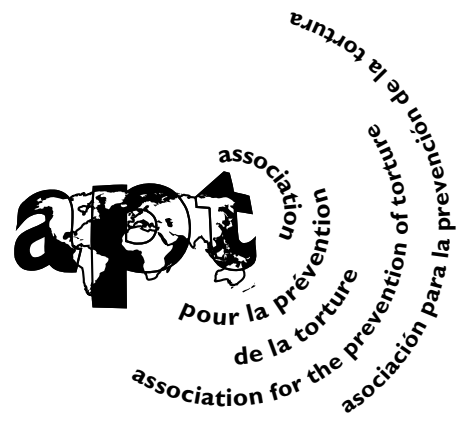




Report

Police activities in Ukraine

Europe



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Geneva, January 1998

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List of abbreviations

CAT	Committee against Torture
CC	Criminal Code
CIS	Commonwealth of Independent States
CPC	Criminal Procedure Code
CPT	European Committee for the Prevention of Torture
ECHR	European Convention on Human Rights
HIV	Human Immunodeficiency Virus
IVS	Temporary Holding Isolators
KGB	State Security Committee
MVD	Ministry of Internal Affairs
NATO	North Atlantic Treaty Organisation
NKVD	People's Commissariat of Internal Affairs
OMON	Special corps of the Militia
OSCE	Organisation for Security and Co-operation in Europe
ROVD	District Department of Internal Affairs (Police stations)
SBU	Ukrainian Security Service
SIZO	Investigation isolation facilities (Pre-trial detention centres)
UN	United Nations
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees

FOREWORD

The Association for the Prevention of Torture (APT) is a non-governmental organisation founded in 1977 in Geneva and active in the field of human rights and prevention of torture and ill-treatment. The APT proposed the draft European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT) which was adopted by the Council of Europe in 1987. Since the creation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the treaty body charged with visiting places of detention in the State Parties to the Convention, the APT has taken pains to inform it on the conditions of detention and ill-treatment in different European countries.

Ukraine signed the ECPT on 2 May 1996 and ratified it on 5 May 1997; the Convention took effect for this country on 1 September 1997. It is thus highly probable that CPT's first visit to this country will take place in 1998.

In this context, the APT decided to prepare a report on the question of deprivation of liberty in Ukraine. Considering the size of Ukraine and APT's limited means, and considering also the fact that experts from the Council of Europe have written a comprehensive assessment of the Ukrainian prison system¹, it was decided to focus on police activities.

The goal of the present report is to present the legal framework of police activities in Ukraine as well as a synthesis of the principal problems linked to these activities.

The APT's consultant, Ms. Ilaria Dali-Bernasconi, travelled twice to Kiev, once alone and once with the Programme Officer, to gather information, in July and in September 1997. In general, the APT does not visit places of detention. The pertinent legal data has been researched and studied in conjunction with information regarding its implementation, gathered either through direct talks with various interlocutors (lawyers, physicians, non-governmental organisations, concerned ministries) or through press articles, human rights publications, as well as letters from people claiming violations of their rights.

The APT received these letters from human rights organisations, but did not have the chance to verify the information reported. In the report, only the initials of the people concerned are given in the cases used to support information, even in respect of a number of well-known cases that were in the press. In fact, since it is more important to expose a pattern of abuses or violations rather than individual cases, the real names of the people are irrelevant.

Some problems were encountered in finding the relevant legal texts: in Geneva we received the Constitution in English, and in Kiev the 1996 drafts of the Criminal and Criminal Procedure Codes in English, as well as the latest drafts from 1997 in Ukrainian. The laws on the Militia and Criminal Investigation were obtained from the Ministry of Justice, in Ukrainian, and were translated with the help of the Council of Europe. Other texts we received from our interlocutors in Russian.

We would like to thank here all the people who helped us in the organisation of our missions, the Mission of the Republic of Ukraine to the UN in Geneva, the interlocutors in Kiev who agreed to give us some of their time, and the Council of Europe for their assistance with the translations.

¹ Assessment of Ukrainian prison system, report on Council of Europe expert missions to Ukraine in June and August 1996 (Lakes, Flügge, Philip, Nestorovic), Directorate of legal affairs, Council of Europe.

1 General information

1.1 Technical data²

President: Leonid Kuchma, elected in 1994 for 5 years
 Prime Minister: Valeri Pustovoitenko, appointed on 11 July 1997
 Parliament: 450 members, elected in 1994 for 4 years (next election March 1998)

Ukraine (603,700 km²) (former Soviet Socialist Republic of Ukraine) is the third largest republic of the former USSR, after Russia (17,075,000 km²) and Kazakhstan (2,717,300 km²).

Population: approximately 51 million (sources vary from 50.3 to 52)
 Capital: Kiev (pop. 2.5 million)
 Major cities: Kharkiv (pop. 1.5 million), Odessa (1.1 million), Dnipropetrovsk (1.1 million), Donetsk (1.09 million)

Neighbouring countries: Russia, Moldova, Belarus, Poland, Slovakia, Hungary and Romania.

Climate: continental; in Crimea Mediterranean.

Communication and transport network: there are highways from Kiev to the main cities, but not always in good condition. The railway is well developed, although security can be a problem (petty criminality). Ukrainian Airlines provides internal flights to Crimea and the main cities with old Aeroflot planes.

Administrative and territorial divisions: 24 regions (oblast') divided into districts (rayony). Kiev and Sevastopol' have a special status. Crimea has the status of Autonomous Republic.

<i>Minorities:</i>	Russians	22.1 %
	Jews	1.0 %
	Belarussians	0.9 %
	Moldovans	0.6 %
	Bulgarians	0.5 %
	Poles	0.4 %
	Tatars	0.2 %

Currency: the grivnya since September 1996; it is exchanged at 1.85 to the US dollar (September 1997).

1.2 General context

1.2.1 Political situation

Ukraine's Supreme Soviet declared the sovereignty of the Republic on 16 July 1990, and independence on 24 August 1991, immediately after the abortive August 1991 putsch in Moscow. A popular referendum confirmed this decision on 1 December 1991 with 93 % in favour. The same day, the people elected the President of the Supreme Soviet, Leonid Kravchuk, as President of the new republic with 62 % of the votes.

² Data taken from Chrystyna Lapychak and Ustina Markus, "Ukraine's Continuing Evolution", Transition, vol. 3 no.2, 7 February 1997, OMRI, Prague; and the Yearbook of "Le Monde", Bilan du Monde, Edition 1997, p. 62.

These fundamental changes occurred unexpectedly and in a very short period of time: Ukraine's political class was not ready to take on such a responsibility, nor to abandon old forms of ruling. The first years of independence were a slow and stumbling march towards a State structure and identity. The country came close to disintegration, because of the problems in Crimea (see ch. 1.2.7.), the language conflict between the deep Ukrainian West and the Russian-speaking and rus-sophile East, culturally closer to Southern Russia, and an awakening of independentist feelings in the far West, the Transcarpatian region³. In the event, these upheavals did not lead to open confrontation, partly thanks to the deteriorating economic situation which meant that all the regions were interdependent and dependent on the central Government for subsidies. Unity was maintained and spirits calmed.

The political situation has stabilised, apart from the Crimean crisis, which, after reaching a peak in 1995, continued until May 1997; the only critical signals are the instability of Prime Ministers, who change at a rate of about once a year, and a creeping censorship in the media, not as open as in Soviet times, but strong enough to push journalists to self-censorship⁴.

The first legislative elections took place in Spring 1994, enabling people to directly chose the 450 members of the Parliament for 4 years. The Parliament is composed as follows: left block (Communists - 86 seats, Socialists - 14 seats and Peasant Party - 18 seats); the RUKH (nationalist right, very popular during perestroika, established mainly in the West) 20 seats, the RPU (Republican Party of Ukraine) 8, the Interregional Bloc for Reforms (which was formed by the then Prime Minister Kuchma) 6 seats. The majority of the members of Parliament declared themselves as not belonging to any party⁵, which illustrates that the concept of the political party as understood in Western Europe has not yet taken root in former Soviet countries. In fact, by 1995, about 50 parties had registered on paper, but the people's participation remains weak.

The legislative elections were followed on 10 July 1994 by Presidential elections, in which Leonid Kuchma replaced Leonid Kravchuk as Head of State, getting 52 % of the votes.

The cohabitation of the President and the Parliament⁶ is not always easy. In 1995, the need arose to sign a "Constitutional Agreement" on the separation of power, while awaiting the adoption of the new Constitution one year later. However, even with the new Constitution, conflicts between the legislative and the executive still continue: the left block, which has almost a third of the seats, is as a rule opposed to liberal economic reforms. It also tends to maintain strong links with Russia and the Russian Communist Party, and stems mainly from the East and the South of Ukraine.

3 This region, part of the Austro-Hungarian empire until 1917, was split between Poland and Chekoslovakia between the two wars and annexed by the Soviet Union only in 1945.

4 See Chrystyna Lapychak, "Playing the Patronage Game in Ukraine", *Transition*, vol. 2 no. 21, 18 October 1996.

5 These figures are taken from Leonid Finberg, "L'Ukraine indépendante : la difficile modernisation (1991-1995)", in *Ukraine-Bielorussie-Russie, trois Etats en construction*, Notes et études documentaires, no. 5022, La Documentation française, Paris, 1995; and Larrabee Stephen, "Ukraine : Europe's Next Crisis" in *Arms Control Today*, July/August 1994, ACA Publications, Washington. Other useful, although slightly obsolete, information on political parties can be found in Wilson Andrew and Bilous Artur, "Political Parties in Ukraine", in *Europe-Asia Studies*, vol. 45, No. 4, 1993.

6 For their respective roles, see the Constitution of Ukraine, ch. V and IV.

1.2.2 Economic situation

Some figures

Ukrainian Macroeconomic Trends (1991 - 1996) ⁷						
	1991	1992	1993	1994	1995	1996 *
Change in real GDP	-11,6%	-13,7%	-14,2%	-23,0%	-12,0%	-9,5%**
Consumer price inflation	290,0%	2000,0%	10156%	401%	180%	32,2% ↗
Change in real industrial output (gross)	-4,87%	-6,4%	-8,0%	-27,3%	-11,5%	-12,5%**
Change in real household consumption	–	–	-31,2%	-26,4%	-3,7%	-10,0%**
Change in real investment (gross)	-8%	-3,7%	-10%	-23%	-35%	–
Consolidated budget balance	–	-12%	-17%	-11%	-8%	-4,2% ↗↘
Gross foreign debt (in billions of dollars)	–	–	4,1	7,1	10*	10 *
Official exchange rate (karbovantsi/1\$)	–	563	8557	78 638	177 127	176 000
Average monthly salary	–	11	18	17	41	76##
Unemployment rate	0,0%	0,3%	0,4%	0,4%	0,6%	1,0%##

*Preliminary data; **Mid-1996, relative to mid-1995; ↗ January–August 1996; ↘ As of mid-1996

End of year (except for 1996 rate, which is for 13 September. This rate translates into \$1/1,76 hryvnias)

##End-of-year data (except for 1996, which is for mid-year)

Following the fall of the Soviet Union, the production-distribution network of goods and energy collapsed, leaving most republics to their own resources. Ukraine, which depends on foreign countries for most of its energy (Russia and Turkmenistan for gas) found itself in a bad position. The Chernobyl station, one of the country's five nuclear power stations, had to close down one of its reactors and reduce production after the 1986 catastrophe. Moreover, this accident consumed a large part of the State budget, taking into account the immediate works needed and subsidies for the affected population (about 3 million people were affected to a greater or lesser extent and are eligible for food subsidies and medical care). 4.7 million hectares of cultivable land were contaminated by radiation and still can not be used today.⁸

Ukraine's economic performance during the first four years of independence was extremely poor, and only now is it beginning to recover. Nevertheless it is still faced with massive problems. Exports have increased, thanks, in part, to a special agreement with the European Union. The new currency, the grivnya, has managed to remain stable (between 1,75 and 1,85 to the US dollar) since its introduction in September 1996. However, the external debt is still considerable, heavy industrial production is decreasing, due to the shortage of raw material and energy. Donbass miners regularly go on strike. Economic reforms are slow and lack a long-term and global perspective.

