



The Ukrainian Parliament Commissioner for Human Rights

Information of the Ukrainian Parliament Commissioner for Human Rights, acting as a national preventive mechanism, on the implementation in Ukraine of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

*(submitted in the context of the seventh periodic report of Ukraine on the
implementation of the Convention at the 70th session of the
Committee against Torture)*

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I. Introduction

According to the Law of Ukraine “On Amendments to the Law of Ukraine “On the Ukrainian Parliament Commissioner for Human Rights” of December 23, 1997 № 776/97, the Ukrainian Parliament Commissioner for Human Rights (hereinafter - the Commissioner) is entrusted with functions of the national preventive mechanism.

Performing of these functions is a priority of the Commissioner.

Over the past two years, the Commissioner has taken a number of measures to strengthen the authority of the National Preventive Mechanism (NPM) in Ukraine and its institutional capacity, staffing both Division on NPM of the Secretariat of the Commissioner, and members of the public who participate in conducting monitoring visits of the NPM, adequate financial support for performing of the functions of the NPM.

The NPM is implemented by the Commissioner in close cooperation with representatives of international organizations, Ukrainian public and human rights organizations. The results of implementation of the functions of NPM are covered in the media and in official website of the Commissioner in order to increase public awareness of the powers of NPM.

On April 27, 2020, the representatives of the European Union and the Council of Europe presented the report of the Council of Europe on implementation of the NPM by the Commissioner in Ukraine.

International experts have noted a number of positive changes that have taken place in the NPM over the past two years. In particular, the role of the regional offices of the Commissioner in the work of the NPM has significantly increased, which has made it possible to significantly increase the number of monitoring visits.

High results were achieved, among other things, due to the increase in public monitors selected at competitions. In 2020, 175 public monitors in different regions of Ukraine were involved in implementation of the NPM functions.

The international partners also noted that the Secretariat of the Commissioner continues to actively analyze the results of the visits, in particular, to improve national legislation.

On 30 April 2020, the Council of Europe published this report in the official website of the Council of Europe.

In early 2017, the Committee against Torture provided the Government of Ukraine with a list of 42 issues related to torture and ill-treatment in Ukraine. The Government of Ukraine has prepared a draft of the Seventh Periodic Report, which provides answers to these questions.

The following is the information of the Commissioner as a national institution entrusted with the functions of the NPM regarding the issues raised by the Committee against Torture concerning the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Ukraine.

II. To questions 18, 28 - implementation of NPM in Ukraine

As part of its national preventive mechanisms, the Commissioner shall visit the places of detention specified in Article 4 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) aiming at strengthening, if necessary, their protection from torture and other cruel, inhuman or degrading treatment or punishment. As a result of such visits, the relevant authorities are provided with recommendations on improvement of the treatment to detainees and their conditions of detention.

In accordance with the provisions of the OPCAT and the Law of Ukraine "On the Ukrainian Parliament Commissioner for Human Rights" of December 23, 1997 № 776/97, the Department for Implementation of the NPM operates within the Secretariat of the Commissioner.

The powers of the NPM, enshrined in the OPCAT, are fully reflected in the structure of the NPM Department.

Thus, according to the requirements of the OPCAT, one of the main functions of the NPM is implementation of preventive measures to prevent human rights violations in places of detention, which consist, in particular, of providing proposals and comments on current legislation and draft laws, systematic analysis of compliance with human rights as a result of visits to places of detention, the state of implementation by state bodies of recommendations provided as a result of visits, and responding to appeals of citizens or their representatives in cases of violations of rights, taking measures to resume them.

In view of this, the structure of the NPM Department provides for divisions of monitoring the observance of human rights to proper detention and regulatory and legal support of human rights to proper detention, the powers of which include preparation and submission to the Commissioner of draft acts of response to mistreatment, monitoring recommendations, response acts of the Commissioner, preparation of methodological materials for monitoring visits, monitoring and expert analysis of current legislation and draft laws on their compliance with standards aimed at respecting the rights of persons held in detention facilities, preparation of draft laws on these issues.

Starting in 2018, the NPM Department has established the principle of multifunctionality of official duties of personnel inspecting detention facilities, in order to ensure their ability to visit all types of places of detention, one hundred percent interchangeability, increase the coverage of monitoring visits to places of detention.

