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**Alternative interim report by  
Ukrainian Helsinki Human Rights Union  
on implementation of recommendations,  
provided by the Committee against Torture based  
on the consideration of the sixth periodic  
report of Ukraine (CAT/C/UKR/6)**

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2015

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Видання присвячене аналізу забезпечення прав осіб із проблемами психічного здоров'я у відповідності із практикою міжнародних договорів. У звіті приділено увагу реалізації правоздатності, дотримання права на свободу у контексті примусової госпіталізації, аспекту інформованої згоди. Детально проаналізовано дотримання прав людини у психоневрологічних інтернатах. На основі здійсненого аналізу підготовлено рекомендації щодо можливості впровадження міжнародних стандартів до національного правового поля.

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The publication is dedicated to the analysis of Ukraine implementation problems of the right to freedom from torture and cruel, inhuman or degrading treatment. The report is built according to the recommendations made by UN experts on the results of their consideration of the sixth periodic report of Ukraine to the UN Committee against Torture. The report contains a number of proposals to authorities on legislation optimization and improving of the certain aspects of law enforcement activities.

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## Introduction



The Committee against Torture (CAT) considered the sixth periodic report of Ukraine at its 1254th and 1257th meetings, held on 5 and 6 November 2014, according to the article 19 of the Convention under the optional reporting procedure (CAT/C/SR.1254, CAT/C/SR.1257). At its 1272nd and 1274th meetings held on 18 and 19 November 2014 (CAT/C/SR.1272, CAT/C/SR.1274) the Committee adopted concluding observations for Ukraine. In accordance with the decisions made, the Committee requested Ukraine to provide, by 28 November 2015, the

follow-up information in response to recommendations, as contained in paragraphs 9, 10 (a) and 11 (a) of Committee's observations, concerning:

- (a) fundamental legal safeguards;
- (b) investigations into all allegations of the use of force by law enforcement officials;
- (c) the documenting and investigation of all acts of torture, ill-treatment, enforced disappearance and deprivation of life committed in the territory under its jurisdiction.

Considering social importance of Ukraine fulfilling its international obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Ukrainian Helsinki Human Rights Union prepared this alternative interim report in order to guarantee the Committee's impartial consideration of Ukraine's implementation of provided recommendations.

We express our appreciation for the aid provided by the experts of Kharkiv Institute for Social Researches and the Office of the Ukrainian Parliament Commissioner for Human Rights during the preparation of this report.

Arkadiy Buschenko,  
Executive director of Ukrainian Helsinki Human Rights Union

## List of abbreviations

- ATO – Anti-Terrorist Operation  
ARVI – Acute Respiratory Viral Infection  
DIZO – Disciplinary Cell  
SCES – State Criminal Executive Service  
SPS – State Penitentiary Service of Ukraine  
ECHR – European Court of Human Rights  
IR of PI – Internal Regulations of Penitentiary Institutions  
TCC – Temporary Containment Cell  
CEC – Criminal Executive Code  
CPT – European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment  
CC – Criminal Code of Ukraine  
CPC – Criminal Procedure Code  
MoH – Ministry of Health  
ICCPR – International Covenant on Civil and Political Rights  
NPM – National Preventive Mechanism  
NGO – Non-Governmental Organisation  
PKT – Cell-Type Premises  
SSU – Security Service of Ukraine  
SIZO – Pretrial Detention Facility  
PI – Penitentiary Institution  
UPR – Universal Periodic Review

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### **Concerning the items 7 and 8 of the List of recommendations (Definition of torture, Prosecution of acts of torture):**

In 2015 Amnesty International Ukraine published the report on torture in the anti-terrorist operation (ATO) zone in the East of Ukraine. The report was based on testimonies of people who were held captive by representatives of illegal armed groups, as well as detained by Ukrainian law enforcement officers, including SSU (total of 16 people)<sup>1</sup>. These people have marks of beatings of different severity levels or marks of other forms of ill-treatment that are confirmed with X-ray images, medical notes etc. In their turn SSU representatives declared their readiness to investigate facts mentioned in the report together with representatives of Ukrainian military prosecutor's office<sup>2</sup>. The above-noted case of use of torture by law enforcement officials is not isolated.

Ukrainian Human Rights Non-Governmental Organizations have more than once called on high-ranking officials to amend article 127 of the Criminal Code of Ukraine (hereinafter – the CC of Ukraine) in order to bring the term "torture" in conformity with article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. All of this is reflected in alternative reports by NGOs on the status of human rights in Ukraine.

It should be additionally noted that Ukrainian Parliament Commissioner for Human Rights in her 2015 report also recommended Ukrainian parliament to amend the national legislation respectively.

The primary goal of these recommendations is to give main definitions of the term "torture" in Ukrainian legislation, which means capturing in legislation the responsibility for conducting or encouraging the act of torture or torturing with the permission or the silent agreement from an official or a law enforcement officer.

The current legislation does not provide for responsibility of law enforcement officials for torturing while in the discharge of their duties.

As a result, prosecutor's office first opens criminal proceedings on violence conducted by law enforcement agencies based on preliminary legal assessment under articles 364 (abuse of authority or office), 365 (excess of authority or official powers) or 373 (compelling to testify) of the CC of Ukraine. Usually the above-noted assessment is permanent and is not supplemented by an additional assessment under article 127 of the CC of Ukraine.

Moreover, the second part of article 365 provides for responsibility for those actions, which were followed by violence or threat of violence, use of weapons or special tools that cause pain or degrading ones that leave no marks of torture. This leads to distortion and concealment of an actual situation.

**In view of the above-said we recommend Ukrainian Parliament to amend article 127 of the CC of Ukraine so that it will provide separately for stricter liability of law enforcement officers and public officials for torturing.**

According to the official statistics, 1025 prejudicial inquiries were started this year in criminal proceedings on torture or other actions related to ill-treatment of a person by law enforcement officers. Only 15 of these criminal proceedings were determined as acts of torture. Most of them were determined under article 365 of the CC of Ukraine (974 criminal proceedings).

