



UKRAINE: DON'T STOP HALFWAY

GOVERNMENT MUST USE NEW CRIMINAL
PROCEDURE CODE TO END TORTURE

**AMNESTY
INTERNATIONAL**



INTRODUCTION

For the past decade the widespread use of torture and other ill-treatment by law enforcement officers in Ukraine has been a concern to Amnesty International.

The problem continues unabated today. This briefing uses a selection of new cases to highlight how police officers in Ukraine continue to escape investigation and punishment for their involvement in appalling crimes.

Out of 114,474 complaints made to prosecutors about police treatment in 2012, only 1,750 were investigated, leading to only 320 prosecution cases being opened against 438 police officers.

Successive rulings by the European Court of Human Rights (ECtHR) have criticized the conduct of investigations into torture and other ill-treatment in Ukraine and recommend the establishment of a new system for investigating human rights violations by police.

HOW DOES THE NEW CODE PROVIDE BETTER PROTECTION AGAINST TORTURE?

The new Criminal Procedure Code makes clear that detention starts from the moment of apprehension by police and that detainees have the right to a lawyer and an independent medical expert from that moment.

It clearly states that pre-trial detention should only be used in exceptional and justifiable circumstances, and provides for a range of alternative measures to ensure attendance at trial hearings, including bail and home arrest. It also stipulates that in cases where people are remanded in custody there is an automatic review of the reason for continued pre-trial detention at two-monthly intervals.

Amnesty International welcomes these measures as a positive step towards overcoming torture and other ill-treatment because it reduces the length of time suspects are vulnerable to abuse or pressure from law enforcement officers.

Amnesty International also notes that, under the new Code, confessions made to police in custody outside the court are no longer admissible in court – reducing one incentive for police to torture suspects.

However, these new measures will not be enough to prevent torture and other ill-treatment unless police officers are given a clear message from the highest level that all offences – from minor offences to torture and other ill-treatment – will be met with appropriate sanctions.

For this reason, the Ukrainian authorities must set up an independent police accountability mechanism. The establishment of a State Investigation Bureau, provided for in Article 216 of

the new Criminal Procedure Code, is the right opportunity to do so, which should be seized as soon as possible. According to the new Code, the State Investigation Bureau should investigate crimes committed by judges, law enforcement officers and certain high level officials. However, the way in which it is designed, resourced and appointed has yet to be decided, and, according to the new Code, it does not have to be established for up to five years.

WHAT STILL NEEDS TO BE DONE?

Despite the improvements, the idea promoted by some government officials that torture will cease now that confessions to police are no longer admissible as evidence is erroneous. Extracting a confession is not the only reason that officers abuse suspects. Amnesty International continues to document cases where police have tortured individuals to punish them without going to court, in retaliation for a complaint against officials, or in order to extort money.

Abuse by officials can only be prevented when they know they will be effectively held to account for their actions. As well as removing the incentives for torture, there must be a strong deterrent – a strong likelihood of disciplinary or criminal punishment.

The current system, even with most parts of the new Criminal Procedure Code in force, does not yet ensure this. Amnesty International continues to receive reports of torture and other ill-treatment that have occurred since the introduction of the new Criminal Procedural Code that are not being investigated according to international standards. Consequently the victims are denied protection from torture and other ill-treatment, as well as effective reparation, including compensation and redress.



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« The adoption of Criminal Procedure Code will sweep away a lot of problems. It means there will be no need to carry out such actions. »

Minister of Internal Affairs Vitalii Zakharchenko discussing police torture at a press conference on 14 March 2012

RECENT DEVELOPMENTS

In October 2011 Amnesty International launched a report *No Evidence of a Crime: Paying the Price for Police Impunity in Ukraine (EUR 50/009/2011)*. Dozen of cases documented by Amnesty International show how police have used torture to extract confessions, extort money, or because of the ethnic origin or sexual identity of the victim. The organisation drew attention to the failure of the Prosecutor's office to conduct prompt, thorough and impartial investigations into allegations of torture and other ill-treatment, and recommended the establishment of a fully resourced independent agency to investigate all allegations of human rights violations by law enforcement officers.