With the adoption of the Law of Ukraine "On the State Budget of Ukraine for 2019" of November 23, 2018 № 2629-VIII, the Secretariat of the Commissioner for the first time was provided a separate budget program for implementation of measures to implement NPM in the amount of 2.6 million UAH.

Thus, the recommendations of the UN Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) included in the Report on the results of the official visit to Ukraine from 19 to 25 May and from 05 to 09 September 2016 are ensured. The SPT stressed the need to provide the NPM

with the necessary resources to carry out its work, in particular to ensure that its funding is provided for in a separate article of the national annual budget and is earmarked specifically for the implementation of the national preventive mechanism.

These funds in 2019 were used for monitoring visits to places of detention, conducting events to share experiences with representatives of NPMs of other countries, developing the principles of operation and model of the electronic register of the national preventive mechanism.

In accordance with the Law of Ukraine "On the State Budget of Ukraine for 2020" of November 14, 2019 № 294-IX, the relevant funds under the budget program for measures on implementation of the NPM are also provided.

In addition, in 2020 the Commissioner received a grant from the Special Fund of the OPCAT for implementation of the project on implementation of the recommendations of the UN SPT in 2020.

The project envisages development and implementation of an electronic unified report form on the results of monitoring visits of the national preventive mechanism (which will increase the coverage of places of detention by optimizing the time spent on such reports), raising awareness of detainees and staff about the mandate and activities of the national preventive mechanism by publishing appropriate manuals and booklets.

As part of national preventive mechanisms, the Commissioner shall visit the places of detention specified in Article 4 of the OPCAT without prior notice of the time and purpose of the visit, aiming at strengthening, if necessary, their protection from torture and other cruel, inhuman or degrading treatment or punishment. As a result of such visits, the relevant authorities are provided with recommendations on improving the treatment to detainees and conditions of their detention.

Visits to places of detention are carried out with the involvement of representatives of public organizations, experts and specialists on a contractual basis in the format of "Ombudsman +". During 2018, 153 public monitors were involved in visits to places of detention, in 2019 - 175.

Today in Ukraine there are about 5,044 institutions and other facilities that may belong to places of detention within the meaning of Article 13 of the Law of Ukraine "On the Ukrainian Parliament Commissioner for Human Rights", which are regulated by 10 state institutions (Ministry of Internal Affairs of Ukraine, Ministry of Social Policy of Ukraine, Ministry of Education and Science of Ukraine, Ministry of Defense of Ukraine, Ministry of Health of Ukraine, Ministry of Justice of Ukraine, State Border Guard Service of Ukraine, State Migration Service of Ukraine, Security Service of Ukraine, State Judicial Administration of Ukraine).

At the same time, unfortunately, Ukraine does not keep records of private institutions for the elderly and drug addicts. Therefore, they are not included in the above-mentioned number of places of detention.

Employees of the NPM Department, structural divisions of regional offices of the Secretariat of the Commissioner with the participation of public monitors and experts conducted scheduled visits, including repeated ones - to check the status of elimination of previously identified violations, and unscheduled (due to the need to verify information on human rights violations). another institution, in particular on

the use of torture and ill-treatment, which is contained in written appeals of citizens, human rights defenders, media reports).

During 2018, 375 monitoring visits to places of detention of various types were conducted, in 2019 – 711 visits, in January - March 2020 (before the start of quarantine measures in Ukraine) – 139 visits.

Based on the results of monitoring visits the bodies in the sphere of management of which there are places of detention, and directly to the management of such places, recommendations were made on elimination violations of human rights.

In addition, as a result of monitoring visits, the Commissioner submitted response acts to law enforcement agencies. In 2018 as a result of consideration of these acts by law enforcement agencies, the prosecutor's office launched a pre-trial investigation on 74 criminal proceedings, in 2019 - on 63 criminal proceedings (including 40 proceedings initiated by the State Bureau of Investigation). The grounds for the criminal proceedings were the facts of illegal actions of law enforcement officers, injuries, torture, abuse of authority, leaving in danger.

The results of monitoring visits are reflected in special reports of the Commissioner. Thus, during 2019, the Commissioner submitted to the Verkhovna Rada of Ukraine and released to the public four special reports on the implementation of the national preventive mechanism: "On the implementation of the national preventive mechanism in 2018", "On compliance with the right to health care and medical care in pretrial detention centres and penitentiary facilities of the State Penitentiary Service of Ukraine ", " On the state of human rights observance in health care institutions providing palliative care ", " On the state of observance of children's rights in the institutions of institutional care in Ukraine based on the results of monitoring visits of the national preventive mechanism in 2018 "(the texts of these reports in English can be found on the official website of the Commissioner at the link: <http://www.ombudsman.gov.ua/ua/page/npm/provisions/reports/>).