We are also concerned that torture is punishable by up to five years of imprisonment (the CC of Ukraine, article 127, part 1), which makes it a crime of medium gravity. The second part of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment says that every State party determines adequate punishments for the crimes of this kind with due regard to their grave character. According to the provisions of the Criminal Code of Ukraine, grave are crimes, which are punished primarily by the penalty of not more than twenty five tax-free minimum allowances or by up to ten years of imprisonment. Our state has accepted obligations to implement international standards of human rights protection, therefore Ukraine has to take effective legislative measures to prevent acts of torture in accordance with requirements of article 2, part 1 of this Convention.

We believe that penalties for torturing under Ukrainian legislation do not correspond to the gravity of the offence and the requirements of this Convention.

<sup>1</sup> <http://www.pravda.com.ua/news/2015/05/22/7068694/>

<sup>2</sup> [http://news.liga.net/ua/news/politics/5831160-amnesty\\_zayavlya\\_pro\\_katuvannya\\_v\\_ukra\\_n\\_praviy\\_sektor\\_sprostovu.htm](http://news.liga.net/ua/news/politics/5831160-amnesty_zayavlya_pro_katuvannya_v_ukra_n_praviy_sektor_sprostovu.htm)

In this regard we recommend to amend article 127 of the CC of Ukraine as soon as possible with the purpose of enhancing the criminal liability for acts of torture. This crime has to be determined as a grave offence and penalties for it should meet requirements of article 12, part 4 of the CC of Ukraine.

Unfortunately, the analysis of draft laws proposed to Ukrainian Parliament shows that over the last 4 years only one draft law was registered (as of the 27th of June 2012 № 10679) on amending the CC of Ukraine with the purpose of enhancing the criminal liability of law enforcement officers for the acts of torture. The primary goal of the draft law is to enhance criminal liability for illegal acts that impinge on life and health of a person, as well as on personal integrity, and are followed by torture, cruel, inhuman or degrading treatment or punishment by law enforcement officers. However, the work on this draft law stopped within the Parliament of Ukraine and its further fate is unknown.

### **Concerning the item 9 of the List of recommendations (Fundamental legal safeguards)**

NGO experts together with experts from the Secretariat of the Ukrainian Parliament Commissioner for Human Rights point out numerous violations of rights and freedoms, as well as disregard of procedural guarantees for detained persons.

A special report was dedicated to this topic in particular, based on the study "Procedural guarantees for detained persons" done in 2014-2015.

In this study experts paid special attention to the observance of basic rights and freedoms by law enforcement officials while detaining persons and conducting the prejudicial inquiries in criminal proceedings. The study was focused on the following rights:

- right to information;
- right to legal aid;
- right to health care;
- right to special protection of vulnerable suspects (underaged, ethnic minority representatives, foreigners etc.);
- right to translation.

The results of this report published on 13 October 2015 on the official website of the International Renaissance Foundation<sup>3</sup> in general match the conclusions of international institutions concerning insufficient provision of legal safeguards to persons being detained on suspicion of committing criminal acts.

The report states in particular that detained persons are not virtually afforded all the fundamental legal safeguards from the very outset of deprivation of liberty. For instance, detained persons are often not informed of the possibility to have an access to a medical help; they are deprived of their right to legal help through uninformed or informing in undue time by the centres for free secondary legal aid, as well as through not giving lawyers an access to their clients; they are also deprived of their right to notify a member of their family or another appropriate person of their own choice.

In this regard Ukraine is encouraged to take further effective measures to guarantee that all detained persons are afforded, by law and in practice, all the fundamental legal safeguards from the very outset of deprivation of liberty, in accordance with international standards, including:

- ensuring that all persons deprived of their liberty are informed about their rights and provided with prompt access to a lawyer, in line with the legislation in force, and providing adequate financial resources for the effective functioning of the free legal aid system;
- providing detained persons with access to a medical examination by an independent doctor and, if requested, a doctor of their own choice, and ensuring that all health-related tasks in police stations are performed by qualified medical personnel;
- ensuring that detained persons are able to notify a member of their family or another appropriate person of their own choice.

<sup>3</sup> [http://www.irf.ua/knowledgebase/publications/zvit\\_z\\_rezultatami\\_doslidzhennya\\_protsesualni\\_garantii\\_zatrimanikh\\_osib/sib/](http://www.irf.ua/knowledgebase/publications/zvit_z_rezultatami_doslidzhennya_protsesualni_garantii_zatrimanikh_osib/sib/)

Starting with the adoption of new Criminal Procedure Code of Ukraine (hereinafter – CPC) in November 2012, there were positive changes in the field of providing the free secondary legal aid, notifying relatives of the detention etc.

Thus, the CPC in force foresees that an authorised official who has in fact detained a person has to immediately inform Regional centre for free secondary legal aid that the person was detained on suspicion of committing criminal acts. The above-noted is regulated by the article 213, part 4 of the CPC of Ukraine.

The maximum time for a lawyer to arrive since the moment the Centre is informed is two hours, in exceptional cases – seven hours.

However, in practice law enforcement agencies mostly inform the Centre only after the execution of a protocol of a detention on suspicion of committing criminal acts. There are also many cases when the time of actual detaining is not indicated in a protocol, which further leads to prolongation of detention.

This whole tampering leads to self-incrimination and follow-up false confession of crime.

Real dissatisfying is judges' failure to perform their general obligations aimed at human rights protection, as provided for in article 206 of the CPC of Ukraine.