During the past year Ukraine has taken some important steps toward combating torture and other ill-treatment. In April 2012 parliament introduced a new Criminal Procedure Code, which came into force on 20 November. Drafted by the government but guided by expertise from the Council of Europe, Amnesty International considers the new Code a significant improvement on the old one, for reasons set out below.

INSULT AND INJURY

Two young construction workers, **Vitaliy Levchenko** and **Andrei Melnichenko** had been working on a site in the city of Ladyzhyn, southern Ukraine, without pay for three months. They had made repeated calls to their employer who eventually agreed to meet them on 20 November 2012.

On **20 November** at around 7pm the two young construction workers went to the construction site with three other workers. On arrival, they were told the manager had already left. The group of workers refused to leave without payment. Security guards arrived and called the police, at which point the other three workers left the site, but stayed on a hill overlooking the site to watch what happened to Vitaliy and Andrei.

According to Vitaliy and Andrei's lawyer, all three witnesses say that at this point three police officers arrived, seized the pair, dragged them out of the cabin and started beating them, unprovoked, with batons. Police handcuffed Vitaliy and Andrei and took them to Ladyzhyn police station, at which point the three workers called Vitaliy and Andrei's parents.

According to Andrei, **the three officers continued striking Vitaliy with batons and kicking him while he was handcuffed on the floor in the station corridor. He lost consciousness. When Andrei shouted at the police to leave Vitaliy, they attacked him, although he was also handcuffed. One police officer told him he was going to urinate on him, dragged Andrei to the bathroom and tried to force his head into the toilet bowl. Andrei said that he managed to resist, so instead the officer stood on his head and spat in his face, before returning him to the corridor.**

Vitaliy says that at this point he woke up in another room in a pool of water, which officers had poured on him to wake him up. Although he had his hands cuffed behind his back, he says an officer stood on his arms, breaking both of them.

At this point the pair's parents arrived and intervened with the help of Andrei's sister, who works in law enforcement. Police agreed

to release the pair after they signed some protocols and took an alcohol breath test. According to the case records, the test was conducted using a test that only tests fitness to drive, had passed its expiry date, and after a police officer had first blown into the test.

Vitaliy and his father went to Ladyzhyn hospital to have his injuries treated and recorded. Both state the doctor refused to record Vitaliy's injuries, explaining that he had received a telephone call from the police who instructed him not to document the injuries. Instead, the doctor wrote a report stating that Vitaliy was drunk, based not on a test, but solely 'the smell of alcohol'.

Both Vitaliy and Andrei say they had not been drinking at all, and the three construction workers who had accompanied them to the site say they did not smell of alcohol at all.

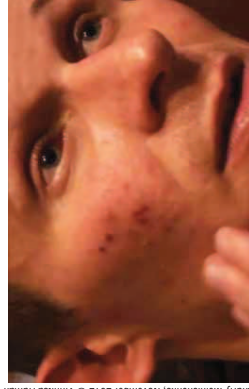
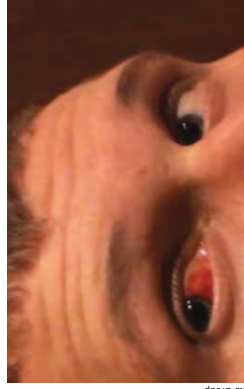
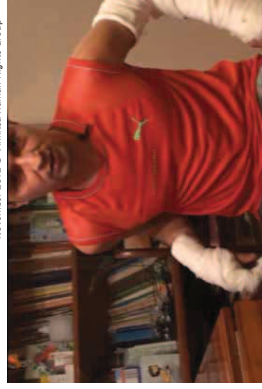
Later that day police officers registered a criminal case against the pair for 'resisting police officers' and 'inflicting bodily injury' on an officer who had a bruise on his leg, another who had a bruised finger and a third who had a bruise on his neck.