All reports contain explicit recommendations to public authorities, the implementation of which should improve the treatment to detainees and the conditions of their detention.

In May 2020, two special reports of the Commissioner were prepared: "On the state of implementation of the national preventive mechanism in 2019" and "On the state of implementation of the Istanbul Protocol in Ukraine as a tool for effective documentation of torture and other ill-treatment or punishment." The reports have now been submitted to publishing houses for printing, and will be translated into English and sent to international partners for review.

The analysis of the implementation of the Commissioner's recommendations shows that the authorities are taking measures to implement them. In particular, the procedure for providing social services to persons with disabilities and the elderly suffering from mental disorders has been improved, procedures for monitoring the provision of social services by the Ministry of Social Policy of Ukraine and regional state administrations have been introduced, information stands with contact information of the Commissioner for appeals in case of violations of the rights of detainees are arranged in all penitentiary institutions. In addition, recommendations

on equipping police premises in accordance with international standards, repairing detainees' rooms and temporary detention facilities, guardhouses and rooms for detainees of the Military Law Enforcement Service of the Armed Forces of Ukraine, and facilities of residential care for children have been partially implemented.

At the same time, the Commissioner's recommendations on ensuring proper conditions in penitentiary institutions remain unfulfilled. The Ministry of Justice of Ukraine has not regulated the procedure for providing medical care to convicted persons, and the provisions of the Istanbul Protocol on the recording of torture and ill-treatment have not been fully implemented in places of detention.

In accordance with Article 19 of the Optional Protocol, the Commissioner provides proposals and comments on current legislation or draft laws aimed at eliminating conditions that contribute to human rights violations in places of detention, torture and ill-treatment.

For this purpose, in 2018 the Commissioner submitted proposals for more than 40 projects or existing regulations that directly or indirectly affected human rights in places of detention, and in 2019 more than 100.

In order to facilitate the implementation of the functions of the NPM and increase public participation in its implementation, in July 2018 a Coordination Council chaired by the Commissioner was established. The Coordination Council included on a parity basis the deputy heads of central executive bodies, under whose authority there are objects of control, representatives of international and public organizations who are monitoring human rights, including the United Nations Development Program in Ukraine, the United Nations High Commissioner for Refugees, the Council of Europe, OSCE Project Co-ordinator in Ukraine, the International Organization for Migration, and others.

The level of representation in the Coordinating Council makes it possible to ensure that the relevant bodies respond appropriately to human rights violations in places of detention and to take joined decisions.

In the context of the pandemic of acute respiratory disease COVID-19 caused by the coronavirus SARS-CoV-2, the Commissioner continues to monitor the observance of human rights in places of detention.

Thus, taking into account the recommendations of the UN SPT (25.03.2020 and 07.04.2020) and the List of Principles concerning the Treatment of Persons Deprived of Liberty in the Context of the COVID-19 Coronavirus Pandemic, approved by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (20.03.2020), such control is carried out thorough:

- monitoring visits to places of detention in order to study the status of measures on prevention and spread of acute respiratory disease COVID-19 caused by coronavirus SARS-CoV-2;

- online monitoring (by telephone) of places of detention and sending information requests to regional state administrations and other bodies in the field of legal regulation of which there are places of detention;

- monitoring of dynamics of infection of acute respiratory disease COVID-19 caused by coronavirus SARS-CoV-2 (at the request of the Commissioner by the

heads of central authorities who are in charge of places of detention, are informing on a daily basis about cases of suspicion and confirmation of this disease among detainees and staff of places of detention - as of 15.06.2020 in places of detention there are 98 patients from among detainees and 133 from among staff);

preparation of proposals for regulations and their drafts related to human rights in places of detention in quarantine.

In order to organize targeted monitoring visits to places of detention in order to study the state of ensuring measures on prevention and spread of acute respiratory disease COVID-19 caused by coronavirus SARS-CoV-2, recommendations were developed for the staff of the Secretariat of the Commissioner and online training on its application was conducted.