Nevertheless, foreign donors were sufficiently reassured as to be generous with Ukraine, which occupies a privileged position in comparison with the other CIS countries: 5 milliard US dollars have been promised for the next 5 years, of which 3.5 should be distributed in 1997.

In spite of a slight improvement, a study by the World Bank concluded that one third of Ukrainians, consisting especially of large families, old people and the miners in coal regions, currently

⁷ Sources: Ukrainian Economic Trends, April, July 1996, TACIS: Eurasia Economic Outlook, WEFA Group, August 1996; "Ekonomika Ukrainy u sichni-serpni 1996 roku (The Ukrainian Economy, January-August 1996), Uryadovy Kuryer, 28 September 1996.

⁸ See Lakes, Flügge, Philip, Nestorovic, "Assessment of the Ukrainian Prison System", Report on Council of Europe Expert Missions to Ukraine in June and August 1996, p. 3, Directorate of Legal Affairs, Council of Europe, Strasbourg, 1997.

live below the poverty level⁹ Unemployment, although officially declared at 1 %, is estimated between 30 and 40 %. Average salaries (circa 80 USD per month) are considered to be worth 5 times less than in 1990.

1.2.3 Legal situation

The Republic of Ukraine kept all the Soviet laws and introduced amendments in all fields step by step during these six years of independence. The new Constitution was adopted on 28 June 1996. The preparatory work for this Constitution had already begun before the collapse of the USSR, but its adoption was not easy. The preparatory Commission, led by the then Minister of Justice Sergij Holovaty, encountered strong opposition from Parliamentary groups, and only the President's threat to submit the Constitution to a referendum forced the Parliament to agree to the draft. Many observers called it the "compromise Constitution"

The main provisions of the Constitution with which a significant part of Parliament did not agree were:

- the declaration of Ukrainian as sole official, national language;
- the decision that only ethnic Ukrainians were to be considered native Ukrainians, leaving Russians, even those who had been living in Ukraine for generations, as non-native;
- the refusal of double nationality;
- the articles on private property, which provoked the opposition of former Communists and Peasants (the coalition of these two groups constitutes the present opposition in the Ukrainian Parliament);
- the status of Crimea.

Chapter II of the Constitution deals with the rights and duties of the citizens, and is in line with European standards. However, the new Constitution allows for a transition period of five years for the provisions concerning "the procedure for arrest, holding in custody and detention of persons suspected of committing a crime, and also for the examination and search of a dwelling place or other possessions of a person" (ch. XV, Transitional Provisions, p. 13) to come into force. This transition period has been justified by officials on the basis of the difficulty of modifying the laws related to the articles concerned and of disseminating them among the legal profession and the population.

As regards the Criminal Code (CC) and Criminal Procedure Codes (CPC), they have to be modified in accordance with the Constitution and the universal standards enshrined in the European Conventions that Ukraine ratified upon entering the Council of Europe. The draft of the CPC is still under elaboration and the CC has been presented to the Parliament but it is unlikely that it will be discussed before the March 1998 elections. There are some intermediary non-official versions of the Codes, drafted at different stages, which include amendments and additions made up to that point.

In the meantime, the Soviet CC and CPC (1961), with all the successive amendments and decrees added since independence, are still in force.

1.2.4 Mafia, corruption and criminality

As in the other CIS republics, capitalism has brought with it an increase in corruption and criminality, and the political, economic and criminal elite are intertwined in the fight for power. Mafia clans are spreading, influence and protections are traded, political and business figures are targets for violence.

This phenomenon affects the police very much. Persistent rumours about links between the police and the criminal underworld are confirmed by cases of the release of members of criminal

⁹ This chapter is based on the following sources: Ustina Markus, "Energy Crisis Spurs Ukraine and Belarus to Seek Help Abroad", *Transition*, vol. 2, no. 9, 3 May 1996; *id.*, "New Trends in Trade", *id.*, vol.2, no. 16, 9 August 1996; Sarah Birch and Igor Zinko, "The Dilemma of Regionalism", *id.*, vol. 2 no. 22, 1 November 1996; Ben Slay, "An Economy at the Crossroads", *id.*, vol. 2 no. 23, 15 November 1996; Chrystyna Lapychak and Ustina Markus, "Ukraine's Continuing Evolution", *id.*, vol. 3 no.2, 7 February 1997; Oleg Varfolomeyev, "Rival Clans Mix Business, Politics and Murder", *id.*, vol. 3 no. 6, 4 April 1997; Yearbook of "Le Monde", *Bilan du Monde*, Edition 1997, p. 62.

clans, or impunity of rich and dubious businessmen. Two parliamentarians who tried to investigate this kind of corruption reported having been attacked (one was brutalised, the other's car was blown up) in connection with their investigation¹⁰.

The appearance of "businessmen" in the industrialised regions of Ukraine (mainly the Eastern part) has not been without problems: the powerful economic clans of Donetsk and Dnipropetrovsk keep fighting for predominance. At least ten rich industrial owners in the Donetsk region were killed in 1996, and the former Prime Minister (himself from the Dnipropetrovsk elite) was the target of an attempted killing in July 1996. A human rights publication, *Prava Lyudini*, quotes data from the Ministry of the Interior: in the first 8 months of 1996, 85 people were killed by contract, among which 51 were businessmen (the rest "godfathers"). In 1995, the corresponding number was 210.

Both petty and violent criminality are on the increase, as a result of the economic problems and lack of hope for a better future on the part of much of the population. The Moscow Centre for Prison Reforms registered an increase in crimes from 784 in 1991 to 1081 in 1994¹¹. The number of murders in 1996 was 4896¹². This insecurity causes people to be in favour of a very repressive system and to consider the death penalty to be a deterrent for criminality.

1.2.5 Sanitary situation

As in the whole CIS, the sanitary situation has constantly worsened since 1990. The dismantling of the economic-commercial network which linked all the Soviet republics affected the medication market, and the new republics which had pharmaceutical industries began to sell their production at market prices, thus preventing many of the other CIS republics from buying them. Medicines provided by humanitarian agencies are not sufficient to supply all hospitals. Basic medicaments are scarce; chronically ill people cannot find, or afford, their usual remedies; the hospitals cannot cope with emergency cases for lack of material. This phenomenon has obvious consequences on the general health of the population.

Medical staff is generally numerous, but insufficiently paid. Services that used to be free must now be paid for. Poor nutrition coupled with a deterioration in sanitary standards have contributed to the reappearance of epidemics such as diphtheria and cholera. Tuberculosis is ravaging prisons.

Alcoholism levels have increased, as have health problems caused by the low quality of alcoholic beverages. UNDP reports a rate of 1430 alcoholics per 100,000 inhabitants (1994 figures), a growing number of accidents at the workplace due to alcoholism, and almost twice the amount of arrests in connection with intoxication in comparison with 1991.

As regards women, the number of abortions (155 for every 100 live births), practically the only means for birth control, as well as ever harsher living conditions, are important factors contributing to health deterioration. Child mortality was 20 % in 1994¹³, and one fifth of all children born suffer some health problem¹⁴. Average life expectancy in 1994 was 63 for men and 73 for women, according to the 1996 UNDP report, but is said to have been decreasing gradually since 1990. Mortality rates have risen from less than 12 to 15 per 1000 people in 5 years (1989-1994).

In this context, the catastrophe of Chernobyl cannot be neglected: 3 million people were affected; more than 2 million still live in contaminated areas. In 1996, the Ministry of Health declared a total of 125.000 deaths directly related to the catastrophe, and consistently increasing cancer rates, including thyroid cancer in children.¹⁵

The number of persons who are HIV-positive has dramatically increased in the last few years: a UNAIDS report presented in Paris in March 1997 gives the following figures for Ukraine: in

10 Ukraine Country Report on Human Rights Practices for 1996, U.S. Department of State

11 See "Ukraine", in *In Search of a Solution. Crime, Criminal Policy and Prison Facilities in the Former Soviet Union*, Moscow Centre for Prison Reform, Moscow, HR Publishers, 1996, pp. 13-18.

12 See Betsa Aleksandr, "Pozhiznennoe zaklyuchenie : kakim emu byt'" (Life detention : how it should be), in *In Search of an Alternative to Prison Sentences*, Acts of the international symposium 15-16 January 1997, Kiev, 1997.

13 1996 *Ukraine Human Development Report, Looking beyond the triple transition*, UNDP, Kyiv, June 1996

14 N. Petrova, "The Rights of Children in Ukraine", in *Prava Lyukiny v Ukraini*, 1993, Annual of the Ukrainian Centre for Human Rights, Ukrainian Legal Foundation, Kiev, 1995

15 See David R. Marples " Ten Years Later, the Tragedy continues ", in *Transition*, vol. 2, no. 8 19 April 1996, pp.46-51

1992 – 45 cases; in 1994: 44 cases; in 1996: 12228 cases. This is linked to an increase in drug use (and criminality related to drug trafficking) and also an increase in STD patients: for example the number of syphilis patients has reached a rate of 120 to 200 per 100,000. This is a very serious problem, especially in respect of places of detention, hospitals, barracks, or any place where promiscuity creates an ideal field for transmitting these diseases. In order to address this problem, the penitentiary authorities have set up detention units specially for HIV-carriers (who numbered 2715 at the beginning of 1997).

1.2.6 Religions

“Everyone has the right to freedom of personal philosophy and religion. This right includes the freedom to profess or not to profess any religion, to perform alone or collectively and without constraint, religious rites and ceremonial rituals, and to conduct religious activity.

The exercise of this right may be restricted by law only in the interests of protecting public order, the health and morality of the population, or protecting the rights and freedoms of other persons.” (Art. 35, Constitution of Ukraine)

There are four major Churches in Ukraine, among which three are Orthodox. The most widespread is the Orthodox Church of the Moscow Patriarchy (it included 6600 parishes in 1995), which split from the Russian Church in 1992. Also in 1992, the Orthodox Church of the Kiev Patriarchy was founded, which refused allegiance to Moscow and had a clearly nationalist character: by the following year, about 2000 parishes had already joined it. The third is the Autocephalous Orthodox Church, founded in 1921, which went underground during the Soviet period and reappeared in 1991 (1000 parishes in 1995). The fight for power and legitimacy among the three has caused tension and sometimes violent demonstrations (as in July 1995, at the funeral of the Patriarch of the Kiev Church, when riots with the police resulted in about 70 wounded and dozens of arrests)¹⁶.

The fourth Church is the Uniate Catholic Church, which recognises as its head the Pope in Rome but follows rites which are closer to the Orthodox Churches. Other churches and religions are present on the Ukrainian territory, in connection with settlements of ethnic minorities (the Muslim Tatars and Meshket Turks, Protestant Germans, Catholics, Jews, etc.) and, in the wake of the spiritual upheaval following the fall of Communism, an increasing number of different sects.

According to reports, some of them are persecuted on grounds of faked criminal accusations, the most famous example being the “White Brotherhood”. This sect, was registered in 1991, but in 1992 was declared illegal (the new “Law on Religious Organisations” was adopted 24.2.92) and persecutions culminated in mass arrests of members in 1993 and the sentencing of three of the leaders to prison (where they still are), in accordance with art. 209 of the Criminal Code (“religious teaching or rites that affect the health of citizens and incite to sexual dissipation”). Members of this sect and the three imprisoned leaders maintain that this is religious persecution, and have complained of especially harsh treatment.