According to the police statement Andrei had injured his head by falling over while handcuffed and trying to kick an officer, and Vitaliy had broken his arms by banging on a station door while in handcuffs. They face up to five years in prison if convicted.

On **22 November** Andrei and Vitaliy filed a complaint against the police with the Ladyzhyn City Prosecutor's office under the new Criminal Procedure Code. A medical examination carried out that day at Ladyzhyn hospital established that both of Vitaliy's arms were broken and recorded multiple bruises on his body. It also recorded heavy bruising across Andrei's body, damage to his ear and right eye.

However, the case had been publicised in the regional media by the NGO **Vimysya Human Rights Group**, and on 6 December 2012 the Deputy Prosecutor of **Vimysya** decided to re-open the case and sent it to Trostyanets District Prosecutor's office.

Vitaliy Levchenko showing how police officers broke his arms, November 2012 © **Vimysya Human Rights Group**



Andriy Melnichenko, November 2012 © **Vimysya Human Rights Group**

On **20 February 2013** the Trostyanets Prosecutor closed the case stating that 'there was no evidence of a crime', accepting the police explanation for Andrei and Vitaliy's injuries. The testimonies of Vitaliy's father and Andrei's mother were not included in the Prosecutor's rationale, and Vitaliy and Andrei's testimonies were discounted on the basis that they were allegedly drunk.

Amnesty International calls on the Ukrainian authorities to ensure there is a new independent, impartial and effective investigation into Andrei and Vitaliy's complaint.



TORTURE FIRST, ASK QUESTIONS LATER

« I am the law and I will do whatever I want. »

Police Officer Valeriy Shapovalov, November 2012

At around 9am on **16 October 2012** **Alexander Popov** had just dropped off his seven year-old son at school and called his mother to let him know that he was going to visit. He told Amnesty International that after walking a couple of blocks he was approached by an unmarked car containing four men in plainclothes.

Two of them jumped out of the car, pulled his sweater over his head and handcuffed his hands behind his back. The men told him they were police but gave no reason for his arrest. They forced a plastic bag over his head and drove him to a forest.

Once in the forest, Alexander said they placed another, larger plastic bag on top of the bag on his head, which covered his torso. They tied his legs at the knees with rope and scotch tape around his thighs. Then they wet his feet and taped electrical wire to his ankles. He was electrocuted for several hours, using different voltages, intermittently through his feet and little fingers.

He said he was asked a series of questions about his connections to individuals, some of whom he knew. Despite answering the same questions repeatedly, he said the police continued to intermittently electrocute him, suffocate him and apply pressure to his eyeballs with their palms.

He lost consciousness several times as a result of the pain and suffocation. Each time they doused him in water to revive him and continue the torture. Alexander said they told him they would kill him, and at times he felt as if he was dying.

« I couldn't breathe, I was trying to bite through the bags but couldn't. I was constantly losing consciousness. I thought I would die there. »

Buses at Alexander's Popov (see, October 2012. © **Alexander Popov**

Between 5 and 6pm Alexander said he was taken to Mariupol City police station still with a plastic bag on his head. His presence in the station was not registered, and he was left bound with the plastic bag on his head for about half an hour, before police removed the bag and took him to another room.

Alexander said that only then detectives interviewed him about the murder of a person they called 'Akhtman' at a village called Sartan. As Alexander had only been to Sartan once to attend a funeral of his colleague's relative, he did not know who the police were talking about. However, he was able to show that the day the murder took place, 12 February 2009, he had been at home looking after his son, who was born the previous week, on 3 February.

Alexander's mother, wife and brother Sergei had been searching for him all day, and at around 3pm Sergei had called police officer Valeriy Shapovalov, a uniformed officer at Mariupol station that Sergei knew from the market where they used to work.