In the period from April 7 to June 15, 2020, 207 targeted monitoring visits were conducted. In particular, 70 visits were conducted to pretrial detention centres and penitentiary facilities of the State Penitentiary Service of Ukraine, 21 - to the police, 22 - to health care facilities, 56 - to social protection institutions, including up to 20 nursing homes and private Drug Rehabilitation Centers.

As a result of the monitoring visits, reports and response acts with recommendations on elimination of the identified violations were sent to the central and local executive bodies, in the sphere of legal regulation of which there are places of detention.

In order to eliminate violations of citizens' rights under quarantine measures, the Commissioner submitted 6 applications to the Minister of Justice of Ukraine and 1 application to the Mayor of Kyiv to eliminate identified violations of citizens' rights, and sent a letter to the Minister of Health of Ukraine on providing penitentiary institutions with rapid tests for SARS-CoV-2.

As a result of consideration of the Commissioner's submissions, the Ministry of Justice of Ukraine took a number of organizational measures to equip rooms for isolation of infected detainees, purchased personal protective equipment, antiseptics and provided them to staff and detainees, etc.

Monitoring visits to places of detention of all types and subordination will continue during June 2020 and until the quarantine restrictions are canceled.

As part of the online monitoring of places of detention, a survey of staff of 52 places of detention was conducted. In particular, 25 places where cases of acute respiratory disease COVID-19 caused by coronavirus SARS-CoV-2 were found, as well as on the eve of International Children's Day, a remote monitoring of 27 institutions for children from all regions of Ukraine, each of which contains the most vulnerable categories children were conducted: orphans, children deprived of parental care, children with disabilities, etc.

According to the results of the survey, recommendations were provided to minimize the spread of the disease and prevent violations of human rights and freedoms.

Reducing the number of detainees is important in reducing the risk of acute respiratory disease COVID-19 in the penitentiary system.

In order to ensure the rights to life and health of detainees and convicted persons in the context of pandemic of acute respiratory disease COVID-19, the Cabinet of Ministers of Ukraine, taking into account the proposals of the Commissioner, submitted to the Verkhovna Rada of Ukraine two relevant draft laws: "On Amendments to Certain Legislative Acts of Ukraine Concerning the Prevention and Spread of Acute Respiratory Disease COVID-19 Caused by SARS-CoV-2 Coronavirus in Penitentiary Institutions and Places of Pre-Trial Detention" (registered in the Verkhovna Rada of Ukraine under № 3396 from 27.04.2020); "On amnesty of convicted persons (concerning the prevention of the spread of acute respiratory disease COVID-19 caused by coronavirus SARS-CoV-2)" (registered in the Verkhovna Rada of Ukraine under № 3397 from 27.04.2020).

The Commissioners sent letters to the Chairman of the Verkhovna Rada of Ukraine, the Chairman of the Profile Committee of the Verkhovna Rada of Ukraine and the leaders of all factions and deputy groups in the Parliament with a request to facilitate their approval as soon as possible.

The draft law on amnesty of convicted persons and detainees was supported at the meeting of the profile Committee of the Verkhovna Rada of Ukraine on 06.05.2020. The Ministry of Justice of Ukraine estimates that if the bill is passed by Parliament, more than 3,000 convicted persons and detainees will be released.

III. To question 7 - exchange of detainees and prisoners, transfer of convicts from the temporarily occupied territories

The Commissioner maintains a list of convicted persons who, at the time of loss of control over penitentiary institutions in the temporarily occupied territories of Donetsk and Luhansk regions, were held in these institutions and wished, according to their written statements or statements of their relatives, lawyers, representatives, to be transferred to the territory controlled by the Government of Ukraine. As of June 2020, there are 570 persons being held in penitentiary institutions located in the temporarily occupied territory in Donetsk region and 191 persons held in penitentiary institutions located in the temporarily occupied territory in Luhansk region who were serving sentences in penitentiary institutions at the time of the beginning of the armed aggression against Ukraine in respect of which the Commissioner received appeals regarding the transfer to the territory controlled by the Government of Ukraine for further serving of the sentence.

With the direct participation of the Commissioner during December 2018 - September 2019, 373 convicted citizens of Ukraine were transferred from the prisons in the temporarily occupied territory in Luhansk region to the territory controlled by Ukraine: on December 12, 2018 - 42 people, on February 7, 2019 - 33 people, on March 20, 2019 - 60 people, on April 22, 2019 - 60 people, on May 24, 2019 - 60 people, on July 24, 2019 - 64 people, on September 12, 2019 - 54 people.

