Human Rights, *Nachova and Others v. Bulgaria*, 26 February 2004, para. 119.

<sup>44</sup> European Court of Human Rights, *McKerr v. the United Kingdom*, 4 May 2001, para. 115

<sup>45</sup> Venice Commission Opinion 380/2006, on the draft law amending the Constitutional provisions of the procuracy, <http://www.venice.coe.int/docs/2006/CDL-AD%282006%29029-e.pdf>

<sup>46</sup> European Court of Human Rights, *Zakharkin v. Ukraine* (*Application no. 1727/04*), 24 June 2010, <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Zakharkin%20Ukraine&sessionid=74338171&skin=hudoc-en>,

<sup>47</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 14th General Report on the CPT's activities covering the period 1 August 2003 to 31 July 2004, Strasbourg, 21 September 2004 CPT/Inf (2004) 28 [www.cpt.coe.int/en/annual/rep-14.pdf](http://www.cpt.coe.int/en/annual/rep-14.pdf)

<sup>48</sup> European Court of Human Rights, *Bocharov v. Ukraine* (*Application no. 21037/05*), 17 March 2011 <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Bocharov%20Ukraine&sessionid=74338171&skin=hudoc-en>

<sup>49</sup> European Court of Human Rights, *Samardak v. Ukraine* (*Application no. 43109/05*), 4 November 2010, <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Samardak%20Ukraine&sessionid=74338171&skin=hudoc-en>

<sup>50</sup> See *Zakharkin v. Ukraine*

<sup>51</sup> See *Zakharkin v. Ukraine*

<sup>52</sup> Principle 3 (b), Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, GA resolution 55/89, 4 December 2000.

<sup>53</sup> UN Human Rights Committee, General Comment No. 31, UN Doc. CCPR/C/21/Rev.1/Add.13, paras. 15-18

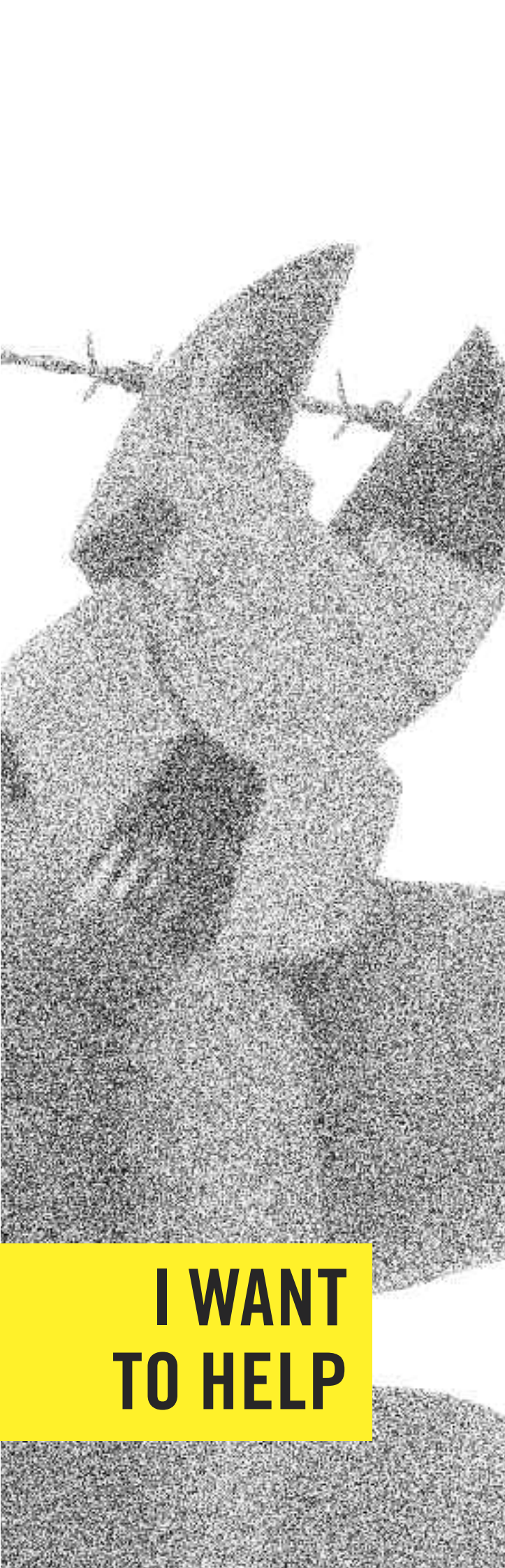
<sup>54</sup> The CPT Standards p. 84

<sup>55</sup> The CPT Standards, p. 88

<sup>56</sup> Letter to Amnesty International dated 15 July 2011.

<sup>57</sup> Letter to Amnesty International dated 15 July 2011.





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## **'NO EVIDENCE OF A CRIME'**

### **PAYING THE PRICE FOR POLICE IMPUNITY IN UKRAINE**

Human rights abuses are practised systematically by the police in Ukraine, despite increasing efforts to combat the problem and growing public outrage. Institutional failings and high levels of corruption in the Ministry of Internal Affairs mean that people who come into contact with the police are at risk of a wide range of abuses, from verbal attacks to torture and other ill-treatment, including fatal injuries. Investigations into these events are often delayed, ineffective and biased, which only encourages the police in a culture of impunity.

This report is a result of interviews carried out by Amnesty International in March and April 2011 with victims, lawyers and human rights defenders. It includes case histories, analyses the problem of torture and ill-treatment in Ukraine and makes recommendations to the government.

Amnesty International makes a variety of recommendations which will help the government fulfil its international obligation to combat torture and other ill-treatment. These include: the establishment of a fully resourced, independent agency to investigate all allegations of human rights violations by law enforcement officers, including the police; better safeguards for detainees in police custody; and the establishment of an independent organization with powers to monitor places of detention.

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