At around 6pm officer Shapovalov found Alexander and took him outside to call his brother. Shapovalov told Sergei that Alexander was at Mariupol City police station but would shortly be transferred to Illichivsky District police station. After his transfer, police registered Alexander's presence at Illichivsky police station and this time formally interviewed him about the murder before releasing him to his brother.

When he met his brother, Sergei noticed his clothes were soaking wet and covered with grass and mud stains. Sergei had to help Alexander undress to use the bathroom as he could not move his hands. Alexander told Sergei what happened and showed him the bruising and marks on his ankles from the electrical wires. They both then went to hospital, where doctors identified and documented bruises caused by at least 12 different blows with a blunt object.

The next day, on 17 October, Alexander and his brother Sergei submitted a complaint to the Mariupol Prosecutor's office accusing the Mariupol police of torture. The same day Sergei called Shapovalov to inform him that they had submitted the complaint.

Shapovalov called him back later in the day to tell Sergei that the deputy head of Mariupol police station wanted to meet Alexander and discuss the situation. Shapovalov also offered financial support for medical treatment. Sergei refused the meeting and the offer of support.

The Prosecutor's office did not respond, so on 7 November Alexander complained to the Donetsk regional prosecutor. Again he received no response, so Sergei and Alexander's wife agreed to meet with the deputy head of Mariupol police to find out what he had to say.

Sergei told Amnesty International that he was puzzled that the meeting seemed to have no purpose, but after it had finished Shapovalov met Sergei outside and offered him between 2,000 and 3,000 UAH (US \$245- 368) if he and his brother withdrew their complaint. Sergei refused, and shortly after that Alexander gave an interview to Inter TV channel explaining what had happened and stressing the lack of an investigation.

On 17 November the interview was aired on national television, and the following week a criminal case was registered under the new Criminal Procedure Code, on 21 November. However, the case was opened as an investigation into 'abuse of power with violence', rather than torture.

After the case was opened, Shapovalov again called Sergei and his wife, angry and abusive to them for complaining and therefore forcing him to testify. Shapovalov told Sergei's wife "I am the law and I will do whatever I want."

In statements given to the investigating prosecutor, the Mariupol police claim that they met Alexander outside a cafe at an unspecified time and took him to Illichivsky police station for questioning, where he was registered and interrogated, then happened to meet Shapovalov.

In their testimony they do not explain why, as detectives from Mariupol police station, they decided to take Alexander to Illichivsky police station for questioning. Shapovalov also does not explain why, as a uniformed police officer from Mariupol City police station, he also happened to go to Illichivsky police station at this time. No explanation is given for Alexander's injuries, and the closed circuit TV system at Mariupol police station on the day of his arrest was apparently broken.

On **13 March 2013** the investigating prosecutor closed the case on the basis that the police officers' testimony contradicted the testimony of Alexander, his wife and brother.

Amnesty International calls on the Ukrainian authorities to ensure there a new independent, impartial and effective investigation into Alexander's complaint.

A HIGH PRICE TO PAY FOR MISSING A SUMMONS



Artem Geraymovych-Magalyas before he was detained by police officers on 18 April 2012.
December 2011 © Nadezhda Marynenko (Artem's mother)

On 18 April 2012 Artem Geraymovych-Magalyas was detained in Smerfopol, Crimea, for failing to answer a court summons relating to a stolen drill and two mobile phones. The summons had been sent to the wrong address.

Artem said he was punched by a police officer during his arrest before being taken to Zheleznodorozhnyi District police station. The police did not register his detention until the following day in violation of the Criminal Procedure Code. At the police station, Artem reported that one of the officers continued beating him in the presence of two others, demanding that he confess to a range of crimes. **He says that this officer took a metal hook and used it to tear his nose when he refused to confess.**

According to Artem, at this stage he lost consciousness and his next memory is waking up in hospital a week later, on 26 April. However, he was registered as being transferred to Smerfopol pre-trial detention facility on 21 April, to a cell with a detainee who suffers from severe manic depression.