**In this regard Ukraine has to establish a single national register of detained persons that includes factual details about detained person, including transfers, the exact date, time and place of detention from the very outset of deprivation of liberty and not from the time of writing of the protocol of detention.**

Together with the establishment of the register, the authority should introduce in activity of law enforcement agencies of Ukraine a detainee's personal file, which should be executed from the moment of detaining. A personal file should include all information concerning transfers, all procedural and other actions towards a detained person, as well as other information, which can directly or indirectly influence observance and protection of fundamental rights and freedoms of detained person and protect this person from illegal actions by state representatives.

### **Concerning the item 10 of the List of recommendations (Excessive use of force and killings)**

The whole world was concerned at events happening in Ukraine between 30 November 2013 and 20 February 2014. This goes primarily for the excessive use of force by government special and riot police, Berkut in particular, and other law enforcement personnel in connection with the popular protests throughout Ukraine.

The biggest issue was the dispersal of protesters in Kyiv on 30 November 2013, as well as events in December 2013 and the reported killings of protesters between 19 and 21 January 2014 and 18 and 20 February 2014.

The incidents in February 2014 were accompanied by so-called sniper killings by unknown assailants and other injuries of protesters, as well as of law enforcement officers.

The total number of people killed in Euromaidan events is 123 with 17 of them being officers of internal affairs agencies of Ukraine<sup>4</sup>. At the same time 27 persons are still listed as missing as of 13.10.2015 .

There was a concern at other crimes reportedly committed by law enforcement officers during the Maidan protests, including alleged beatings of medical staff seeking to attend the wounded.

Events in Odesa (2 May 2014) and Mariupol (9 May 2014) have also evoked concern over the loss of life and allegations of excessive use of force by the authorities. International community is concerned that the official investigations have been slow, remain incomplete and have not resulted in accountability. It was pointed out by International Advisory Panel of the Council of Europe (the Panel), as well as by the United Nations Human Rights Monitoring Mission in Ukraine.<sup>6</sup>

<sup>4</sup> <http://euromaidanos.org/uk/node/73>

<sup>5</sup> <http://euromaidanos.org/uk/znykli>

<sup>6</sup> Panel's conclusions on Odesa,  
[http://www.eurointegration.com.ua/articles/2015/11/4/7040301/;](http://www.eurointegration.com.ua/articles/2015/11/4/7040301/)  
<http://www.un.org.ua/ua/information-centre/news/1870>



As it was stated before in a progress report under the Universal Periodic Review by the the Coalition of Human Rights Organisations on preparation to the UPR, inefficiency of investigations into allegations of torture and ill-treatment by staff of internal affairs agencies and penitentiary service remains a big problem.

Prosecutor's office does not perform effective, thorough, prompt and impartial investigations into such allegations sufficiently. This leads to the loss of material evidence, such as video recordings from borough departments that are to be stored for not more than one month, to the wound and bodily injury healing etc.

Positive potential of the Criminal Procedure Code of Ukraine is not used properly. Moreover, law enforcement agencies learned how to evade those of its provisions, which in their opinion do not let them work. Unlawful use of force and killings in Maidan events remain without a proper investigation as well. Kidnappings and beatings of Maidan activists in Kharkiv, Donetsk and Luhansk, torturing and killing of civilians and prisoners of war, other crimes against their life and health, and violations of property rights remain uninvestigated.

In this regard Ukraine has to carry out complete, prompt, impartial, thorough and effective investigations into all allegations of the use of violence, including torture and ill-treatment by law enforcement officials, resulting in prosecution and punishment of those responsible, including for the incidents on the Maidan and in Odesa and Mariupol.

National and international experts are concerned at Ukraine still not having a relevant state agency with the authority to investigate crimes committed by the law enforcement officers.

The efficiency of prosecution agencies carrying out official investigations is extremely low, which gives victims of unlawful acts by law enforcement officers a reason to apply to the European Court of Human Rights.

It should be noted that on paper the legislation in force provides for the establishment of such agency. Thus, according to the provisions of article 216, part 4 of the CPC of Ukraine, investigations of such crimes is in the competence of the investigative agencies of the State Bureau of Investigation. According to the transitional provisions of the Code, Bureau has to be established by 20 November 2017.

On 12 November 2015 the members of Ukrainian Parliament adopted in thesecond reading the draft law "On State Bureau of Investigation" № 2114.

**In this regard Ukraine as soon as possible should implement the provisions of the newly adopted Law of Ukraine "On State Bureau of Investigation."**

### **Concerning the item 11 of the List of recommendations (Use of excessive force and grave violations of the Convention in the context of recent events in the east)**

International community is gravely concerned at reports regarding the use of torture, ill-treatment, enforced disappearance, deprivation of life and other serious violations of the Convention on the territory of Ukraine that are perpetrated in the context of the events, which have taken place since November 2013. Many of those reports concern above-noted areas where the Government of Ukraine does not exercise effective control.

In the spring of 2014 in the east and the south of Ukraine illegal armed groups started to form, whose main goal was to build the system of total terror and violence against civilians for the purpose of establishing control over the region. Takeovers of public buildings (primarily the buildings of local internal affairs agencies, as well as of SSU agencies, as it was possible to take possession of firearms, control weapons etc. illegally there), beatings, enforced disappearances, tortures, extrajudicial executions, enforced alienation of property, robbery of banks and commercial companies have become a common practice.

National experts in their progress report under the Universal Periodic Review pointed out system violations of articles of International Covenant on Civil and Political Rights (hereinafter – ICCPR) that guarantee the right to life (art. 6), freedom from torture (art. 7), freedom and personal inviolability (art. 9), right to free movement (art. 12), right to fair trial (art. 14), right to privacy (art. 17), freedom of thought, conscience and religion (art. 18), freedom of expression (art. 19), the right of peaceful assembly (art. 21), freedom of association (art. 22), non-discrimination (art. 26). All these violations of ICCPR articles are made under the organized system of terror against civilians that are in fact or are believed to be supporters of state sovereignty of Ukraine.