1.2.7 The Autonomous Republic of Crimea

In order to understand the problems that are assailing this peninsula better, we must look back to the main events of its history. In the 15th century, it was an independent khanat inhabited by Tatars. At the end of the century, it fell under Ottoman domination, recovered independence between 1774 and 1783, when it was again conquered, this time by Russians. Under Russian domina-

¹⁶ Chrystyna Lapychak, “Rifts among Ukraine’s Orthodox Churches Inflamm Public Passions”, in *Transition*, vol. 2, no. 7, 5 April 1996, OMRI, Prague.

tion, Crimea was heavily colonised by Russians and other ethnic groups from the Russian Empire. After the Communist revolution, it became an Autonomous Soviet Socialist Republic, in which the Tatars were still well represented and had political power. However, the purges in 1927 began to weaken their position. During the Second World War, they were accused of collaboration with the Nazi troops, and in May 1944, mass deportations saw 200,000 Tatars transferred from Crimea to Central Asia (mainly Uzbekistan).

In 1954, Crimea was presented by Moscow to the Soviet Socialist Republic of Ukraine, of which it became an integral part. The Tatars, rehabilitated in 1967, gradually began to return to their land, against the wishes of the Russian majority living on the peninsula; in October 1992, a decree enacted by the local Soviet allowed them officially to recover their former property, but was in reality scarcely implemented. On a number of occasions, tensions with the local population broke out into open conflict.

The Tatars supported Ukraine's steps towards independence, in the hope that the new authorities would defend their rights; up to now, however, the problems of integration have not been solved. According to the "Mejlis", the non-official Tatar Parliament based in Simferopol', in 1994 there were 250,000 Tatars in Crimea, and at least as many waiting to return from exile. Many are still in an illegal situation, because the conditions for acquiring Ukrainian nationality for persons who were not resident in Ukraine at the time of independence are not easily fulfilled. Human rights organisations and the 14 Tatar members of the Crimean Parliament are fighting to obtain simplified nationality requirements for those who were deported. The precarious economic situation provides the authorities with the pretext to delay the building of housing and limit assistance for returnees.

Crimea is inhabited by approximately 70% Russians, and even though it also voted in favour of Ukrainian independence (at 56% of the votes) in 1991, already in 1992 it began to separate from Ukraine and move closer to Russia. The presence in Sevastopol' of the Black Sea Fleet, which had to be shared between Russia and Ukraine, poisoned the dialogue, which became more and more politicised, in spite of preliminary agreements in 1992 between the two republics.

On 9 June 1995, the final agreement on the sharing of the fleet was signed, and the question of access to Sevastopol resolved, but the mechanisms for the implementation of the agreement had not yet been defined. The Ukrainian Constitution of 1996 states that "the use of existing military bases on the territory of Ukraine for the temporary stationing of foreign military formations is possible under the terms of lease, by the procedure determined by the international treaties of Ukraine ratified by the Verkhovna Rada of Ukraine" (ch. XV, Transitional Provisions, p. 14).

On this basis, the Russian part of the fleet is now stationed in Sevastopol', which became a Ukrainian town, and has the use of the port of Feodosia. This and other points were established in the general "Agreement on friendship and Co-operation", which includes several treaties, signed on 31 May 1997. This was to be the final step, resulting in peaceful cohabitation, but problems have arisen again lately, as the Ukrainian part of the fleet participated in NATO operations in the Black Sea. Russians accuse the Ukrainians of provocation, and the USA of backing them.

Crimean Russians are not happy with the way the nationalist and separatist question has been resolved in Ukraine's favour. They feel they have been abandoned by Eltsin and Russia, after the strong support from the Russian Duma during the turbulent years 1993-1994.

In fact, in 1993, the Russian Duma had voted a resolution annexing Sevastopol' to Russia, and had questioned the 1954 decree that had given the peninsula to Ukraine. It then openly supported

the separatist movement and the Crimean President Yuri Meshkov, elected in January 1994. There was still much talk but no action when, in March 1995, Ukraine dissolved the Crimean Parliament, abolished the position of President and invalidated the Constitution. Crimea had to negotiate the reconstitution of their Parliament, and then voted a Constitution that was more conciliatory towards Ukraine, abolishing the position of President.

The 1996 Constitution of Ukraine ratifies this situation, granting the Autonomous Republic of Crimea full power over internal policy and management of its own affairs¹⁷, but stipulating approval of the Ukrainian Parliament on national and international questions (art. 137 and 138 of the Constitution of Ukraine).

1.3 International framework: treaties and conventions ratified by the Republic of Ukraine, in particular concerning human rights protection.

Ukraine was a founding member of the United Nations as a Republic of the Soviet Union. It has ratified the following UN Conventions:

- the International Convention for the Elimination of all Forms of Racial Discrimination on 7 April 1969;
- the International Covenant on Economic, Social and Cultural Rights¹⁸ on 12 November 1973;
- the International Covenant on Civil and Political Rights¹⁹ on 12 November 1973 as well as its Optional Protocol concerning individual communications on 25 October 1991;
- the International Convention on the Elimination of All Forms of Discrimination against Women on 12 March 1981;
- the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 24 February 1987²⁰;
- the International Convention on the Rights of the Child on 20 September 1989.

It has signed and ratified the four Geneva Conventions as well as their two Additional Protocols.

Ukraine entered the Council of Europe on 9 November 1995. At the same time, it signed and ratified the European Convention on Human Rights (ECHR). Protocols no. 1, 4 and 7 to the ECHR were signed subsequently, on 19 December 1996, whereas Protocol no. 6 prohibiting the death penalty was signed on 5 May 1997, but not ratified.

The Framework Convention for the Protection of National Minorities was signed on 15 September 1995.

The European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment was signed on 2 May 1996 and ratified on 5 May 1997; it came into force on 1 September 1997.

¹⁷ The Autonomous Republic of Crimea is an inseparable constituent part of Ukraine and decides on the issues ascribed to its competence within the limits of authority determined by the Constitution of Ukraine " Art. 134, Ch. X, Constitution of Ukraine.

¹⁸ The third periodic report was presented by Ukraine to the Committee of Human Rights in 1994 (E/1994/104/Add.4).

¹⁹ Ukraine presented its fourth periodic report to the Committee of Human Rights in 1995 (CPCR/C/95/Add.2).

²⁰ Ukraine presented its third periodic report to the UN Committee against Torture in April 1997. In its concluding observations (CAT/C/XVIII/CRP.1/Add.4.), the CAT expressed serious concern about cases of torture and death in custody.

Ukraine was the first CIS country to sign the NATO Partnership for Peace in February 1994, and since then has taken part in six international peace-keeping missions.

In the economic field, Ukraine signed a "Partnership and Co-operation Treaty" with the European Union on 14 June 1994, which was further reinforced by a "Provisional Agreement" on 1 June 1995.

The Law on the Enactment of International Treaties on the Territory of Ukraine of 10 December 1991 and Article 9 of the Constitution state that international treaties ratified by the Parliament are binding and "are (an integral) part of the national legislation of Ukraine". However, because of inadequate dissemination of these treaties and almost non-existent information for the public, their provisions are probably ignored in most cases.

1.4 The Death Penalty

In acceding to the Council of Europe, Ukraine accepted the obligation to bring its legislation onto a par with European standards and to abolish the death penalty. In the meantime, a moratorium on executions should have been instituted. Nevertheless, in 1995, 191 people were sentenced to death and 149 executed, whereas in 1996, these figures were 167 and 167 respectively; the Court commuted 31 death sentences into maximum prison sentences and the President pardoned 2 people in the last instance. According to Amnesty International, official sources admitted in August that 13 people had been executed in 1997 so far, and 73 sentenced to death. A resolution of the Supreme Court has announced that this process is not going to be discontinued. This contradicts previous official statements according to which the moratorium was being respected, and is in contradiction with Protocol 6 of the ECHR, which Ukraine signed on 5 May 1997.

In 1992, an amendment to the Criminal Code reduced from 17 to 5 the number of articles for which the death sentence can be enforced:

- terrorism against a statesman of Ukraine (art. 58);
- terrorism against a representative of a foreign state (art. 59);
- terrorism against groups of people or property (art. 60);
- intentional homicide with aggravating circumstances (art. 93);
- attempting to kill a member of the militia or of the armed forces in the exercise of their function of maintaining public order (art. 190-1).

A draft law on the abolition of the death penalty was presented to the Parliament on 27 January 1997 but it has not yet been adopted. It envisages the possibility of substituting the death penalty in peace time by life imprisonment. Taking into consideration the position of the Supreme Court, and the fact that the electoral campaign for the legislative elections of March 1998 already started in October 1997, no one expects any further development in this field before the new Parliament has been elected.

Moreover, at the end of August 1997, it became known that in May 1997, the "Committee for State Secrets"²¹ confirmed an article of the "Index of State Secrets", preventing the dissemination of information regarding death sentences, such as the date and place of execution and the place of burial of the executed person.

²¹ This Committee depends directly on the Cabinet of Ministers, and has the power, according to the "Law on State Secrets", to decide what is to be considered secret. Its decisions must be approved by the Ministry of Justice, when they become as binding as a law.

1.5 Law enforcement organs, penitentiary and judicial systems

1.5.1 Police (Ministry of Interior)

Historically the militia was a militarised body, merged with the secret police, and directly answerable to the Communist party (this until 1990). It was more concerned with political and economic control than the protection of citizens. In 1953, the NKVD (People's Commissariat of Internal Affairs) split into two separate ministries, the KGB and the Ministry of Interior (MVD). The militia fell under the control of the MVD and its role began to change.

Starting from the Andropov government, a major anti-corruption campaign began to bear fruit, and, over the course of a few years, 250.000 policemen were dismissed on various charges (15% of the total number). During the glaznost period, especially between 1986 and 1988, the press reported 2500 cases of brutality, abuse and corruption among the militia.

This brief historical introduction illustrates that the problems facing the militia today in the different CIS countries are but the inheritance of old times. The structure has remained the same as before, and the habits too.

The police (which kept the name militia) is divided into six branches: public security police, criminal investigation, traffic and vehicles inspection, transport police, military police and special corps for more dangerous actions including against terrorism (called "OMON" in the USSR and in Russia today, and "BERKUT" in Ukraine). Each branch is directed by a Deputy Minister of the Interior, who is responsible before the Minister.

It seems now to be a usual procedure for enterprises and businessmen to hire groups of militia from the MVD for their own security, paying a monthly "rent" to the Ministry. These groups are therefore under the shared responsibility of the MVD and of their "owner".

Police stations (ROVD = district department of Internal Affairs, or GOM = town militia department) are equipped with a few cells for detention lasting one night, and sometimes a smaller "cage" for detention lasting a few hours. There is no hygienic infrastructure. The police is also responsible for the IVS, the temporary holding isolators for custody of up to 72 hours.

1.5.2 Penitentiary system (Ministry of Interior)

The penitentiary system is subordinate to the Ministry of the Interior (MVD); there are plans to transfer the penitentiary system to the responsibility of the Ministry of Justice before the end of 1998, but little concrete progress has as yet been made. Another proposal under discussion is the creation of an independent body responsible for the Penitentiary system. A working group commencing a study of the mechanisms for this transfer to under the responsibility of the Minister of Justice. The idea is greeted with mixed feelings by human rights activists who fear that the Ministry of Justice (a façade Ministry from Soviet times) will not be able to assume such a responsibility and will not have the manpower to carry out the job, leaving a vacuum in the system and staff in colonies and prisons with no commanding authority at all, and hence with greater freedom to abuse their prisoners.