On December 13, 2018, 13 people were transferred from the temporarily occupied territory in the Donetsk region. The issue of transferring Ukrainian citizens detained in the temporarily occupied territory of Donetsk region from December 13,

2018 is complicated due to the lack of desire of the persons under whose control they are to transfer them without explaining the grounds for such a decision.

Of the total number transferred detainees in 2018-2019, 150 were released due to served sentence.

The Commissioner receives separate appeals in the interests of citizens of Ukraine illegally detained in the temporarily occupied territories in Donetsk and Luhansk regions since the beginning of such occupation. Information on violations of the rights and freedoms of this category of persons is processed jointly with the headquarters of the Security Service of Ukraine, the International Red Cross and the UN Monitoring Mission in Ukraine.

IV. To questions 10 – on bringing the definition of the offence of “torture” into line with the provisions of the Convention

In order to bring the definition of the offence of “torture” into line with the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment the Government of Ukraine has developed and submitted to the Verkhovna Rada of Ukraine a draft Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine Concerning Harmonization of Criminal Legislation with Provisions of International Law” (Reg. № 0892 of August 29, 2019), agreed with the Commissioner.

However, due to the change in the Government of Ukraine in February 2020, this bill was withdrawn from consideration by the Verkhovna Rada of Ukraine.

To date, the Government of Ukraine has not submitted a bill of similar content to the Verkhovna Rada of Ukraine.

In addition, Ukraine has not yet officially ensured unconditional compliance with the provisions of the Istanbul Protocol in full. Its provisions are implemented in the practice of public authorities only partially.

In order to study the situation with recording of possible torture and further respond to possible cases of torture and other ill-treatment of persons in detention, anonymous surveys of police officers, penitentiary facilities and psychiatric facilities and psycho-neurological residential institutions and persons in appropriate institutions were provided during the NPM monitoring visits.

During the monitoring visits and questionnaires, the procedures for identifying and documenting cases of possible torture and further responding to possible cases of torture and other ill-treatment of persons in detention were investigated. In addition, appropriate procedures were sought for the victim to seek medical attention in connection with the injuries sustained by officials of the relevant places of detention.

The results of the study are reflected in the Special Report of the Commissioner "On the state of implementation of the provisions of the Istanbul Protocol in Ukraine as a tool for effective documentation of torture and other ill-treatment or punishment." The Commissioner's report provides recommendations to the central executive bodies on bringing the legislation of Ukraine in line with

international standards for recording the facts of torture and ill-treatment, as well as on the need to bring the provisions of the Criminal Code into compliance with the Convention and punishment in terms of defining the criminal offense of "torture".

The report will be submitted to the Verkhovna Rada of Ukraine in the near future.

V. To questions 20, 24 – on observance of the rights of asylum seekers

The article 26 of the Constitutions of Ukraine defines that foreigners and stateless persons may be granted asylum by the procedure established by law.

In accordance with the provisions of paragraph 2.2 of the Rules for consideration of applications and processing of documents necessary to resolve the issue of recognition as a refugee or a person in need of complementary protection, loss and deprivation of refugee status and complementary protection and cancellation of the decision on recognition as a refugee or a person in need of complementary protection, approved by the order of the Ministry of Internal Affairs of Ukraine dated 07.09.2011 № 649, the decision to accept an application for recognition as a refugee or a person in need of complementary protection is made by the State Migration Service of Ukraine during the working day when it was addressed by the person concerned.

Part 6 of Article 5 of the Law of Ukraine “On Refugees and Persons in need of Complementary or Temporary Protection in Ukraine” establishes a list of grounds on which an applicant for protection may be denied an application, namely: (1) if the applicant impersonates him/herself (2) if the applicant had previously been refused to be recognized as refugee or a person in need of complementary protection owing to the absence of conditions envisaged by Article 1.1.1 or 1.1.13 of the present Law, provided the abovementioned conditions have not changed.

However, during the NPM's monitoring visits in 2018-2019, the refusals to accept applications for recognition as a refugee or a person in need of complementary protection were repeatedly revealed, which is a violation of the Law of Ukraine " On Refugees and Persons in need of Complementary or Temporary Protection in Ukraine". That is, such persons were not actually admitted to the procedures for applying for international protection.