The report also states that there are no legal remedies for human rights in the territory controlled by illegal armed groups. Members of these groups in general follow verbal instructions of their leaders and have wide

powers as to self-decision concerning property, health and life of civilians. There are no institutes of human rights protection. So called "commissioners for human rights" of self-proclaimed "Luhansk People's Republic" or "Donetsk People's Republic" handle the exchange of war prisoners only. At the same time, despite the existence of the above-noted position there are "people's courts" being held within this territory and death penalties being carried out. Whole groups within the territory controlled by illegal armed groups are in distress now, including: national minorities, religious communities, LGBT representatives, persons affected by HIV, prisoners.

However, in spring and summer of 2014 a number of acts were adopted in Ukraine that contradict the national law and international standards on human rights. The necessity to adopt them was explained by the need for effective task execution by the state authorities for "neutralization of terrorists during ATO". This means giving law enforcement officers the right to use force, non-lethal and regular weapons in the ATO zone without warning; pre-emptive detention of persons involved in terrorist acts without any court judgement for up to 30 days; allowing prosecutors to authorize an arrest of a person on their own without any court judgement for a term of up to 3 days with the search of their property, access to their possessions and documents etc.

All of the above-noted can result in illegal detaining of persons that are not involved into crimes incriminated, followed by the detention in places that are not adjusted for this. Further, unpermitted methods of investigation may be applied to a person aimed at achieving the self-incrimination and false confession of crime.

In March 2014 the Office of the United Nations High Commissioner for Human Rights launched a monitoring mission on the evaluation and reporting as to the state of human rights in the East of Ukraine, as well as on providing the support for the government of Ukraine in promotion and protection of human rights<sup>7</sup>.

According to the United Nations Human Rights Monitoring Mission in Ukraine, provision of law was replaced by the power of violence in Donetsk Oblast and Luhansk Oblast, especially in the regions controlled by illegal armed groups that often include foreign fighters. The Mission documented the use of heavy weapons and indiscriminate shelling, resulting in killings of civilians.

The UN is particularly alarmed by the finding in the report of the High Commissioner for Human Rights that "armed groups continue to carry out abductions, physical and psychological torture, ill-treatment and other serious human rights violations", resulting in "a reign of fear and intimidation by the armed groups".

As it is stated in article 2, paragraph 2, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, "no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture".

The UN Committee draws the attention of Ukraine to paragraph 5 of its general comment No. 2, in which it states that those "exceptional circumstances" include "any threat of terrorist acts or violent crime as well as armed conflict, international or non-international."

On 8 September 2015 the United Nations Human Rights Monitoring Mission in Ukraine presented its report, in which it mentioned that since the beginning of an armed conflict in the east of Ukraine not less than 7 962 people were killed (including Ukrainian law enforcement officers, civilians and representatives of illegal armed groups) and at least 17 811 people received wounds of varying severity.

It is also mentioned in the report that between 16 May and 15 August 2015 the number of civilians who suffered from the armed conflict has doubled comparing to the previous period (between 16 February and 15 May 2015). Thus, over a period of report at least 105 people died and 308 people received wounds. Over a previous period 60 people were killed and 102 people received wounds.

**Ukraine has to undertake prompt, thorough and impartial investigations into all acts of torture or other ill-treatment, including enforced disappearances and deprivation of life, committed both by illegal armed groups and Ukrainian law enforcement officers in the ATO zone.**

It should be noted additionally that since the beginning of ATO citizens of Ukraine have approached human rights organizations regarding violations of rights and freedoms by the law enforcement agencies.

<sup>7</sup> <http://www.un.org.ua/ua/information-centre/news/1870>

The analysis of cases of approach mentioned above indicates numerous violations of rights and freedoms, including:

- right to freedom from torture;
- right to respect, honour and dignity;
- right to legally detain persons on suspicion of committing criminal acts in the context of national security;
- right to legal aid;
- right to notify close relatives of the detention.

Such violations are made by law enforcement officers (primarily SSU staff) while they are detaining persons on suspicion of committing criminal acts, as provided for in the first section of special part of the CC of Ukraine and/or in the ninth section "Crimes against public safety" (art. 258-3 "Establishment of a terrorist group or a terrorist organization", art. 260 "Establishment of militant and armed group unprovided by law" etc.)

The majority of such detentions is carried out in the ATO zone.

As the CPC of Ukraine in force provides for the pre-emptive detention for up to 30 days without court judgement, the above-noted persons are illegally held in places that are not adjusted for this purpose.

Unpermitted methods of investigation (tortures) are applied to the persons detained in above-noted places (such as basements, derelict building, pits), which results in their self-incrimination. Persons are also deprived of their right to protection, right to notifying relatives or others appropriate persons of their detention, right to medical help etc.

Further on, persons are taken to the extrajudicial investigation agency, where the official records of their detentions are made, the Regional centre for free secondary legal aid is informed etc.

Due to the threats of continuing acts of torture against them or their relatives, persons mentioned above may deny the fact of coercion (physical and/or moral) or state that they received their existent injuries in their everyday life.

There are cases when an investigating judge does not follow the provisions of article 206 of the CPC of Ukraine while choosing a safeguard, through inactivity and ignoring the claims of the suspect or the defender about detainee having visible injuries or about the use of unpermitted investigating methods against this person.

Thus, during the prejudicial inquiry an investigation officer may force the suspect to agree to be exchanged for Ukrainian military personnel, law enforcement officers, volunteers and other persons that are held captive by the representatives of illegal armed groups.

In case of such agreement, an investigation officer either submits an application to the court as to the change of a safeguard for a suspect to the one not related to the deprivation of liberty (if prejudicial inquiry is not finished), or an indictment is sent to the court together with the agreement for the confession of guilt.