According to official information provided by the Ministry of Justice in the report to the UN Committee against Torture, on 1 April 1997, the penitentiary system included 169 establishments housing 223.200 persons, of which 173.823 sentenced persons were located in 126 colonies,

3106 minors in 11 colonies, and 45.229 detainees in 32 SIZOs (3 of which were opened in the last 5 years, to accommodate a total of 1800 supplementary inmates). MVD figures from 1 September 1997 reckon 215.000 detainees, among which about 40.000 in SIZOs. The penitentiary system is conceived as follows²²:

- SIZO (pre-trial detention centre)
- prisons-colonies:
- open settlements
- general regime (minor non-violent crimes, first custodial and female offenders)
- strengthened regime (sentences up to 15 years)
- strict regime (recidivists)
- special regime (particularly dangerous recidivists)
- prisons: up to 5 years in cellular conditions; usually a special sector of SIZO; (for very grave crimes).

The kind of regime in which a sentence is to be served is determined by the Court when it decides the sentence.

During the period 1995-96, there were 150 cases of suicide in detention which were investigated by the authorities, but in none of the cases was responsibility on the part of the detaining authorities ever established.

On 15 July 1997 a presidential amnesty was declared, which entailed the liberation of 34.500 prisoners within three months. By 20 September, 27.500 prisoners had already been freed. This is a usual method of solving the problem of overcrowded prisons, but it does not reassure the population, which fears that real criminals are released, although in fact only minor offenders are eligible for amnesty.

1.5.3 Ukrainian Security Service

The Ukrainian Security Service (SBU, former KGB) also has a detention network with 6 SIZOs with a capacity of 300 persons. They must follow the same rules on pre-trial detention as the MVD establishments and undergo monthly inspections by the Prosecutor. In the last few years (our information is not more precise than that) there were three cases of suicide. The SBU has its own special corps of field agents, independent from the MVD, who deal with offences against the State (terrorism, smuggling, forgers, etc.).

1.5.4 Prosecutor's Office

The Prosecutor's office (Prokuratura) is responsible for supervising the application of the law in all fields of activity and in the State administration, including local governments. The Prosecutor General is nominated by the Assembly on the proposal of the President. The hierarchical organisation of the Prokuratura is also territorial: there are Prosecutor's offices at the district, regional and national levels. There are also special Prosecutor's offices for military matters, transport and ecology.

In the criminal procedure, the Prosecutor supervises the investigation, authorises arrests and gives authorisation for searches in apartments, and gathers all documents concerning complaints, although he refers the matter to the competent authorities for investigation, in accordance with the hierarchy of the institution concerned. For serious crimes, he is in charge of the whole investigation.

22 These figures were supplied by the MVD on 1 September 1997.

He also has the task of supervising conditions in penitentiary establishments, as well as investigating prisoners' complaints.

The functions of the new Prokuratura are defined in articles 121-123, ch. VII, of the Constitution, and a new law is being elaborated on this basis. The powers of the Prokuratura are to be limited: the Court will be more involved in the process of investigation, issuing sanctions and arrest orders, for example. According to information gathered at the MVD, the task of supervision of detention centres should be transferred to a new independent State Commission, to be created for this purpose on the suggestion of the Council of Europe experts.

In 1996, Prosecutors paid 5400 visits to penitentiary establishments, and uncovered more than 7000 violations. About 2000 people were sanctioned with disciplinary measures and 22 were subjected to criminal proceedings²³.

1.5.5 Courts

The judiciary as well is organised according to territorial levels: there are district or town courts, regional courts (including the Court of the Autonomous Republic of Crimea) and the Supreme Court in Kiev. Appeals are addressed to the level superior to the one where the first decision was taken. The Supreme Court is the highest judicial body of general jurisdiction.

Judges are elected by the Parliament and appointed for life. Human rights defence organisations have complained about the fact that the 5000 judges in Ukraine will be reconfirmed for life by the Parliament without any check on their activities, and have submitted lists to Parliament of judges who have committed abuses. By September 1997, only about 200 of them had been reconfirmed on a permanent basis.

In theory, the judicial system is independent, but the reality differs: The Courts do not have the independent means for subsistence, and so must rely on other instances for their practical needs (e.g. the town administration, Prokuratura, Ministry of the Interior). Some judges complain that they do not even have enough copies of Codes and laws, so that they work on custom and tradition rather than on the new legislation²⁴.

Low salaries for judges (although some interlocutors maintained that judges' salaries, including privileges, can amount to 400-500 US dollars, which is quite considerable, when one considers that the average salary is circa 80 USD) seem to prevent good law students from choosing to follow the career of magistrate; furthermore, there is reluctance to leave Kiev for the provinces. Thus, judges are not all equally educated and prepared, which can lead to abuses in some cases²⁵. In this situation, bribes are readily accepted.

Moreover, judges complain that their personal security is not guaranteed; as a result they can easily be threatened and they cannot be impartial when passing sentences. This is not unusual in a society where violence and pressure are commonplace and frequently used as a means of conviction, but it contributes to the growing distrust towards State structures among the population.

1.5.6 Constitutional Court

The Constitutional Court was created by a law of 3 June 1992²⁶ and its competencies and regulations are also stipulated in articles 147-153 of the Constitution of Ukraine as well as in a new

23 These data are quoted in the "Additional information to the III Periodical Report on the implementation of the UN Convention against torture and other cruel, inhuman or degrading treatment and punishment", Geneva 29 April 1997, provided by the official Ukrainian delegation to the CAT.

24 See Vasyl Yurchenko, "Common Sense - the Basis of Judicial Reform", in *Ukrainian Journal of Human Rights*, 2/1996, Ukrainian Legal Foundation, "Pravo", Kiev, 1996.

25 See opinion of V. Belusenko, Chairman of the Ukrainian Council of Judges, related by the Moscow Centre for Prison Reform, *In Search of a Solution*, op. cit., pp. 13-15.

26 See "Report of a Needs-Assessment Mission in Ukraine", International Commission of Jurists, 25 November-10 December 1995.

Law on Constitutional Court of October 1996. Its 18 judges are appointed for nine years by the President, the Parliament and the Congress of Judges of Ukraine (each institution appoints 6 judges).

Its role is to examine the constitutionality of laws and presidential or governmental acts and decide on their official interpretation. They do not have special competence for individual claims, but citizens can apply for advice on the interpretation of laws.

The Constitutional Court began functioning only in January 1997 and by September of the same year had discussed three cases, concerning separation of power and accounts-related matters, whereas it received about 2000 appeals from citizens.

2 The police (militia)

2.1 Legal framework

The Constitution of Ukraine of June 1996, ch. II, articles 21-68 lays down the general rules of behaviour in defence of human and citizens' rights. Article 28 of the Constitution provides that "No one shall be subjected to torture, cruel, inhuman or degrading treatment or punishment that violates his or her dignity".

The Code of Criminal Procedure currently in use is the old Soviet Ukrainian Code of 1961, but with many subsequent amendments. In the last few years, several projects for a new Criminal Code (CC) and Criminal Procedure Code (CPC) have been produced and some drafts (about 10) of the CC were presented to Parliament in May 1997; the elaboration of the CPC is now on stand-by, pending the adoption of a new law on the judiciary system.

The militia operates basically in accordance with the "Law on the Militia" of December 1990 and the "Law on Operational Investigative Activities" of February 1992 (see annex G).

Article 29 of the Constitution states that police custody should not exceed 72 hours, after which a "substantiated Court decision in regard to the holding in custody" must be produced in order to extend it. But according to the transitional provision, the application of this article is suspended for five years. The Code of Criminal Procedure also provides for 72 hours of police custody.

Article 11 of the Law on the Militia allows the militia to keep a suspect in preventive custody for up to 10 days, in accordance with a decision of the investigation authority, the Prosecutor or a court, and persons suspected of being vagabonds up to 30 days with the authorisation of a public prosecutor (in accordance with the old CPC). In the case of suspected gang crime as well, custody can last up to 30 days before any decision is made. The three-day custody rule is applied to persons who have committed administrative offences, in accordance with the same article 11, point 5 of the Law on the Militia.

In 1994, the President issued a Law on Pre-Trial Detention, which provoked so many protests from lawyers and social organisations that it was revoked in 1995. Since then, pre-trial detention is regulated by the Soviet CPC, pending the approval of the new one, and the 1993 Law on Preventive Detention.

An article from the "Index of State Secrets", already mentioned in reference to the death penalty, also contains information concerning the structure and the conditions of places of detention, as a State secret. This article was confirmed in May 1997 by the Committee of State Secrets and by the Ministry of Justice.

More than fifty laws still have to be modified, before the legislation is compatible with the new Constitution, which is why article 29 and others related to investigation and detention will enter into force only in the year 2001. In the meantime, laws and amendments to Soviet Codes introduced since 1991 form the legal basis. Unfortunately it was impossible to obtain all the relevant legal acts (even lawyers have to procure them themselves by photocopying the official journal

The following fundamental rights are guaranteed by the existing (but not yet in force) legislation:

- Presumption of innocence

“A person is presumed innocent of committing a crime and shall not be subjected to criminal punishment until his/her guilt is proven through legal procedure and established by a court verdict.

No one is obliged to prove his/her innocence of committing a crime.”
(Art. 62, Constitution of Ukraine).

- Right to Information regarding reasons of arrest, and about rights related to the arrest

“Everyone arrested or detained shall be informed without delay about the reasons of arrest or detention, apprised of his/her rights...” (Art. 29 Constitution of Ukraine).

Art. 43 of the Soviet Ukrainian CPC of 1961 guarantees the same rights, including the right to appeal any decision of the Prosecutor, the investigator or the judge, but does not specify the delay within which the information should be given.

- Legal assistance from the moment of detention

“(Everyone).....from the moment of detention shall be given the opportunity to personally defend himself or to have the legal assistance of a defender”
(Art. 29, Constitution of Ukraine)

“Everyone has the right to legal assistance. provided free of charge in cases envisaged by the law. Everyone is free to choose the defender of his rights.”
(Art. 59, Constitution of Ukraine)

The old CPC recognises the right to legal defence (art. 21) but permits the presence of a defence counsel only after the conclusion of the preliminary investigation, when the accused himself can acquaint himself with his file. Only for minors, and psychically or physically ill people the defender is accepted from the moment that the accusation is formulated (art. 44).

The draft of the new CPC includes a change regarding this matter:

“A defence counsel shall be permitted to participate in a case from the moment the accusation is produced or a person is deemed a suspect. In the event of the detention of a suspect or an accused person or choosing a preventive measure for him, a defence counsel shall be permitted to participate in the case no later than 24 hours from the moment of detention or of choosing a preventive measure” (art. 44, p.3, CPP)²⁷.

This article also stresses the fact that the counsel “shall be permitted”, while the current system gives the investigator of the case (a militia officer) the power to decide whether or not to permit interviews between lawyer and client.

²⁷ This article is quoted from the English translation of the draft of en 1996. In the last draft, from which we have only the Ukrainian version, the article has been modified : the 24 hours delay has been deleted, and the lawyer is allowed to take up the case only after communication of the charges to the suspect.

Article 5 of the Law on the Militia states that the Police guarantees the right to legal defence.

- Information of relatives

“Relatives of an arrested or detained person shall be informed immediately of his or her arrest or detention.” (art. 29, Constitution of Ukraine)

Article 5 of the Law on Militia also provides that the police must inform the close relatives of the persons arrested and “the management of their place of employment or study of their whereabouts”.

- The integrity and dignity of the person must be respected

“No one shall be subjected to torture, cruel, inhuman or degrading treatment or punishment that violates his or her dignity.

No person shall be subjected to medical, scientific or other experiments without his or her free consent.” (Art. 28, Constitution of Ukraine)

“No punishment is meant to cause physical sufferings or to humiliate human decency and dignity” (Art. 50, p.3, Criminal Code, draft 1996)²⁸

- Access to a doctor

Article 5 of the Law on Militia states that the police “if necessary, takes measure to give (the person arrested) urgent medical or other aid”.