Moreover, in August 2019 a case was revealed that the State Migration Service of Ukraine made a decision on forced return of a citizen of the Republic of Tajikistan to the country of origin or a third country and a ban on entry into Ukraine for 3 years, which was declared illegal and abolished. At the same time, the citizen's failure to comply with the illegal decision on forced return within the specified period became the basis for his detention and further placement in the temporary accommodation center for refugees.

In addition, during the monitoring visits to the temporary accommodation centers for refugees, there were frequent complaints from foreigners and stateless persons that after their detention the State Migration Service of Ukraine did not provide them with copies of detention protocols, copies of court decisions on detention and placement in temporary accommodation center for refugees, copies of decisions on forced expulsion. Translation of these documents, participation of

qualified interpreters in court hearings and access to free legal aid during detention and consideration of administrative claims in courts are not provided. Thus, the detained foreigners do not have a real opportunity to appeal against the decisions made against them within the ten-day period provided by the legislation of Ukraine.

In 2018-2020, the Commissioner sent response acts, reports and letters to the Ministry of Internal Affairs of Ukraine, the State Migration Service of Ukraine, as well as the State Bureau of Investigation, prosecutors to investigate violations of citizens' rights.

It should be noted that the Ministry of Internal Affairs of Ukraine together with the State Migration Service of Ukraine has developed a draft Law of Ukraine "On Protection of Foreigners and Stateless Persons", which aims to address the above issues. The draft law was agreed with the Commissioner, but not today it has not been submitted to the Verkhovna Rada of Ukraine in the prescribed manner.

VI. To questions 27, 30-31 – on human rights violations in penitentiary institutions

Monitoring visits of the Commissioner's NPM in 2018-2020 showed that the facts of illegal use of physical force and special means against convicted persons continue to take place in penitentiary institutions. During of special regimes there is no video recording of all stages and measures taken by the administrations of institutions and rapid response teams against convicted persons and detainees, which leads to numerous violations of the rights of such persons.

Thus, during the monitoring visit to the Kropyvnytskyi pre-trial detention center (the visit took place in December 2019), a large number of complaints of torture and ill-treatment were received by the staff of the rapid reaction teams during the special regime in the institution - the use of tape to restrict movement, battery. The injuries received by the detainees were not recorded. Measures were taken to conceal the actual number of persons who received them. No medical assistance was provided to the victims. A total of 82 detainees and convicted persons were injured. Only after the Commissioner's intervention were prisoners' rights to medical care and legal protection ensured. The State Bureau of Investigation is conducting a pre-trial investigation of the facts.

The facts of degrading treatment by the staff of the penitentiary system and the total number of convicted persons to certain categories of convicts, the so-called rejected, are systemic. Such persons are forced to stay in unsuitable facilities, to perform the dirtiest work, constantly suffer from manifestations of ill-treatment by staff and other convicted persons.

The facts of torture and ill-treatment in Oleksiyivka Correctional Colony № 25 continue to be revealed. During the monitoring visit of the Commissioner's representatives to this institution in January 2020, it was established that during the special regime in the institution due to the use of physical force and special means 22 convicted persons were injured. As a result of the revealed facts, the State Bureau of Investigation is conducting a pre-trial investigation under Article 127 of the Criminal Code of Ukraine (torture).

Also, at the request of the Commissioner, the State Bureau of Investigation conducts a pre-trial investigation under Article 127 of the Criminal Code of Ukraine (torture) on the facts of detention in unsuitable for living in a bakery for more than 4 months (Zhovtovodsk Correctional Colony № 26) and on the facts of improper temperature, provision of drinking water and medical examination in conditions that violate the rights of convicted persons to respect for their dignity (Kamyanska Correctional Colony № 34) ”.

During 2018, the Commissioner received 1,666 complaints and grievances from citizens regarding human rights violations in penitentiary institutions, in 2019 there were 1,775 of such complaints (including 1,023 complaints on inadequate conditions in prisons, 43 - on violations of the right to liberty from torture).

During the monitoring visits in most of the visited pre-trial detention centers, there were violations of the Law of Ukraine “On Pre-trial Detention”, the Rules of Procedure of Pre-trial Detention Centers of the State Penitentiary Service of Ukraine, approved by the Ministry of Justice of Ukraine dated 14.06.2019 № 1769/5, in particular detainees do not have adequate living conditions, they are not provided with individual beds, most cells are overcrowded, and detainees are forced to sleep in turn. When placing prisoners, the administration of the institution does not take into account the actual area of the cells, as a result of which the statutory norm of the area per person is violated, as well as the right of the latter to eight hours of sleep at night, etc.