Thereafter a suspect is released from custody. Next the above-noted person disappears and the relatives can not trace his or her whereabouts. In reply to the requests to the SSU (both to the central and regional offices) department officers report the lack of data as to the mentioned person being under their jurisdiction.

According to the information, which was not officially confirmed, the above-noted persons are held in SSU temporary containment cells in Dnipropetrovsk, Poltava and Kharkiv Oblasts. Some of them are waiting to be exchanged, but the majority has no formal legal status, which makes them highly vulnerable.

In November 2014 the staff of the Secretariat of the Ukrainian Parliament Commissioner for Human Rights together with human rights defenders visited temporary containment cells (TCC) of the Office of SSU in Kharkiv Oblast. The group was allowed to enter cells after 40 minutes of waiting in front of the Office building and did not register any facts of persons being illegally detained, although there were traces of people occupying containment cells recently. According to the Head of the Office the traces were left by the soldiers, who had come back from the ATO zone and were having rest there.

Additionally, there's the need to consider the statements by the relatives of the missing persons, which state that persons, who agreed for the exchange and with whom there is no connection, remain nevertheless on the SSU list for the exchange. SSU administration staff denies this information while answering to the requests of the relatives. Moreover, some of the persons who are now held in SIZO insist that after the actual detaining they

were held in SSU detention unit without the court permission or any other legal documentation, as well as without the minimum required level of communication with the outside world (incomunicado).

In this regard:

- the State has to end the practice of detaining persons without the required legal documentation and providing them with the possibility to exercise their rights under the law and regular proceedings;
- state agency, which manages the information as to the list of persons who agreed for the exchange for the persons who are held captive by the representatives of illegal armed groups, has to submit this information to the Ukrainian Parliament Commissioner for Human Rights, as well as to the Head of the United Nations Human Rights Monitoring Mission in Ukraine.

### **Concerning the item 16 of the List of recommendations (Parliamentary Human Rights Commissioner and the national preventive mechanism)**

National and international experts positively evaluated Ukraine's fulfilment of its international obligations, which was noted in the Optional Protocol to the Convention against torture ratified by Ukrainian Parliament in 2006.

Thus, in 2012 the Law of Ukraine "On the Ukrainian Parliament Commissioner for Human Rights" was amended, and in accordance with these amendments National Preventive Mechanism was established (hereinafter – NPM). In connection with this the Department on Implementation of National Preventive Mechanism was established within the Secretariat of the Ukrainian Parliament Commissioner for Human Rights.

Department consists of somewhat more than 20 people. Since being established the Department of NPM has paid 589 visits as of 31.12.14, and 736 visits as of 31.10.15. Unfortunately, at the same time the number of NPM's visits appears to decrease annually. Whereas 236 visits to penitentiary institutions were made in 2013, in 2014 this number was 157, and over the period of 10 months of the year 2015 only 147 visits were made. This decrease in visits paid to penitentiary institutions together with the decrease of relevant follow-up reports leads to the loss of NPM's efficiency and its influence on the state of observance of human rights and freedoms in Ukraine.

NGO representatives criticize the fact that NPM visits are often followed by the inspections of information given in complaints by citizens, which is not in NPM's competence, but in the competence of regional representatives of the Commissioner for Human Rights. This combination of functions does not meet the requirements of the Optional Protocol on NPM and weakens the effectiveness of the visits. In this regard human rights defenders have more than once recommended Office of the Ombudsman to use the work of NPM for the prevention of torture and ill-treatment only. Representative of the Office of the Ombudsman admit that the above-noted will be possible after the staffing resources of NPM are increased, as besides making visits NPM staff has to review citizens' applications concerning the conditions of detention in prisons.

It should be noted additionally that the current model of Ombudsman in Ukraine allows the visits of community leaders to the penitentiary institutions only with the participation of the representatives of the Office of the Ombudsman. This model of NPM decreases essentially the range and the number of visits. Thus, according to the information by the Kharkiv Institute for Social Researches there are around 6 thousand penitentiary institutions in Ukraine as of 2015. Many of them – up to 2 thousand penitentiary institutions – are controlled by the Ministry of Internal Affairs of Ukraine. This means that in order to visit all of the penitentiary institutions with the obligatory participation of the representatives of the Office of the Ombudsman 25 years are needed. However, budgetary assignments of the Secretariat of the Ukrainian Parliament Commissioner for Human Rights in 2015 remain the same as they were in 2014. Therefore for the third year of NPM's work in Ukraine the above-noted model needs to be changed for the other one, which will foresee the independent visits by the specially trained community leaders.

The shortage in staffing resources of the NPM Department, the lack of regional representatives of the Commissioner for Human Rights, as well as insufficient financial support from the state leads to the decrease in efficiency of response of the Ukrainian Parliament Commissioner for Human Rights to the numerous violations of human rights by state agencies and their officials. With this purpose the institute of regional representatives

of the Commissioner for Human Rights to act in Oblasts of Ukraine was established within the Secretariat of the Ukrainian Parliament Commissioner for Human Rights. 12 out of 15 regional representatives of the Commissioner for Human Rights act on a voluntary basis by special instructions. Other three are full-time employees of the Secretariat of the Ukrainian Parliament Commissioner for Human Rights.

**In this regard the Parliament of Ukraine is recommended to take the following measures:**

- the current model of NPM needs to be exchanged for the other one that will provide for the independent visits by the specially trained community leaders, which will allow it to broaden the range of visits and increase their number;
- to end the practice of using mandate and resources of National Preventive Mechanism against torture for it to perform the functions it is not meant to perform;
- to allocate additional financial and staffing resources to ensure the full and effective operation of both NPM and the institute of regional representatives of the Commissioner for Human Rights.

### **Concerning the item 18 of the List of recommendations (Training)**

According to the items 7 and 8 of this report, during 9 months of 2015, among 1,025 open criminal proceedings on illegal actions of law enforcement officers, only 15 proceedings were opened by prior legal qualifications specified by the Article 127 of the Criminal Code of Ukraine. One of the factors that affect the low efficiency of the prosecution bodies of Ukraine concerning the investigation of crimes committed by law enforcement officers is a poor legal awareness, including awareness of the international law.