2.2 What really happens (ill-treatment)

2.2.1 Police behaviour in the streets

Police were a common sight in Soviet towns and their presence is still evident in the CIS countries. Traffic police, car control police, OMON (=special police) and normal patrols are mix with passers-by in a concentration which is unusual for Western eyes.

On Saturday nights, special troops in black uniforms and purple caps are present on the main street and square in Kiev, to keep order. We frequently saw black jeeps with blackened windows and policemen in camouflage or black uniforms, weapon in hand, strolling around in the streets of Kiev.

Reportedly, most abuses occur during in document controls (the police can ask anyone in the street at any moment to prove their identity): the slightest protest or provocation can lead to arrest, beatings or abuse.

- the son of OK was asked to show his identity papers at a bus station. He refused to follow the police to the station, so he was allegedly dragged into the police car, taken to a deserted place and beaten up by the policemen. He was left on the road where truck drivers are said to have found him and brought him to hospital, where he was treated for concussion and two broken ribs.²⁹

²⁸ The 1997 Draft, in Ukrainian, has this same article under no. 47, p. 3.

²⁹ All cases quoted to support our report are recent (at most, from 1995) even when a precise date is not mentioned.

Police patrols, especially of OMON (BERKUT in Kiev), are used to inspire respect or fear; they are said to behave arrogantly and react violently to any kind of opposition.

2.2.2 Arrest

Although even in the old Soviet Ukrainian Criminal Procedure Code there were provisions that guaranteed the rights of arrested persons, and rules concerning interrogation, reportedly officers conduct the interrogation of the suspect at night (art. 143 of the old CPC specifies that it is possible only "during daytime"), without waiting for the investigator in charge or the Prosecutor, and with methods that ignore any human rights protection.

Many people are not aware of their rights as individuals, and fail (or fear) to demand the minimal guarantees. Policemen mostly do not inform the detainees about their rights, in contradiction of art. 28 of the draft Code of Criminal Procedure, which stipulates that "the individual in charge of conducting the inquiry - investigator, prosecutor, judge or the court - is obliged, prior to the first interrogation, to explain to the suspect, accused or convicted their right to a defence attorney"³⁰

If suspects try to insist on their rights, they are usually ignored, or may even provoke increased violence from the policemen. Interviews with lawyers very much depend on the good will of the policemen and the investigator. Although they should be informed within 24 hours, often the delay is extended, or police manage to persuade the detainee not to call a lawyer. In financial cases, we were told that arrests are made on Friday afternoons, so that it is unlikely that a lawyer, judge or a Prosecutor can be contacted for three days.

Sometimes, detainees are not registered at the station, so that there is no official record of their presence there. They may be released before the arrival of a responsible officer and threatened so as to ensure their silence

- a minor was allegedly beaten up in custody and released the following morning. When his mother noticed the traces of violence and expressed her wish for an official medical examination, the officer on duty (not the ones who had taken charge of the boy) threatened that "it would be worse", and showed her that there was no mention in the register about the night-time detention of the boy; officially he had been released the evening before.

2.2.3 Custody

According to Article 11 (5) of the Law on the Militia, the police can detain and keep in detention:

- Persons suspected of having committed a crime;
- Persons who have been taken into custody as preventive measure;
- Persons who have committed administrative offences;
- Persons below the age of majority up to 16 if they are left without care;
- Persons who have failed to obey the lawful demands of a member of the Police;
- Persons in public places in a state of intoxication;
- Persons suspected of being vagabonds;
- Persons evading execution of the judgement of a court;
- Servicemen who have committed offences;
- Persons showing symptoms of marked psychological disturbance.

³⁰ Quoted by Anatoly Masko, "Some issues on Human Rights Protection in accordance with the new Criminal and Criminal Procedure Codes of Ukraine", in *The Ukrainian Journal of Human Rights*, 2-1995, Ukrainian Legal Foundation, Kyiv, "Pravo", 1995. This corresponds to art. 17, p.2 of the 1997 draft of the Code of Criminal Procedure.

Police custody can easily exceed the statutory length of 72 hours; sometimes it can even last for several weeks, which, considering the material conditions, already amounts to ill-treatment.

- VM was arrested for theft and was detained in a ROVD for more than 35 days. His mother complained about ill-treatment and unacceptable detention conditions.

In police stations, every policeman can take the detainee from the cell and interrogate him. If a policeman bears the detainee a grudge, he can make use of the opportunity to “clarify their relationship”, and his colleagues will cover-up for him.

- VP was arrested on 13.1.97 in a restaurant for “acts of hooliganism”; at the police station he was beaten up by 4-5 policemen who accused him of having killed the son of the owner of the restaurant, their friend. Repeated beating during the night by drunken policemen (it was the Orthodox New Year’s Eve) caused a partial deafness and serious bruising over his whole body. A policeman pretended to shoot him in the head with an empty pistol and threatened to kill him next time. Only the arrival of the Head of the station interrupted the beatings and VP was transferred to a regional police station.

Investigations are mainly based on confessions, so it is of the utmost importance for the officer in charge to extract a confession from the suspect. There are very many allegations of psychological and physical harassment, in order to obtain a confession. Furthermore, investigators seem to bargain a full confession against the possibility of release on bail or on signature until the trial: this provides a very strong incentive, since a refusal entails the perspective of spending months in appalling conditions, with the risk of further ill-treatment.

Art. 62 of the Constitution states that “An accusation shall not be based on illegally obtained evidence nor on assumptions” ; a Recommendation of the Supreme Court underlines that confessions obtained through violence are illegal and should not be listened to in court, but these provisions seem to be largely neglected.

- V.B. and Z.B. were convicted of murder, apparently mainly on the basis of their confessions, which were extracted under physical and psychological (threats to detain their teenage daughter) duress.

A few methods of torture have been reported in different testimonies: “slonik” (little elephant): police put an anti-gas mask on the suspect and they close the air conduct until he almost suffocates, repeating it several times; “lastochka” (swallow): they bind the hands behind the back and then tighten them with the foot, arching the body; detainees have reported being kept in this position for more than an hour. Beating on the sole of the foot, on the kidneys, on the head covered by a book (so that there are no visible traces), electric shocks, and “routine” beating with fists, feet and batons are a widespread procedure. Another “invisible” form of torture is to put the suspect into a special iron safe and beat on the safe so as to make as much noise as possible, or using climatic conditions as torture (cutting the heating in winter, forcing to sleep without blankets, etc.).

- After the riots at the funeral of the Metropolitan Vladimir in 1995 in Kiev, people detained by the police declared that at the Shevchenkivsky ROVD they were kept in a special room and tortured.³¹ A further investigation revealed that gas masks and electrical implements were kept in this room.

31 *Prava Lyudini* 1997, no. 18, p, 6

- In 1996 in Krivoy Rog, at a bus station, V. was allegedly beaten with an automatic weapon by policemen, who arrested him (he had no passport). At the station he was put in a corridor and kept one and half hours in the "lastochka" position. He was strangled until he lost consciousness and beaten up with batons. He remained in detention for three hours.
- According to his mother, VM was severely beaten during detention in a ROVD, in March 1997; the ambulance is said to have come several times for him and his mother could see him in hospital, where he was treated for beatings in the head and face.

There are several allegations (but no official figures) of deaths in police stations, or after arrest and custody in police stations:

- VK was arrested on 28 February 1996 and died in hospital on 3 March 1996 of a haemorrhage, a burst spleen and a poly-traumatic condition after spending 5 days in a Donetsk ROVD. His wife, arrested with him, was released on 29 February, and underwent medical tests to prove that she had been beaten. Nevertheless, the trial against two of the officers of the ROVD was interrupted for lack of proof (Prava Lyudini, 1997, no.18).
- AP was arrested in May 1997 on a Sunday evening and died the following Wednesday in the district hospital where he had just been brought by a militia car. He had evident signs of beatings. His case is being heard in Court. (Krymskoe Vremya, 24 September 1997).
- VI was arrested just after he was released from hospital after a second heart attack in June 1995, for financial irregularities in his company. In spite of medical certificates and repeated appeals from his lawyer, he was kept in prison and died of another heart attack 9 months later. The investigator in charge of his case had opposed his release and even modified the medical certificate. The case was in the press in Ukraine and caused a scandal, but responsibility on the part of the MVD authorities was never officially ascertained.

2.2.4 Pre-trial detention

It frequently occurs that, because of lack of space, or delays in the official procedure, detainees spend more time than is permitted by law in police premises or IVS. This entails consequences that can be considered as inhuman and degrading treatment: detainees are left at the mercy of the policemen, the same ones who arrested them, and who possibly bear them a personal grudge, and thus have the possibility of persecuting them for longer.

- RC was arrested in June 1995 and spent 54 days in an IVS in Kiev, before being transferred to a SIZO.

It also happens that, depending on the evolution of the investigations, detainees are ill-treated in SIZOs as well, in order to extract further information from them. Ill-treatment continues even during trial and after.

- According to information from human rights associations in Autumn 1996, AG and his lawyer were caught by a group of policemen just after the Court had released AG and were beaten up in public.

In general, pre-trial detention cannot exceed a total of 18 months (3 times 6 months, extended each time with the approval of the Prosecutor), but this can be easily overruled.

- RC, arrested in June 1995, was still in jail in September 1997, and the date for his trial had not yet been fixed.

2.2.5 Administrative detention

Administrative detention is regulated by the Administrative Code and implemented by the police. The following minor offences can incur administrative sentences or fines: hooliganism, insults, resistance to officers, public misbehaviour or drunkenness. Administrative sentences can amount to up to 15 days detention and community work and are served in IVS (separate from criminal detainees) or in special detention centres that are under the jurisdiction of the Ministry of the Interior.

Administrative detention is decided by Court, on the basis of a report by the police. Detainees do not have access to a lawyer, and most frequently they are held incommunicado for the whole period. Consequently, any kind of abuse can take place during this time without any control.

One member of a human rights organisation, who has been arrested himself, describes the conditions as follows: in one cell, called "aquarium", of 1,5 x 5 m, with only 4 chairs, there can be up to twenty people, who remain there for several hours (up to 18). There are also cells with very small benches for two or three people, overcrowded with the twice the number of people. Food is provided very irregularly, not even every day. Often minors are detained with adults. Requests to use the sanitary facilities are not granted, with the imaginable hygienic consequences. Beatings and attempts to suffocate detainees are the norm³².

This measure seems to be very widely applied, and possibly arbitrarily as well. It can be used in case of lack of identification documents during identity controls, to counteract any kind of objection or opposition from people stopped for a control by the militia, sometimes it can be exchanged for the payment of a fine by a benevolent judge.

We were told that it is a good way to keep a suspect out of the way while investigation proceeds, in the hope that after 15 days more incriminating evidence shall be found, especially in financial cases.

- Two employees of the Bank "Dendi" were arrested at the airport in September 1997. One of them was released, while the other received 15 days administrative detention. He was held incommunicado.

As far as drunkards are concerned, they are brought to sobering-up stations, where medical staff should decide the period of detention, which cannot exceed 24 hours. These stations are usually one per region, depending on the decision of regional authorities, and are financed by the regional budget. This kind of establishment is a heritage from the Soviet system, but are now considered a service that must be paid for. We did not hear any complaints about these centres, except that, in fact, since they are not a free service, the militia tend to collect only drunkards who seem well off, and leave the poor on the street or bring them to police stations (where conditions are worse). The number of such arrests is nevertheless increasing steadily: from 578.800 in 1990, to 1.011.100 in 1994³³.

32 See the Committee Helsinki-90's intervention at the seminar on "Human rights in places of detention", in Kishinev, 4-7 September 1997, organised by the International Helsinki Federation.

33 See 1996 *Ukraine Human Development Report, Looking beyond the triple transition*, UNDP, Kyiv, June 1996, p. 63.

2.3 Material conditions of detention

Cells in police stations are not adapted to prolonged detention: they are very small, there is no sanitary infrastructure, no food service is provided, since they are meant for a few hours detention, so relatives of the detainee, if they are informed of the whereabouts of their kin, have to take care of those needs.