Most of the visits also revealed a dangerous condition of electrical networks in the cells, the use of which can lead to injuries or deaths, which indicates a danger to life and health of detainees and is a serious violation of the Rules of fire safety in Ukraine.

Convicted persons with disabilities are also held in penitentiary institutions and need constant third-party care and assistance. However, contrary to international and national norms, the institutions do not create comprehensive living conditions for people with special needs. There are no handrails, ramps, special holding cells, rehabilitation facilities or medical professionals to provide adequate facilities for the rehabilitation of this category of detainees.

It should be noted that in order to approach the legislation of Ukraine that regulates conditions of detention of detainees to the standards of human rights restrictions of the Council of Europe, in particular the CPT, the People's Deputies of Ukraine submitted to the Verkhovna Rada of Ukraine a Draft Law of Ukraine “On Amendments to the Law of Ukraine“ On Pre-trial Detention ”(concerning the implementation of certain standards of the Council of Europe) (Reg. № 0882 of 29.08.2019). The implementation of its norms would have a positive effect on the conditions of detainees in penitentiary facilities. The bill was adopted by the Verkhovna Rada of Ukraine in the first reading. However, it has not been submitted for the second reading yet.

VII. To questions 27, 30-31 – on the conditions of medical care in penitentiary institutions

For the second year in a row, the safeguards for the right of individuals to health care and medical care remains low in the vast majority of places of detention in the penitentiary system.

Significant attention was paid to this issue in the special reports of the Commissioner "On the state of implementation of the national preventive mechanism in 2018", "On the state of observance of the right to healthcare and medical assistance in pre-trial detention facilities and penitentiary facilities of the State Penitentiary Service of Ukraine in 2018" (the texts of these reports in English can be found on the official website of the Commissioner at the link: <http://www.ombudsman.gov.ua/ua/page/npm/provisions/reports/>).

These documents provided the Ministry of Justice of Ukraine with a number of recommendations on addressing the human rights violations and ensure adequate medical care.

However, there was no significant improvement in 2019. Lack of necessary licenses for medical practice, incomplete vacancies of doctors, lack of medicines, careless medical examinations, improper medical records characterize the state of realization of the right to health care and medical care in most penitentiary institutions.

The result of a joint study with the public on the state of observance of the rights of individuals to medical care in penitentiary institutions showed negative trends in this direction. The following issues remain unresolved:

- an adequate level of examination of detainees for tuberculosis and provision of medical care to patients with various forms of tuberculosis;

- continuous treatment with antimycobacterial therapy for prisoners suffering from a contagious form of tuberculosis;

- continuous treatment with highly active antiretroviral therapy for prisoners with HIV-positive status;

- concealment of the facts of receiving injuries by convicted persons and detainees during their stay in facilities;

- proper provision of medical units with the necessary equipment and medicines;

- failure to conduct or formal medical examinations of detainees upon release from penalty facilities or the use of special means;

- lack of medical care for detainees during their transfer (transfer of detainees with infectious diseases (tuberculosis) is conducted under general procedure of transfer, without providing the necessary isolation and personal protective equipment, which contributes to the deterioration of the epidemiological situation of tuberculosis).

During the monitoring visits of the NPM to penitentiary facilities, the facts of failure to provide adequate medical care were revealed. As an example, due to the lack of licenses for activities related to the circulation of narcotic drugs, psychotropic substances and precursors, multidisciplinary hospitals in the penitentiary system did

not provide surgical treatment (operations), due to the impossibility of using general anesthesia.

The order of interaction of health care institutions, internal affairs bodies, pre-trial detention centers and correctional centers on ensuring continuity of treatment with substitution therapy drugs, approved by the order of the Ministry of Health of Ukraine, Ministry of Internal Affairs of Ukraine, Ministry of Justice of Ukraine, the State Service of Ukraine on Medicines and Drugs Control dated 22.10.2012 № 821/937/1549/5/156, provides for the procedure for ensuring the continuity of treatment with drugs of substitution maintenance therapy of persons detained in penitentiary facilities.

Despite this, there are cases of discontinuation of maintenance therapy. Such persons undergo only detoxification in the institution.