Police and guards at the pre-trial detention facility say on 24 April the mentally-ill detainee attacked Artem with a metal pipe, although do not explain how this was allowed to happen while both were being held in custody, or how the other detainee was in possession of a large and heavy metal pipe while in his cell. Artem does not remember being in the pre-trial detention facility at all, and the mental illness of the other detainee is so severe as to render him incapable of giving testimony.

The police initiated a criminal case against the detainee, but did not take fingerprints from the metal pipe or provide the court or the prosecutor with closed-circuit TV records from the police station and detention centre as potential evidence.

THE PROSECUTOR'S OFFICE – THE WRONG TOOL FOR THE JOB

Under the current system, the General Prosecutor's Office is responsible for investigating criminal allegations against police officers. However, in each of the cases above, the prosecutors responsible for investigating the allegations have not done so thoroughly, and each time have disregarded witness testimony and medical evidence in favour of police accounts, even where the police account does not appear credible.

In reports published in 2005 and 2011 Amnesty International has drawn attention to the conflict of interest inherent in the role of prosecutors in Ukraine. Prosecutors work with police officers on a daily basis to solve ordinary crimes. They are often in close contact and form personal relationships. For this reason prosecutors are reluctant to investigate and prosecute their colleagues in the police force. Furthermore, exposing the torture or ill-treatment of a suspect in a criminal case may undermine the prosecution's case against that suspect.

In Amnesty International's October 2011 report *No Evidence of a Crime: Paying the Price for Police Impunity in Ukraine*, the organisation highlighted several cases in which the prosecution failed to investigate credible evidence of torture in police custody, in some cases even collaborating with police officers to retaliate against individuals who reported being tortured. As a result, police officers feel confident that they can torture or otherwise ill-treat people without being punished, and continue to do so.

One of the key recommendations Amnesty International has therefore been making to the government is to establish a new and independent institution able to promptly, effectively and impartially investigate allegations of human rights abuses by police.

Ukraine needs to do this in order to carry out its international obligations under the European Convention of Human Rights and in order to comply with rulings of the European Court of Human Rights.

Amnesty International believes that unless investigations into crimes by police are carried out by an independent investigative body, with no functional links to law enforcement agencies investigating ordinary crimes, the investigations will not be conducted promptly, effectively and impartially.

Amnesty International therefore calls on the Ukrainian authorities to establish a new system of investigating complaints against the police as a matter of priority. The provision for a State Investigation Bureau as envisioned by the new Criminal Procedural Code is an opportunity to establish an independent police accountability mechanism with powers to ensure prompt, effective and impartial investigations into allegations of serious human rights violations, including crimes of torture and other ill-treatment committed by police officers. Doing so would significantly assist Ukraine to fulfil its international obligation to end torture and other ill-treatment.

Key principles

As recommended by the former Commissioner for Human Rights of the Council of Europe, any agency investigating allegations of human rights violations by law enforcement officers should comply with the five principles of independence, effectiveness, promptness, public scrutiny and victim involvement. Based on its knowledge of international practice, Amnesty International calls on the Ukrainian authorities to consider the following principles in setting up the State Investigation Bureau.

Independence

It is especially important to safeguard the independence of the State Investigation Bureau as it will be investigating people in positions of power and influence. For this reason it should have no hierarchical or institutional links with the Ministry of Internal Affairs or the General Prosecutor's office. This should include independent funding.

The State Investigation Bureau should be headed by individuals of acknowledged competence, expertise, independence, impartiality and integrity.

Although the State Investigation Bureau will no doubt need to recruit some forensic and investigative expertise from former police officers or prosecutors during the initial stages, they should try to recruit as many staff as possible from other state and non-state bodies to avoid undue influence from law enforcement agencies. One way to ensure independence is to establish a system of civilian oversight over investigators. Ideally, resources should be allocated to establish an in-house training programme for future investigators. Employees should also be subjected to thorough background checks.

Effectiveness/Adequacy

In order to be effective Amnesty International believes the State Investigation Bureau will need to adequately resourced and empowered.