Cells are usually about 2 x 3 m, provided with benches or mattresses for sleeping, with either a small window or just a window in the door. The number of detainees can exceed the number of benches; they must obtain permission from the guards in order to use the toilets.

The medical service is external: if a detainee needs a doctor, the police call an ambulance or bring him directly to a hospital. It is completely up to their good will to provide this service, upon the request of the detainee. It also leaves the police at liberty to take the detainee to any medical service where they have acquaintances so that the medical certificate can be falsified if necessary. Overcrowding facilitates the spreading of epidemic diseases (e.g. tuberculosis).

In the IVS establishments, the main problem seems to be the overcrowding of cells. Material conditions are better than in police stations, although often there are no showers, food is scarce (hot water morning and evening, bread at noon), open air hours are not observed. The detainees can receive parcels from their families and hope that police will hand them over. We heard of cases where the detainee was not accepted at the IVS unless he could produce a medical certificate concerning the condition of his health. In fact, since they have no regular medical care service, IVS guards are afraid to admit someone who might have health problems, or could accuse them of having abused him.

2.4 Control and supervision: impunity, claims and remedies for the victims

"Article 26. Monitoring of police activities Monitoring of Police activities is carried out by the Cabinet of Ministers of Ukraine, the Minister of Internal Affairs of Ukraine and , within the bounds of their powers, Councils of People's Deputies. Councils of People's Deputies carrying out monitoring of the activities of the Police do not interfere in its operational-investigative, criminal procedural or administrative activities.

Article 27. Supervision of Observance of legality in the activities of the police Supervision of observance of legality in the activities of the police is carried out by the Public Prosecutor General of Ukraine and the Public Prosecutors subordinate to him." (Law on the Militia, 1990)

Any citizen who feels abused in his rights can complain either in person or by letter to a member of any Administration. Almost all the departments in ministries have reception rooms, where citizens can have their complaints filed. The complaints travel up the hierarchy: for example, if you want to complain about the commanding officer of the police station in your district (rayon), you send a letter to the police chief of the regional (oblast') police department, and all the way up until you reach the Head of the Militia or the Minister of the Interior. These authorities can reject the complaint (this is usually the case) or make some internal investigations on the case, but the result is almost always in favour of the system, not of the individual. The procedure is very time- and nerve-consuming, since often the instances concerned do not even answer, or inform of their conclusions months later.

At the same time, or afterwards, you can turn to the Prosecutor's office, which is the absolute authority in matters of defence of legality, and can interfere in any field. He can decide whether to ignore the complaint or to follow up the case, and has the power to ask any Ministry for an explanation, which he usually does, formally. He has also the power to open a criminal procedure against any institution or person following a complaint, although this rarely happens.

People dissatisfied with the authorities' response to their complaints usually begin writing to all the national or international organisations that they know, trying to get them to intervene (local NGOs, influential people, UN Communication section of the Centre for Human Rights, European Court in Strasbourg; etc.). Members of Parliament also receive a large amounts of this kind of correspondence, but, as results from the article of law quoted above, they cannot really interfere in the work of the police. The Parliamentary Commission for Human Rights and National Minorities estimates that each month it receives 2000-4000 letters.

The problem is that even if the law foresees measures against persons in positions of responsibility who abuse their power in the exercise of their public functions — from administrative and disciplinary measures within their Ministry, to prison sentences³⁴ — the interdependence of the different institutions (for criminal cases, these are the courts, the police and the Prosecutor's office) and a kind of "solidarity of rank", often prevents the persons in charge from investigating the complaints properly, as they prefer to cover up possible abuses committed by some of their friends or subordinates.

US State Department Report on the Human Rights situation³⁵ quotes only one case in which a police officer was jailed for torturing detainees in 1996, and stresses the Government's neglect to implement measures against such abuses. Helsinki-90 informed us that in 1997 at least three cases of abuse by police officers had been brought before the Court, and one concluded with 4 officers being sentenced to three and a half years imprisonment. This information was not denied by the Ministry of the Interior, but neither was it confirmed.

On 1 December 1994, the Parliament adopted a "Law on Recovering Damages inflicted on Citizens as a Result of Illegitimate Measures taken by Bodies of Inquiry, Preliminary Investigation, Prosecution and the Court" of which Article 1 provides for the recovering of damages³⁶:

- 1) illegitimate conviction, accusation, detention, taking into custody, search in the course of investigation or trial, extraction, property arrest, job (or position) dismissal or any other procedure restricting civil rights;
- 2) illegitimate placing under administrative arrest or correctional labour, or property confiscation or fining;
- 3) illegitimate investigation envisaged by the Laws of Ukraine on Investigation, Organisational and Legal Principles of Measures to Combat Organised Crime, and other acts of legislation."

No direct mention is made of physical harm or torture in this article, nor in others of this law, which leaves a loophole for impunity of the officers involved. Moreover, this law could have the reverse effect, inciting judges not to declare people innocent, or recognise their claims for redress as justified, so as not to increase the expenses of the State. In fact, we have no information about this law having been applied.

34 see art. 25 of the Law on Militia and Ch. XVI of the Criminal Code Draft 1996

35 US Department of State, Ukraine Country Report on Human Rights Practices for 1996, released by the Bureau of Democracy, Human Rights, and Labor, January 30, 1997.

36 Reported in *Human Rights in Ukraine. Yearbook 1994*, Ukrainian Legal Foundation, Kyiv, 1996, pp.266-269.

The Constitution foresees the creation of the institution of the Ombudsman (called "Authorised Human Rights Representative of the Verkhovna Rada", art. 101). The Ombudsman will be a member of Parliament elected by the Parliament. Three projects of law have been presented to Parliament, but have not been accepted; the Head of the Commission on Human Rights and National Minorities identified a suitable candidate and elaborated a new project on the basis of these three drafts. This issue is on the agenda of Parliament for the Fall session, but it is unlikely that it will be discussed this year. The electoral campaign is draining all energy and this issue will probably be postponed until mid-1998 for the new Parliament to solve.

The danger that many people see in this new institution is that it could become another bureaucratic organ, devoid of real effect and influence. The Ombudsman will not have any executive power, but will be able to intervene in investigations of complaints at any moment and at any level. It will depend on the person in question to make the institution worthy and trusted by the people.

2.5 Access of external organisations

No mechanisms exist for visiting detainees in police stations. As far as places of detention are concerned, officially, regulations do exist allowing access to representatives of different religions; Parliamentarians can accompany Prosecutors in their visits, but this seems generally not to be put into practice.

Article 126 of the Code on Correction and Labour (ispravnitel'no-trudovovo) foresees the possibility of visits to prisoners by social organisations. The Ukrainian Committee "Helsinki-90" denounced the non-observance of this article, since for two years they have been denied access to a prisoner whom they are trying to help, despite repeated requests and the intervention in favour of this visit by a member of Parliament.

Visiting organisations must obtain an authorisation from the Department for the Execution of Sentences of the MVD, but even then the Director of a penitentiary establishment can deny access.

With the help of the Constitutional and Legislation Policy Institute (COLPI) in Budapest, the Ukrainian Centre for Human Rights is organising a group of 10 people from different regions of the country, to train them in prison monitoring. At this stage, the ten people have been selected for the different regions and an introductory seminar has taken place. A questionnaire was being compiled to monitor places of detention (see Annex). The Centre is confident that these people will enjoy the support of the authorities concerned, and if the program works, could consider extending it to police stations.

2.6 Recruitment and training

Candidates must be at least 21 years old, have completed secondary schooling and served the obligatory two-year term in the army. The Ministry of the Interior has its own institution for the education and training of policemen and different kinds of specialist for the penitentiary system. Throughout the country there are 12 Police Schools, where young candidates receive a three to six month general training. The training includes some legal and human rights foundations, the use of weapons and physical training, first aid. The special corps (OMON) undergo more intensive physical training.

Institutes in Chernigov and Dniprodzerzhinsk offer 3 year BA courses for officers and 2-3- month update training for the staff of penitentiary establishments.

The National Academy for Internal Affairs of the MVD, on the other hand, offers in 4 years courses for specialists: treatment officers, managers, educators, psychologists. As of a year ago, the possibility exists of obtaining a Masters for students having graduated from a civilian University.

The profession is actually losing its aura in the eyes of the common people, and some of our interlocutors were aware of this. Every day in newspapers you can read articles about the misdeeds of the police, cases of abuses or corruption, and the general feeling is that it is better to avoid any contact with the police, because it always leads to problems even for the victims. On the other hand, youngsters see the profession as a means to make a lot of money in a semi-legal (because of abuses and corruption) but secure way.

According to the Moscow Centre for Prison Reform, criminality levels among MVD officers (including police and prison guards) are higher than among civilian population and 14% of it concerns violent crimes. Although we heard from human rights organisations that recently at least 6 officers were sentenced in Court for abuses, we could not obtain any official confirmation from the Ministry of the Interior, whose representatives did not deny it either.

Although low salaries pave the way for corruption, MVD employees still enjoy many practical privileges: free medical care, free uniforms, free public transport, discount for holidays in special MVD guest-houses at the seaside, a good pension system. The transfer to the responsibility of the Ministry of Justice would probably entail the disappearance of these privileges, which would provoke considerable dissatisfaction among the staff.

3 Vulnerable groups

In so chaotic a situation, when arbitrariness is often the governing principle, some people are more equal than others – that is, some groups of the population can cope with this reality, others are much more helpless.

We deemed it necessary to highlight three categories of people who are targeted, either by the police or in the detention system, and are subjected to even more discrimination and abuse than others.

3.1 Women

In police custody, the separation of women and men in the cells is observed, but we have heard allegations of ill-treatment of women or girls, sexual threats, rape, and use of violence against wives to extract information from their husbands. Women are also more vulnerable to psychological pressure where their children are concerned.

The bulletin "Prava Lyudyny", no. 17 from 1997 reports the case of a pregnant woman mistreated during interrogation (extinguishing cigarettes on her arms), who consequently suffered a miscarriage. Another case reported by the press this year is that of a 15 year old girl who was arrested without documents, who was severely beaten by the police and then put into an hospital for STD to wait until the marks had disappeared.

According to the law "On the introduction of changes to the Criminal Code" of July 27, 1994, pregnant women and women with children of up to 3 years of age can have their sentence postponed or annulled, if it does not exceed 5 years' imprisonment. According to one human rights organisation, this is not observed, and even the practice of giving annual leave to women with small children was discontinued a few years ago because a detainee failed to come back after her leave³⁷. The same organisation cites the case of a mother who was prevented from being permanently with her daughter, who had been born in jail (Koval O., jail YuG-311/74, Odessa) and urges that special children's homes should be built near female prisons to allow children older than three years to meet regularly with their mothers.

On the other hand, we heard testimonies that often foreign women and children get away with administrative punishment (fine or imprisonment) if caught in the street without valid documents, which can be considered a remnant of Soviet chivalry.

3.2 Minors

"... I often defended minors, during the preliminary investigations and trials,... I believe that my colleagues in this area will unanimously agree that officers of the law regularly violate the rights of the children by applying brutal force without justification."³⁸

Any person aged at least 16 can be prosecuted for a criminal offence, the barrier is lowered to 14 years if the crime is particularly serious (murder, premeditated attack, armed attack, pillage). If the offender is under 18 years of age, the sentence cannot exceed 10 years imprisonment, but the execution of the sentence can be adjourned by the judge³⁹.

37 Report of the Ukrainian Committee "Helsinki-90" as comments to the official Ukrainian report to the UN Commission against Torture, April-May 1997.

38 N. Petrova, "The Rights of Children in Ukraine", in *Prava Lyudyny v Ukraini*, 1993, Annual of the Ukrainian Centre for Human Rights, Ukrainian Legal Foundation, Kiev, 1995, p. 145.