The absence of it within a system of official training or poor study of certain provisions of national and international legislation on combating torture and ill-treatment, including best practices of the European Court of Human Rights and the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), results in ineffective investigation of torture and abuse, the intentional or unintentional destruction of evidence proving torture etc.

In turn, it shall be specified that the Ukrainian Parliament Commissioner for Human Rights, in the annual reports, has repeatedly specified the necessity for the prosecutors to carry on the effective investigations of torture and ill-treatment by the law enforcement authorities based on the best practices of the European Court of Human Rights. During the official investigations the prosecutors often limit their actions with interrogation of law enforcement officials. There are also certain cases of sending by the citizens applications about illegal actions of police to the authorities which are the subject of complaint; it contradicts both with the national and international legislation.

**In this regard it is recommended to the Prosecutor General's Office of Ukraine, the Ministry of Internal Affairs and the State Penitentiary Service of Ukraine to amend the system of official training for the study of the practices of the European Court of Human Rights and the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).**

#### ***Staff training at the State Penitentiary Service of Ukraine: assessment methodology for the training efficiency***

The Committee is right to remark the lack of special methodology for assessment of the efficiency of impact of training on human rights in penitentiary institutions upon the number of cases of torture and ill-treatment.

The current system of collecting statistics on ill-treatment in penitentiary institutions neither allows tracking of the impact of education and training upon the change of the number of such incidents, nor generally allows monitoring of general patterns of the prevalence of torture in these institutions.

In addition, at the time when a certain amount of personnel takes respective training on the Convention, there remains a large part of the personnel that does not take such trainings. Even taking into consideration the refresher courses, which are held regularly, but rather seldom, their short duration does not offer the possibility of good study of material on the Convention and other standards for the prevention of torture and ill-treatment. It means that there is the possibility of distortion of indicators concerning the impact of study upon the dynamics of reduction of cases of torture and ill-treatment, as part of the staff that can perform such acts has a completely different level of training. This situation requires differentiated statistical information with reference to the level of training of the staff representative guilty in such acts.



### ***Staff training at the State Penitentiary Service of Ukraine: further improvement of training programs to familiarize with the Convention***

As practice shows, the staff of the penitentiary institution does not distinguish the UN Convention against Torture and the European Convention for the Prevention of Torture. The study of the UN Convention itself is in most cases conducted formally, it is limited with general wording on its contents and without studying of the details of its interpretation. There is also no attention paid to the way how the provisions of the Convention are translated into practical requirements during the service. Especially the lack of explanations concerning the practical consequences of the Convention in simple terms is the reason for arrogant attitude towards its provisions by the staff taking the appropriate education and training.

The formal approach to learning, it is too detached from practice nature are also topical issues concerning the programs on human rights education. That is why the drawing attention by the Committee to the necessity of assessment of the effectiveness of training programs on the prohibition of torture and ill-treatment is particularly relevant and equally applies to assessment of the efficiency of other educational programs on human rights.

In item 145 of the Government report there is attention drawn to the work done by the Government Agent for the European Court of Human Rights in training of law enforcement authorities. It shall be confirmed that the Agent actually performs relevant work concerning SPSU institutions. It is performed within adoption of general measures to implement the decisions of the ECHR against Ukraine. In addition, the familiarization of staff working directly with prisoners on the content of decisions on torture (as well as other solutions) is, at the best, formally performed, by affixing their signature on a document confirming the fact of familiarization.

### ***Staff training at the State Penitentiary Service of Ukraine: provision of training on compliance with the Code of Conduct for Law Enforcement Officials<sup>8</sup> and Basic Principles on the Use of Force and Firearms by Law Enforcement Officials<sup>9</sup>***

According to available information, training programs of the SPSU do not include issues concerning the Code of Conduct. Instead, there is the study of the Council of Europe Code of Ethics for Prison Staff.

Also, the Code of Conduct is not available for all employees of the penitentiary institutions, i.e., it is not printed and available in penitentiary institutions.

With regard to the Basic principles, they are only briefly studied by the penitentiary staff. Detailed review does not take place. In turn, in practice, the use of force and weapons is made only based on the national legislation and meeting the requirements with the service regulations.

## **Concerning the item 19 of the List of recommendations (Conditions of detention and deaths in custody), in the part concerning the SPSU**

### ***Architecture***

Specificity of the architecture of Ukrainian prisons is connected with the Soviet past. The Soviet philosophy of penalties provided that the convicted person should be corrected by bringing to work and "by the collective and through the collective". The consequence of such approach, alongside with the massive use of the punishment in form of imprisonment, is the construction of the penitentiary institutions of a collective type or "colonies" – as they are called in Ukraine. Penal colonies are prisons with the barrack type wards. Usually, convicted persons live there not by one and not by several individuals, but in groups. And mostly these are large groups.

Keeping people in specified collective institutions causes a number of problems concerning the terms of human rights:

#### ***1. Management.***

One head of unit is in charge for each premise where there is held a large group of convicted persons. In accordance with established practice one head of department can be in charge for from 60 to 100 prisoners.

<sup>8</sup> Code of Conduct for Law Enforcement Officials

<sup>9</sup> Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (adopted at the eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders).

On average this number is about 60-80 people. In other words, the usual situation is when one member of staff is responsible for almost one hundred of prisoners. This ratio makes it impossible to talk about efficient management. Heads of departments apply the legal possibility of appointing assistants from among the prisoners (they are called orderly men). However, there are also cases where there are leaders without formal authority appointed from among the prisoners. It is through formal or informal leaders from among the prisoners the heads of departments have to administer the prisoners.