Anti-epidemic and preventive measures in institutions need additional attention. Many institutions do not have commissions for infection control of tuberculosis, there are no infectious isolators.

Due to the lack of special transport designed to transfer patients to specialized tuberculosis hospitals for examination, diagnosis or exclusion, patients diagnosed with tuberculosis are transferred without taking into account the resistance profile and in some cases with other prisoners who do not suffer from this disease, that does not meet the requirements of infection control for tuberculosis.

At the same time, it should be noted that some recommendations of the Commissioner were implemented. In particular, in 2019, the implementation of recommendations on ensuring compliance with the requirements of the Order of the Ministry of Health of Ukraine, the Ministry of Internal Affairs of Ukraine, the Ministry of Justice of Ukraine, the State Service of Ukraine on Medicines and Drugs Control dated 22.10.2012 № 821/937/1549/5/156 "On approval of the Procedure for interaction of health care institutions, law enforcement agencies, remand centers and correctional centers to ensure the continuity of treatment with substitution maintenance therapy drugs." Thus, in 2019, antiretroviral therapy drugs for convicted persons and detainees were purchased for the first time (975 schemes). In accordance with the requirements of the Order of the Ministry of Justice of Ukraine dated 26.12.2018 № 4092/5, the protocol of the Pilot Project on the introduction of substitution maintenance therapy in the Bucha correctional colony № 85 was approved.

To date, the recommendation to ensure the licensing of hospitals, medical units and paramedics in penitentiary facilities are partially implemented in accordance with the laws of Ukraine "Fundamentals of the legislation of Ukraine on health care" of November 19, 1992 № 2801-XII, "On licensing of economic activities »dated March 2, 2015 № 222-VIII and Licensing conditions for conducting business activities in medical practice, approved by the Resolution of the Cabinet of Ministers of Ukraine dated March 2, 2016 № 285, and providing qualified personnel.

VIII. To question 41 – on means of restraint for persons with mental disorders

The ill-treatment in the context of excessive isolation, the use of statutory restraints (such as long-sleeved clothing for tying hands) remains common in the social security system.

In residential care facilities, the practice of applying physical restraint continues, including towards children aged 6 to 18 and young people for a long time by inappropriate means. For example, according to the wards of the Dnipro psychoneurological care facility of the Kherson regional council (the visit took place in September 2019), they are punished for violating the order and trying to escape by being tied to an iron bracket nailed to the floor by a chain. This fact was evidenced by the marks on the ankles of children left after fixation, and the specified bracket in the floor.

Monitoring of psychiatric care facilities in the health care system continues to identify cases of harassment of patients, which in some cases leads to their ill-treatment. The practice of applying physical restraint and / or isolation without documentary proof of this fact continues in a number of visited psychiatric care facilities.

Thus, during a visit to the Regional Clinical Psychiatric Care Facility in Slovyansk (the visit took place in February 2019), a person was found who had been handcuffed to his bed for six days. She was under the protection of police officers, who could not explain the reasons for such measures and provide a properly executed court order.

No hospital has separate wards for the use of physical restraint, fixation occurs in front of other patients. In some of the visited institutions, patients are fixed to beds with armored nets. This is a violation of clause 3.5 of the Standards of the CPT (hereinafter referred to as the CPT Standards) " Means of restraint in psychiatric establishments for adults" [CPT / Inf (2017) 6] and can lead to cruel treatment towards patients.

Analysis of the situation regarding the elimination of systemic violations of the rights and freedoms of persons detained in health care facilities, provided in the annual report of the Commissioner for 2018, special report "On the implementation of the national preventive mechanism in 2018", as well as the results of monitoring visits in 2019 indicate that such recommendations are partially implemented.

In particular, the recommendations on bringing the Rules of application of physical restraint and (or) isolation in the provision of psychiatric care to persons suffering from mental disorders and forms of primary accounting documentation, approved by the order of the Ministry of Health of Ukraine from 24.03.2016 № 240, in accordance with CPT " Means of restraint in psychiatric establishments for adults" [CPT / Inf (17)].

In May 2020, the Ministry of Health submitted a draft order to the Commissioner for approval, but its provisions did not fully comply with the Standards of the CPT of 21.03.2017 (in particular, the ban on physically restricting

patients in the presence of other patients). In this regard, the Commissioner provided proposals and additions to the draft act.