39 "Report of the Secretary General on Children in Detention", 01/04/96. E/CN.4/1996/31. to the ECOSOC

A law of 24 January, 1995 and decree no. 502 of July 8, 1995 established a special branch of militia responsible for minors. Accordingly, in every ROVD there should be one officer from this special branch.

- MP, a 14 year old boy arrested in September 1996 on accusation of rape of minors alleged that he was beaten by 4 officers of this same special branch for minors, in order to make him sign a confession, which he did not. In the same case, witnesses, also 14, were reportedly beaten by the police to make them recognise MP as the author of the crime.

In police stations there is no area in which to detain children separated from adults, although in IVS and SIZOs this rule is generally observed. As far as food is concerned, since there is no service provided, the police should transmit to the detainees any parcels brought to them by relatives, or buy them food with the detainees' own money.

- MP states that he was denied the parcel his parents had brought on the evening of his arrest, therefore he had to stay 24 hours without food and without warm clothing.

Children should be interrogated only in the presence of a lawyer and /or a parent, who should be called within 24 hours. This rule is allegedly often violated. From the moment of arrest on, detained children should be allowed to see their parents regularly.

- MP was detained at the SIZO for 8 months before his trial began. During this period he was never allowed to see his parents. His rights were denied by the investigator in charge of his case, who allegedly answered the repeated requests of his parents by saying that his father had a bad influence on the boy.

Minors aged between 11 and 14 who have committed a crime but cannot be sentenced, are sent by Court decision to special schools, which are under the authority of the Ministry of Education but are nevertheless often compared to prison or military barracks, and whose educational aim is questionable⁴⁰.

Minor-recidivists aged 14-16 are sent to closed educational institutions also under the responsibility of the Ministry of Education. Young offenders aged 16-18 are sent to young offenders institutions.

Lawyers agree also on the fact that conditions in prisons for juveniles are often completely unsuitable and degrading, that no educational activity is carried out, and that in these places, minors become real criminals, instead of being rehabilitated.

3.3 Foreigners and ethnic minorities

3.3.1 Foreigners

"Foreigners shall enjoy and honour the same rights, freedoms and duties as the citizens of Ukraine, unless otherwise stipulated by the Ukrainian Constitution, legislation or international agreements endorsed by Ukraine. Foreigners are equal before the law, regardless of their extraction, social and property conditions, race, nationality, sex, language, religion, occupation or business, or any other condition." Art. 2, Law on the legal status of foreigners, February 4, 1994.⁴¹

"Foreigners and stateless persons who are in Ukraine on legal grounds enjoy the same rights and freedoms and also bear the same duties as citizens of Ukraine, with

⁴⁰ See on this subject Y. Kravets, "Educational Establishments of Child Prison ?", in *Ukrainski Chasopis Prav Lyudini*, (Ukrainian Journal of Human Rights), 1/1996, Kiev, Ukrainian Legal Foundation, 1996.

⁴¹ In *Human Rights in Ukraine. Yearbook 1994*, Ukrainian Legal Foundation, Kiev, 1996, pp. 256-265.

the exceptions established by the Constitution, laws or international treaties of Ukraine. Foreigners and stateless persons may be granted asylum by the procedure established by law." Art. 26, Constitution of Ukraine.

According to the opinions and testimonies gathered, foreigners are a group at risk, if by foreigners we mean people with different physical traits from the Ukrainians. It is in fact rare that a European or White American is disturbed by the police (although there was recently a case where an American was beaten up by police, because he did not have his passport on him⁴²) whereas darker-skinned foreigners, including international organisation and embassy staff are frequently questioned on the street.

If they do not have documents recognised by the police (the UNHCR identification card is not considered as an identity paper), illegal migrants and refugees can be fined from 50 to 500 \$ or jailed for up to 10 days, are often abused, ransomed, and their fundamental rights are not observed.

- UNHCR recorded the testimony of an Angolan refugee who was stripped of his jacket in a police station and sent out onto the street in winter this year.
- an African illegal migrant (who has now received the official status of refugee) reported that he was arrested at the beginning of 1997 and kept in a prison for 5 months. He does not speak Russian or Ukrainian, nobody explained anything to him during the whole period of detention, and when he was released he did not receive any kind of explanatory document. He was kept in a cell with a Russian and an Ukrainian who occasionally beat him up, but his complaints were not listened to.
- some representatives of the African community with whom we spoke during our mission reported different cases of beatings, illegal searches of their accommodation, extortion of money, insults by the police, deliberate destruction of documents. They agree, however, that after an increase of abuses in March 1997 when the new Administrative Code came into force, the situation has now improved.

3.3.2 Ethnic minorities

"Citizens have equal constitutional rights and freedoms and are equal before the law. There shall be no privileges or restrictions based on race, colour of skin, political, religious and other beliefs, sex, ethnic and social origin, property status, place of residence, linguistic or other characteristics. " Art. 24, Constitution of Ukraine.

The Declaration on the Rights of Nationalities, adopted by the Parliament on 1 November 1991 and the Law on National Minorities in Ukraine, adopted in June 1992, should provide a legal framework for the defence of ethnic minorities and guarantee their political, economic, social and cultural rights.

In actual fact, that which is well expressed on paper, is not always observed in reality and ethnic minorities are discriminated against in different fields of social life, and are the target of physical violence: their relations with the police are no exception to this rule.

Politically, and in terms of defence of their rights, the best organised community are the Crimean Tatars. Nevertheless, a representative of an NGO based in Simferopol' informed us that they now have more global and essential problems to tackle (such as the problem of their acqui-

42 Incident reported by one of our interlocutors, said to have been published also in the English language weekly " Kyiv Post " .

tion of Ukrainian nationality and of recovering their property). They do not collect data on police abuses, although they expect to be dealt with more roughly when they are arrested, and that when they are the plaintiffs, the investigation is not as thorough as it should be.

Other ethnic groups, like the Roma, especially in Transcarpatia, the Germans⁴³ in Crimea, Odessa and Zhitomir regions and the Jews suffer occasional racist attacks, but we do not have information about concrete abuses by the police. It is to be expected that, given their fragile position in society, they might be treated in a degrading way. On the other hand, OSCE sources informed us that there was some protest from Crimea concerning the overwhelming majority of Russians in the police, although positions of responsibility are held by Ukrainians, which increases ethnic discrimination towards the victims and/or arrested people in criminal procedures.

Members of the Ukrainian Centre for Independent Political Research drew attention to the case of a series of anti-Semitic articles which appeared in a western regional newspaper, and which the authorities took no steps to ban, although this kind of publication should be prevented by law.

43 The Germans started to emigrate to the Russian empire in the XVII century and settled along the Volga. They have been known all along as " Germans ", and this was kept as their " nationalnost " in Soviet passports. Having been deported to Central Asia during the Second World War, many of them left for Germany in the last years of " perestroika ", when Germany accepted them more easily than other refugees. Others have since been trying to recover their lands and possessions in Ukraine and Southern Russia.

4 Conclusions and recommendations

Not much has changed since the fall of Soviet Union and the Ukraine's gaining of independence. Much more than six years is necessary to modify behaviour, reflexes, and ways of thinking inherited from the past. The State and the law-enforcement bodies are still seen as absolute and arbitrary authority, not to be trusted, but at the same time the all-providing Pater familias.

According to the information gathered, the practice of torture and ill-treatment on persons arrested by the police is wide-spread, leading in several cases to the death of the suspect.

The fact that the constitutional guarantees regarding arrest and holding in custody are suspended until the year 2001 is worrying and opens the door to legal uncertainty and arbitrariness. It contributes to the perpetuation of old methods and hinders the necessary change of mentality.

In response to the main features which have emerged in the course of this report, we should like to present some measures, the introduction of which would enable a better prevention of inhuman or degrading conditions of detention or treatment.

Let us recall first of all that every State has the obligation to conform to international obligations even if the general economic situation is bad. For there are numerous measures which do not require important financial commitment.

To start with, physical and mental brutality must be stopped and the dignity of human beings who have been arrested or detained by the police respected. The message should be clearly delivered by the authorities: it is not only forbidden to violate the fundamental rights of persons who have been deprived of liberty, but those who do so degrade themselves as well. The authorities should also commit themselves openly to investigating and punishing violations of this nature.

At the same time, changes should be made in the following areas:

Legal context

- The harmonisation of laws and Constitution on the question of arrest and deprivation of liberty is urgent.
- Priority should be given to the adoption of a new Penal Code and a new Criminal Procedure Code. They should be in conformity with the standards of the European Convention on Human Rights.
- The new law on the Prokuratura, which limits the power of the Prosecutors in favour of the Courts, should be adopted as soon as possible. Responsibility for the supervision of prisons should be transferred from the Prokuratura to an independent Commission.
- The Law on Police should be revised so as to bring it into conformity with the Ukrainian Constitution as well as with international rules in this subject.
- The draft Law on a Parliamentary Ombudsman should be adopted as soon as possible and the position should be occupied by an independent and committed person, who should be given the necessary powers to act effectively in cases of complaints against the police.

Police (practical measures):

- The procedure regarding arrest and investigation, as provided for by law, should be implemented in practice, the time-limits respected, the rights of the suspect protected, especially the right to defence and the right to inform the family.
- Permitted lengths for custody (72 hours) and pre-trial detention should be strictly observed, especially given that the appalling material conditions of detention make any extension of their length equivalent to ill-treatment.
- Administrative detention for up to fifteen days should be resorted to only when necessary and not be used by the police as a means for punishment or harassment.
- Police activities should be submitted to greater control by an independent or judicial body; checks and balances by civil society should also be introduced;
- Allegations of torture and ill-treatment in custody should be thoroughly investigated by the authorities concerned as well as by an independent and impartial body (Ombudsman or independent commission). Appropriate administrative and penal sanctions should be applied to the persons responsible.
- Remedies offered to victims and detainees against acts of the police should be reinforced.
- The training of police officers should stress the importance of the protection of individual rights and human dignity.
- A code of ethics for the police should be introduced.

Annexes

ANNEX A

Sensitive issues and problematic areas

After considering the general situation, and taking into consideration the specific topic we were tackling, we did not visit places of detention, but we obtained information about some of them that presented specific problems.

1. One issue which would deserve deeper consideration is the one of HIV- infected people. It has been reported that there are two detention establishments (YuG-311/14 in Odessa and YuA-45/85 in Bucha, Kiev region according to Helsinki-90 Committee) with areas attributed especially to them, as well as the regional hospital of the Ministry of Interior in Donetsk. Out of security considerations for the other prisoners, these detainees are reportedly kept in isolation cells even when this is not provided by the Court sentence. Although it is a fact that prisons often lack disposable syringes and needles, disposable razor blades, and that hygiene conditions are not suitable to prevent the spread of the disease, it is not acceptable that these people who should need special care are isolated and mistreated more than the common detainees.

A journalist from Odessa wrote articles about the same problem, pointing out especially the case of two other prisons in Odessa (SIZO-1 and 2) and one in Izmail. The conditions were so bad that the inmates went on hunger strike in 1996.⁴⁴ The harshness of SIZO-1 has also been pointed out in some of the complaints and letters we gathered and other articles.

Official data given by O. Betza in Kiev at a seminar in January 1997, show a frightening tendency: if at the beginning of 1997 2715 HIV cases were registered in prisons, they are expected to have risen to 12.500 by the end of the same year, and to 66.000 in 1998.

It is also interesting to observe that point 21 of article 10 of the Law on the Militia, "Main duties of the militia", states that the police is obliged to give information about persons in AIDS risk group to health care institutions, and that, on the request of these institutions and with permission of the Prosecutor, they can take HIV-infected, together with chronic alcoholics and drug addicts, to health care institutions for compulsory examination and treatment. The right to privacy is here clearly not respected and HIV is considered a disease that makes people suffering from it not responsible before the law.