This situation leads to a large number of violations of human rights. First of all, it is the violence among convicted persons themselves. Leaders from the convicted persons, appointed by the administration of the institutions, using the support of the staff, often use psychological and physical violence to maintain order in their units. Thus the penitentiary staff is able to avoid liability, even when cases of torture or ill-treatment are detected by the controlling entities. It is difficult to prove their involvement, and especially involvement to proceedings in such cases, even when it is known about incitement from them<sup>10</sup>. Victims-convicted persons, fearing reprisals from the other prisoners, do not dare to complain of violations to the authorities in charge or to disclose information to the public.

The issue of informal leaders (both in prisons and in detention facilities) has been emphasized by the Committee against Torture of the Council of Europe (see, e.g., reports on visits in 2002 (item 92), 2005 (item 92), 2012 (paragraph 25) and 2013).

For example, in report dd. 2005 the Committee against Torture stated the following: "In its report on the visit of 2002 (item 92), the Committee against Torture recommended for the prisoners- orderly men not to perform tasks associated with maintaining order and control. Though it continued in 2005, especially in penal colony No.61, where, in addition, the orderly men have an impact on the application of disciplinary sanctions. The Committee against Torture recommends terminating such practice in the future." The same report contains links to the European Prison Rules updated in 2006, where item 62 states that no prisoner should be vested with any disciplinary powers.

In addition, the Internal regulations of penal institutions (hereinafter - IR) contain standard that in order to ensure proper internal order in dormitories the administration of institutions may in addition impose on such persons other duties, which are not inconsistent with the legislation. However, Ukrainian legislation does not contain a direct prohibition concerning granting to the convicted persons certain functions of the SPSU staff, so this rule leads and will lead to abuse of powers. Annex No.23 of the IR, which determines the duties of an orderly man, grants too broad powers over other prisoners and should be changed.

It shall be noted that, alongside with the mass collective accommodation, a large number of penitentiary institutions perform accommodation in smaller premises, where can be kept from 8 to 30 people. These facilities are sometimes called "block" premises and their equipment is considered progressive achievement of the administration of institutions. It is believed that such premises have to simplify the outlined problem. Though, alongside with the positive results, in practice it has harmful consequences that could affect management. It is about appointment of responsible leaders among convicted persons by every such premise.

In addition to the outlined complications of management, collective accommodation of prisoners complicates carrying out of searches of premises and leads to increased conflict situations when such searches take place. At night the control over prisoners is also inevitably complicated.

## **2. Privacy**

In areas with a large number of convicted persons there is actually the ongoing interference with the privacy right. Almost complete lack of opportunities to be left alone, not taking into consideration the cases of disciplinary actions and certain short moments, is a significant interference with the right for privacy. It leads to various attempts of convicted persons to avoid such intervention, such as curtaining their beds (mostly double-deck) with sheets to remain in private. On the other hand, such actions are the violation of the discipline, as well as they are prohibited by the Internal Rules of Conduct (section 3, item 3).

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<sup>10</sup> Good example is the decision of the ECHR - Yuri Illarionovych Shchokin against Ukraine.

Under such circumstances, the convicted persons shall constantly be surrounded by other prisoners and be the subject to various inconveniences - extraneous noises and smells. There are frequent complaints of prisoners concerning cases where such accommodation leads to a variety of transmissible diseases, such as ARVI or/and tuberculosis.

### **3. Violence among convicted persons**

In addition to violence, which is a consequence of appointment of leaders among convicted persons to ensure order, the collective accommodation has other, equally serious consequences, i.e., domestic violence among convicted persons. Cohabitation with a large number of persons, especially with a criminal background, inevitably leads to systematic conflicts, which in some cases may result in mental and physical violence.

In addition, vulnerable prisoners, being in a constant environment of other prisoners are particularly at high risk of violence and discrimination.

Taking into account the mentioned arguments, it is necessary to ensure the gradual transition from the collective system of accommodation to the ward system. Moreover the ward system shall not mean accommodation in one unit of 3 or more people, because in that case there are the conditions for the continued use of an existing type of management and ensuring of order and security in the institutions - involving the convicted persons as assistants by the administration of penitentiary institutions.

#### **Accommodation standards**

In accordance with the Law of Ukraine "On pre-trial detention" the area in a ward for one person taken into custody shall not be less than 2.5 square meters, with the exception of pregnant women or women with a child with them; in such case this standard is not less than 4.5 square meters. Such standard does not comply with generally accepted international standards, requiring the area per person to be at least 4 square meters.

In addition, there are systematic violations through misallocation of preliminary imprisoned persons in institutions, and, as the consequence, overcrowding of some wards. The problem of irrational use of potential of accommodation of preliminary detention institutions was repeatedly announced by the international institutions. The same applies to penal institutions.

The Ukrainian legislation defined area of residence per one convicted person, i.e., 4 m<sup>2</sup> (article 115 of the Criminal Executive Code of Ukraine). However, a formal approach to the established standard sometimes leads to unexpected consequences. For example, placing the convict to the camera, which is 4 square meters, means that its size is a bit larger than a common bed. No wonder, the CPT clearly stated that the wards less than 6 square meters shall not be used at all (item 59 of the 21st General report). For a long time, in item 112 of report on visit to Ukraine in 1998, Ukraine was recommended not to use wards less than 6 square meters to keep one person. While the State Department for the Execution of Sentences replied that there was no financial ability to meet this requirement. At the same time the Committee highlighted certain standards, such as that ward, area of which is 8-10 square meters, shall not be used to accommodate more than two persons and wards with an area of 11 square meters shall not be used for more than 3 persons, and ward with an area of 15-17 square meters shall not be used for more than 4-5 people.

