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Amnesty International Annual Report 2012 - Ukraine

Head of state: Viktor Yanukovich

Head of government: Mykola Azarov

Death penalty: abolitionist for all crimes

Population: 45.2 million

Life expectancy: 68.5 years

Under-5 mortality: 15.1 per 1,000

Adult literacy: 99.7 per cent

There was continuing impunity for torture and other ill-treatment. Reforms of the justice system failed to increase independence of the judiciary, and the rule of law was undermined by the use of the criminal justice system for political ends. Asylum-seekers risked being forcibly returned and were unable to access a fair asylum procedure. Human rights defenders were at risk of prosecution and physical attack for their work.

Torture and other ill-treatment

There were continuing reports of torture and other ill-treatment in police custody. The European Court of Human Rights ruled in nine cases against Ukraine, finding that Article 3 of the European Convention on Human Rights, which prohibits torture, had been violated.

- Firdovsi Safarov, a Ukrainian citizen of Azeri ethnic origin, told Amnesty International that, on 26 March, he had been beaten by six police officers from Mohiliov Podilsky police station. He had been stopped by police officers while taking an old car to a scrap yard. He was punched in the head and racially abused. At the station, the Director and other police officers beat him intermittently until 1am, when he was released. Firdovsi Safarov said that he had been asked to pay US\$3,000 to be released. He was later charged with resisting police officers, but was acquitted on 25 June. Firdovsi Safarov lodged a complaint about the ill-treatment and, after two refusals, the Prosecutor's Office opened an investigation in July. Although the investigation was ongoing, the Director of the police station remained in post at the end of the year. In October, Firdovsi Safarov was rehospitalized due to the injuries he had received, but his treatment was stopped early, reportedly because police officers pressurized the doctors treating him.

Impunity

A culture of impunity for the police continued. Structural shortcomings, corruption, non-existent or flawed investigations into criminal acts committed by the police (even in the face of medical or other credible evidence), harassment and intimidation of complainants, and the subsequent low level of prosecutions, all fuelled this lack of accountability. A high number of complaints about the police were rejected at the first instance. In July, the Prosecutor General's Office stated that out of the 6,817 complaints made against police officers in 2010, only 167 had resulted in criminal investigations, of which 21 were subsequently closed for lack of evidence.

- On 17 August, three Kyiv Court of Appeal judges decided that no further investigation was required into the death in police custody of 19-year-old student Ihor Indilo in 2010. In doing so, the court effectively accepted the police explanation that his fatal head injury

had been caused by falling 50cm from a bench in the cell in which he was detained. In October, the Prosecutor General announced that he had ordered a further investigation into the death.

- On 24 October, the Kyiv Prosecutor announced that an investigation had been opened into Alexander Rafalsky's continuing and persistent claims that he had been tortured in June 2001 to force him to confess to murder. He was sentenced to life imprisonment in 2004. Prosecutors had consistently refused to open an investigation into his allegations.

Justice system

The process of reform of the justice system continued. In July a new draft Criminal Procedural Code was presented to parliament, but was not passed by the end of the year.

The independence of judges was threatened by pressure from the Prosecutor General's Office, which retained the power to prosecute judges. On 7 June, the Deputy Prosecutor General requested the dismissal of three judges from the Kyiv Court of Appeal because they refused a prosecutor's request to detain a suspect, on the basis that there were no grounds to hold him.

In October, amendments to the Law on the Judiciary and the Status of Judges were passed. The amendments responded to criticism of the Law passed in 2010, which had, among other reforms, seriously reduced the role of the Supreme Court.

The amendments only partially reinstated the Supreme Court's role.

In October, the Council of Europe criticized the role of parliament in the appointment and dismissal of judges. Appointing judges initially for five years before confirming their appointment for life threatened their independence. It recommended that such judges should not be appointed to deal with "major cases with strong political implications".

- On 11 October, Yuliya Tymoshenko, who had been Prime Minister from January to September 2005 and again from December 2007 to March 2010, was sentenced to seven years' imprisonment and barred from holding public office for three years by a Kyiv court for signing

a multi-million dollar energy contract with Russia in January 2009. The charges against her were not recognized criminal offences and were politically motivated. The judge in her case was on a temporary contract.

Refugees and asylum-seekers

On 8 July, Ukraine adopted a new law "on refugees and persons in need of complementary protection". It improved the status of refugees, simplified documentation for asylum-seekers, and introduced the concept of complementary protection for those who did not fall strictly within the definition of the Refugee Convention. However, it fell short of international standards by not offering complementary protection for reasons of international or internal armed conflict. UNHCR, the UN refugee agency, criticized the new law for failing to provide it with access to people of concern, or with an advisory role in refugee status determination.

A new State Migration Service of Ukraine, co-ordinated by the Ministry of Internal Affairs, had been established in December 2010. Regional migration offices stopped working in October: the new system was operational at the end of the year. Asylum-seekers risked return to countries where they could face serious human rights violations.

- In March, a group of 10 Afghan citizens including one child were returned to Afghanistan. The asylum applications by some of the group had been refused. They were not given the opportunity to appeal against this refusal, or their deportation. The group claimed they had not been provided with interpreters while applying for asylum or during the deportation process and that they were required to sign documents in a language they did not understand. On 17 March, the State Border Guard Service told regional media that force had been used against the men because they had tried to resist their deportation.

Human rights defenders

Human rights defenders, who exposed corruption and human rights violations by local officials and police, faced physical attacks and prosecution in an attempt to silence them.

- On 12 January, Dmytro Groysman, Chair of the Vinnytsya Human Rights Group, was charged with insulting the national flag of Ukraine and with distributing pornography for posting a sexually explicit satirical video and images on his blog. At the end of the year, the trial was still ongoing and Dmytro Groysman was on bail. The use of such images in this context fell within the limits of permissible public expression under international law. Dmytro Groysman was the only person prosecuted for posting the video, despite it having already been widely circulated within the public domain on various internet sites, which suggested that he may have been targeted because of his human rights work.
- On 28 August, Andrei Fedosov, the head of Yuzer, an organization defending the rights of psychiatric patients, was allegedly subjected to a brutal attack because of his work to expose corruption and human rights violations in psychiatric hospitals. He had been invited to the village of Mirny in the Crimea by an unidentified man on the pretext that a psychiatric patient needed his assistance. He was taken to a flat in the village where he was tortured. When he was released, he immediately phoned the police. He saw his attacker walking down the village street and pointed him out. The police drove both Andrei Fedosov and the attacker to the police station in the village. The attacker and the police appeared to be on familiar terms. Andrei Fedosov reported the crime, gave his passport details and then left. Outside the station, he paused to phone a friend, but was then detained again by the police, who claimed that he was displaying "inadequate behaviour". The police took him to a psychiatric hospital for a test, and struck him on the head when he questioned the why he was being taken there. Once he arrived the doctors there released him. The authorities failed to investigate the attack and Andrei Fedosov had great difficulty in documenting his injuries. Despite attempts to document his injuries, doctors in the nearby city of Yevpatoriya and in Kyiv did not take his injuries seriously.