2. The conditions of detention of prisoners sentenced to death are said to be extremely harsh, and the attitude towards them cruel. Helsinki-90 reports daily beatings by special teams with masked faces in the SIZO of Khmelnytsky.

⁴⁴ Quoted in "Army and prison. Where would you prefer to serve a term?", *Prava Lyudiny* 1996, No. 1. Prava Lyudiny is the information bulletin of the Kharkiv group of human rights protection.

ANNEX B

Questionnaire used by the joint prison monitoring programme (Ukrainian Centre for Human Rights – Constitutional Legislation Policy Institute)

The joint programme for monitoring prisons in Ukraine between the Ukrainian Centre for Human Rights and COLPI, Hungary seems the way to fill in a gap on detention conditions. It will depend on the people actually carrying it out that it reaches the aim of protection and defence of the rights of the detainees.

Every two month, the Centre will issue a comprehensive analysis of the data collected and distribute it to officials and organisations concerned.

We annex the form (translated from Russian) because it is quite interesting to see where the questions point at and thus identify the problems which are more worrying for the implementing organisation.

Questionnaire on conditions of detention

This form was compiled by the Hungarian section of Helsinki Committee within the framework of the monitoring programme in respect of detention conditions. The aim is to gather information on conditions, on observance of the rights of detainees by the authorities and possible cases of abuse. The form is filled out on a voluntary basis and is anonymous. Any information that could help identify the person will not be published and is not available to the authorities.

1. Place
2. Date
3. Date of arrest
4. Was physical violence applied at the moment of arrest ?
5. If yes:
 - a) How did the arrest take place:
 - arrest on the spot
 - search
 - by Court request
 - other
 - b) How was it violent?
 - c) who committed the violence?
 - the policeman who arrested me
 - the policeman who interrogated me
 - security staff (guards)
 - others
 - d) did you complain or write an official appeal about the violence?
 - yes
 - no

6. Was there any violence during previous arrests (if appropriate)
- yes
 - no
7. If yes, describe when and how
8. How many times were you interrogated?
- not yet
 - once
 - twice
 - three times
 - more
9. During interrogation, were you submitted to physical violence?
- yes
 - no
10. If yes, describe.
11. Before the first interrogation, were you informed that you were not obliged to answer and that you had the right to request the presence of a lawyer?
- yes
 - no
12. If you have a lawyer
- is he appointed
 - is he independent
13. After arrest, when did you have the possibility to speak personally with your lawyer?
- right away
 - before the first interrogation
 - after the first interrogation
 - later
 - I have not spoken to him yet
14. If you do not have contact with a lawyer, explain why
- they could not get in touch with him
 - they did not want to get in touch with him
 - he was informed but did not come
 - other
15. If you got in touch with the lawyer, how did you do that?
- by telephone
 - by letter
 - by official communication
 - through the police
 - other

16. After arrest were you allowed to use the phone?
- yes
 - no
17. If yes, with whom did you speak and why
18. During the interrogation, did the officer promise you that if you made a full confession, you
- a) would be released
 - yes
 - no
 - b) would have meetings with relatives more often
 - yes
 - no
 - c) would be given the permission
 - d) to write more frequently
 - yes
 - no
19. During the interrogation were you threatened if you refused to confess or made a false declaration, you
- a) would be placed in preventive detention
 - yes
 - no
 - b) would not have meetings with family and relatives
 - yes
 - no
 - c) would be transferred to worse detention conditions
 - yes
 - no
20. If you were not arrested at home, were your family or relatives informed about your arrest?
- yes
 - no
21. If not, who informed your family?
- the officer in charge
 - another policeman
 - the lawyer
 - others
22. When was your family informed ?
- the same day
 - the following day
 - a few days later
 - a week later
 - I do not know

23. Do you receive visits?
- yes
 - no
24. If yes, how long after the arrest did your family visit you
- within one week
 - within two weeks
 - within a month
 - within two months
 - later
 - not yet
25. If they have not visited you yet, why?
- financial problems
 - the visit is not allowed
 - I have no family
 - I do not want any visit
26. Are you allowed to receive visitors twice a month?
- yes
 - no
27. How often can you receive visitors?
- twice a month
 - more often
 - more seldomly
28. Since you were arrested, in how many cells were you kept?
- this is the first
 - the second
 - the third
 - more
29. Do you receive parcels from your family?
- yes
 - no
30. If yes, how often
- twice a week
 - every week
 - once every two weeks
 - every month
 - seldom
31. If seldom, for what reason?
- financial problems
 - not allowed
 - no family/relatives

32. Do you correspond with your family ?
 yes
 no
33. If not, for what reason
 do have no relatives
 other reasons
34. As far as you know, how long does it take your letters to get to their destinations ?
35. How long does it take the letters you receive to reach you ?
36. Are you aware of any letters you wrote which were not received or vice versa ?
 yes
 no
37. Were you seen by a doctor when you arrived
 yes
 no
38. If yes,
 he examined you
 he just asked you some questions
39. If you were ill or injured, did you tell the doctor about that
 illness
 injury
 did not tell
40. If you informed the doctor about an illness, he
 sent you to a specialist
 prescribed medicines
 did not pay attention to your claim
 other
41. If you informed the doctor about an injury, he
 wrote a medical protocol
 treated you
 sent you to a specialist
 other
42. Did the doctor visit you after arrest ?
 yes
 no
43. Did you request a medical visit ?
 yes
 no

44. If yes, were you visited ?
 yes
 no
45. If yes, when?
 the same day
 the following day
 after a few days
 after a week
46. Before arrest, did you take medicines regularly?
 yes
 no
47. If yes, for what ?
48. Can you get your usual medicines?
 yes
 no
49. Who buys medicines for you ?
 a relative
 a policeman
50. If it is a policeman,
 out of your money
 without reimbursement
51. Did you ask for a special treatment ?
 yes
 no
52. If yes, have you received it ?
 yes
 no
53. How often can you wash ?
 every day
 every second day
 once a week
 seldom
54. Under which conditions can you use the toilet
 with permission of the guard
 other
55. Did you have problem in using the toilet?
 yes
 no
56. If yes, which ones ?
-

57. How often can you go out into the fresh air ?
- every day
 - every second day
 - once a week
 - seldom
58. How long can you stay out
- less than 30 minutes
 - 30 minutes
 - between 30 minutes and 1 hour
 - 1 hour
59. Do you go out each time ?
- yes
 - no
60. If no, why not?
61. Light in the cells:
- a) Is it possible to read by daylight
- yes
 - no
- b) is it possible to read with electric light
- yes
 - no
62. Describe the cell (furniture)
63. How is the air in the cell
- very bad
 - bad
 - average
 - good
64. Is it possible to open the window ?
- yes
 - no
- If only the guard can open the window, how often does he do it
- every hour
 - every minutes
65. During your detention, did you have quarrels with other detainees, which ended up in fights?
- yes
 - no
66. Were you insulted because of your origin or physical problems ?
- yes
 - no

67. If yes, then
- because of your origin
 - for other reasons
68. If yes, then
- by other detainees
 - by the guards
 - by the investigator
 - by other official people
69. Has there been any special event in the last month (escapes, attempted escapes, hunger strikes, suicides, attempted murders)?
- yes
 - no
70. If yes, what was it and when?
71. Do you know of any visit of the Prosecutor ?
- yes
 - no
72. Did you meet the Prosecutor?
- yes
 - no
73. Did you ask to meet the Prosecutor ?
- yes
 - no
74. If yes, were you granted a meeting ?
- yes
 - no
75. have you written a complaint on any kind of abuse ?
- to the Prosecutor
 - to the Ombudsman
 - to a human rights organisation
 - to the media
76. Personal information
- a. sex male
female
 - b. age
 - c. education
 - d. nationality or ethnic group (optional)
 - e. previous sentences

ANNEX C

Other types of detention

1. Detention camp for illegal migrants at Skachevo (western border)

This camp was set up to detain, for up to ten days, those who enter or leave the country illegally. Allegedly, conditions in the camp are very bad; it was not intended to detain more than 10 people, but usually it holds about 150, accommodated in tents. It is guarded by the Border Guards, who are depending on the State Committee for Protection of State Borders, which is in charge of security for the country's international borders and is under the direct jurisdiction of the Council of Ministers.

UNHCR is aware of the conditions and is considering taking action.

There are more and more groups working as "smugglers" to or through Ukraine to Western Europe and more and more illegal migrants. In the period 1992-1996 36,000 were arrested coming from 140 different countries.⁴⁵

2. Psychiatric hospitals

There are 90 such hospitals, with about 1000 patients each. Conditions vary depending on the responsible persons in charge, but in general, they are not good, especially in hospitals for criminals with strengthened regime of control. The organisation to contact is the Association of Psychiatrists, whose head is the highly active human rights activist, psychiatrist and former detainee Dr. S. Glusman.

Helsinki-90 illustrated the especially bad conditions of the Regional Psychiatric Hospital with strengthened regime (for psychiatrically ill criminals) in Dniepropetrovsk.

Most of the patients are hospitalised on the request of the family or of the Court. This violation of the rights for the patients is institutionalised by practice and there exists no law on psychiatry (the only CIS country with Kirgiztan).

Psychiatry is sometimes still used in order to manipulate people or gain some material advantage.

- in 1996, OR was declared irresponsible on the request of her husband, who wanted to separate from her but to keep their child. Reportedly he paid the medical-judicial expert to issue a false medical certificate. The woman was subsequently helped by a human rights organisation. There was a contradictory opinion from an American doctor and she recovered her civic rights. However she does not have an official residence permit for Kiev (where she used to live with her family) and does not have custody of her child.
- members of the "White Brotherhood" sect were arrested on a large scale in 1993 in Kiev and other cities. They were subsequently sent by train to different regional ROVDs, and from there to psychiatric hospitals. Some of the medical staff recognised the prisoners as mentally healthy and refused to accept them. None the less, it is still a widespread mechanism, which exists in the mentality of policemen, to lock up people who disrupt public order to psychiatric institutions.

⁴⁵ *Prava Lyudini* 1997, No. 18

ANNEX D

Army violence

A widely-spread phenomenon in the army, since Soviet times, is the “dedovshchina” the practice of “dedy” (which means “grandfathers”, that is those who have already served at least six months in the army) who bully, mistreat, enslave new recruits, often with the knowledge of officers.

This practice can lead to most tragic results, as, according to Gen V. Bilyi⁴⁶, 80% of the deaths in the army are not linked with military duty. He also added that in the first 9 months of 1996 there had already been 44 cases of suicide. The human rights bulletin *Prava Lyudini* (no. 18, 1997) gives data from 1995: 300 deaths, of which 64 by suicide; in 1996, 460 victims of “dedovshina” of which 6 died, and 68 were seriously wounded.

In this, and other issues of the review several cases of mistreatment are mentioned, and on two occasions soldiers were condemned by a military court for torturing recruits. Ill-treatment ranges from beatings, having boys perform extenuating exercises, keeping them in the cold, giving orders and punishing for inadequate obedience, requisitioning parcels from home (which is serious considering the bad nutrition in the barracks), forcing them to eat cigarettes.

Prava Lyudiny also registered cases of malnutrition: three Navy recruits in Crimea and 12 soldiers in Berdiaev were brought to hospital in an advanced state of malnutrition; another one in Evpatoria was hospitalised too late and died. Cases of soldiers stealing food or asking for charity are also frequent.

The “Committee of Soldiers’ Mothers” is the best contact concerning this problem. Some of the members have suffered the loss of a son or relative in the army and they gather first-hand information.

The “International Society for Human Rights” has launched a project to hold some seminars in different barracks across the country on human rights rules in military activity but also within the barracks.

ICRC is also active in the army, but mainly in order to spread information on International Humanitarian Law.

46 See note 15

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