The State Investigation Bureau will need to have immediate access to police premises and other relevant locations such as crime scenes, and the power to order the production of evidence and documents. It will need a mandate to interview victims, witnesses and accused parties. It will need to be able to refer matters to the criminal prosecutor and/or to the internal security department of the Ministry of Internal Affairs.

The institutional budget of the new State Investigation Bureau must be large enough for it to function effectively on a national scale and salaries must be on a scale to discourage corruption.

Promptness

International human rights standards call for the investigations of torture allegations to be prompt and effective. In many of the cases documented by Amnesty International and many of the cases that have been submitted to the European court of Human Rights, the investigation of allegations of torture and other ill-treatment has failed because they were not investigated promptly and vital evidence was lost. The State Investigation Bureau must ensure that its investigators are able to start work as soon as possible after a crime has been committed.

Accountability and Public Scrutiny

If the State Investigation Bureau is to be effective in overcoming impunity it must be open to public scrutiny of the investigations and their results. It must keep publicly available records of all complaints received and the actions taken and must have adequate internal disciplinary mechanisms. Information about how to make a complaint must be widely available publicly and clear enough for all to understand. To ensure public trust in the system, victims and families should be kept fully informed of progress of investigations. While taking care not to prejudice the interests of the official who has been complained against, the complainant should be consulted and kept informed of developments throughout the determination of his or her complaint.

■ Role of the General Prosecutor's Office

Even a thorough and effective new State Investigation Bureau will not be able to provide an effective accountability mechanism if the Prosecutors they present cases to continue to be influenced by their relationships with law enforcement officers. The establishment of the State Investigation Bureau will therefore also call for corresponding reforms within the General Prosecutor's Office.

The architects of this reform will need to consider how to separate prosecutors working on ordinary crimes from those specialist prosecutors working on crimes by police, and how to ensure these prosecutors are not bound by the current links between local prosecutors and local law enforcement established by studying, training and working together in the same district.

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RECOMMENDATIONS

In 2012 Ukraine took some important steps toward combating torture and other ill-treatment. A modern and improved Criminal Procedure Code was introduced, and the National Preventive Mechanism was established.

However, Amnesty International continues to document cases where police have tortured individuals to punish them without going to court, in retaliation for a complaint against officials, or in order to extort money.

The introduction of new legislation and preventive monitoring alone will not be enough to end the widespread use of torture and other ill-treatment. The challenge the authorities face now is to properly implement and enforce the new Criminal Procedure Code, and by doing so usher in a new era for Ukraine's criminal justice system – an era in which the rights of detainees are respected and officials are held to account for unlawful actions.

Abuse by officials can only be prevented when they know they will be effectively held to account for their actions. As well as removing the incentive for torture, there must be a strong deterrent – a strong likelihood of disciplinary or criminal punishment.

In November 2012 President Yanukovich stated that "Corruption, office abuse, ill-treatment and torture on the part of law enforcement bodies must stay in the past".

However, corruption, office abuse, ill-treatment and torture by law enforcement is still very much part of the present.

Amnesty International is calling on the executive, legislative and law enforcement bodies of Ukraine to work together to ensure that torture really does become a thing of the past.

We urge them to:

- Urgently establish the State Investigation Bureau outlined in the new Criminal Procedure Code as a genuinely independent institution that effectively and promptly investigates all allegations of torture by law enforcement officers, while ensuring public scrutiny and victim involvement;
- Promptly prosecute any law enforcement official reasonably suspected of torture or other ill-treatment;
- Ensure that full investigations are immediately carried out into the allegations of police torture and ill-treatment in the cases of Yakov Strogan, Mikhail Belikov, Firdovski Safarov, Svitlana Pomilyaiko, Vitaliy Levchenko and Andriy Melnychenko, Oleksandr Popov, and Artem Geraymovych-Megalyas.

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Amnesty International is a global movement of more than 3 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights.

Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of human Rights and other international human rights standards.

We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.

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