Subsequently, the issue was corrected, which was confirmed by the following visits. For example, in item 148 of the report on the visit in 2009 there was stated the following: "Some disciplinary wards were not suitable to accommodate prisoners because of their limited size (for example, from 4.5 to 5 m<sup>2</sup>), moreover, some wards were too narrow (1.3 m) ..." and therefore it was recommended that the wards less than 6 square meters were decommissioned or enlarged. Also, in item 89 it was recommended that all wards have at least 2 meters between walls. The same observations (minimum 6 square meters in the ward per one person and at least 2 meters between walls) were indicated in the report of 2012 (item 45), in addition, it was clarified that the square meters shall be counted without area of toilets.

Today all these demands are not taken into account, including the neglect of the area of the sanitary facilities in a proper calculation of living space per one person. However, it should be noted that the Verkhovna Rada registered the Draft Law of Ukraine "On Amendments to the Law of Ukraine "On pre-trial detention" (on the implementation of certain standards of the Council of Europe), which, if being adopted, will change existing standards.



The current construction standards of disciplinary detention centres do not meet modern standards. For example, in punishment cell of pretrial detention centre it is allowed to use asphalted or concreted floor without any covering (Annex 30 to the Internal regulations for detention centres of the State Penitentiary Service of Ukraine). According to the previous version of the Internal Regulations, the rules relating to the fencing of toilets in cells of disciplinary isolation wards and ward-type premises, punishment cells and areas of the maximum security of the penitentiary institutions there are equipped the sanitary facilities with mandatory fencing with a solid wall with a minimum height of 1 m (item 17). The same rate was fixed for the toilets at stations on intensive control (item 16). In item 46 of the Report of the European Committee for the Prevention of Torture about the visit to Ukraine in 2012 in the context of specific institutions it was recommended that the toilets were completely separated, to the ceiling. However, according to the available preliminary information the relevant regulations were not significantly amended and were included into the Constructions codes, i.e., regulation, which regulates in detail the material living conditions and is under approval.

Common practice for Ukrainian penal colonies is assembly of lattice in most premises and on all windows of the disciplinary isolation wards and ward-type premises where convicted persons are kept in case of disciplinary actions. In many cases, this approach leads to insufficient natural light to such an extent that the convicted persons have to serve disciplinary action in terms of partial darkness even during good weather.

Attention shall be drawn to the fact that according to the Internal regulations both detention centres and penal institutions the beds during the day in the isolation wards are locked, folded to the wall, depriving the possibility to lie on them during all day. Persons, who are in these premises, have to sit all day, usually without any useful activity (excluding one-hour walk). In addition, they, like the person from the premises of ward-type, according to the Criminal Executive Code of Ukraine automatically lose the right for visits, and phone calls. In accordance with part 11 of article 134 of the Criminal Executive Code of Ukraine during this stay they are prohibited from purchasing food and the necessaries of life, receiving parcels and packages, use of board games.

#### ***Transportation issue***

The problem of improper transportation conditions of prisoners remains unresolved. This problem was in detail processed by the National preventive mechanisms. By results of its activities the attention was drawn to the following<sup>11</sup>.

The Internal Troops of the Ministry of Internal Affairs of Ukraine were the only public entity that performed the escorting by railroad transport the persons placed under detention and convicted. For performing of this task the internal troops rented 29 special carriages of "ST" type from "Ukrzaliznytsia" (the State Administration of Railway Transport of Ukraine), which served 143 convoy routes. Over 90% of these carriages operate for more than the prescribed period (28 years) and are obsolete.

Starting from 2005 the General Administration of the Internal Troops of the MIA annually appealed to the Ministry of Infrastructure of Ukraine to take the necessary measures for the renewal of the special carriages "ST", stipulating in the State Budget of Ukraine funds to purchase modern special carriages meeting international norms and standards, though this issue has not been positively resolved yet. The audit conducted by the office of the Ukrainian Parliament Commissioner for Human Rights defined that the carriages are in improper condition. There is no ventilation in the carriages, making unbearable conditions during hot season both for persons taken into custody and imprisoned and also for the servicemen of the internal troops. During cold season it is cold in the carriages because of outdated heating systems working with solid fuel.

To ensure communication there used the tube radio stations, which are constantly breaking down, endangering the timely receipt of assistance to the escort in case of violence among detained and in respect of convoy personnel from the arrested and convicted persons, their attempts to escape, fire and so on.

The wards of special carriages with a total area of a bit more than 3 square meters, equipped with rigid benches with width of 0.5 meters (bedding and mattresses are not provided) sometimes are used to carry up

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<sup>11</sup> Annual Report of the Ukrainian Parliament Commissioner for Human Rights on "State of Observance and Protection of Human Rights and Freedoms in Ukraine". – K., 2013.

to 12-16 people. Accordingly, the carriage, designed to carry up to 70 people, simultaneously carries up to 100 or more people.

Special carriages are equipped with only one sanitary facility for prisoners and convicted persons and one sanitary facility for military personnel, making it impossible for the prisoners to relieve natural functions when needed under clean and decent conditions. Transported persons have no constant access to drinking water. They are also not provided with hot meals due to lack of conditions for cooking. Given the length of stay of persons taken into custody and convicted persons under such conditions (for example, route Vinnytsia-Cherkasy takes for almost four days), such conditions can be considered as cruel and degrading treatment and punishment.

In addition, the problem is evidenced by the European Court practice (for example, decision on "Yakovenko against Ukraine", "Taran against Ukraine"). Thus, in case "Taran against Ukraine", the Court found a violation of Article 3 of the Convention because of inadequate conditions of detention and transporting of a prisoner from the pre-detention centre to temporary detention facility for a few days for investigation. It happened 45 times. Although the transportation lasted about two hours, the applicant had to wait about 22 hours in a metal ward inside the car, with the area of the ward of 0.5 square meters. During transportation he did not receive food or water, and he could not sleep. The ward was dirty, it was cold in winter and hot in summer, it was not ventilated properly. However, the implementation of this decision is poor. Upon presentation of the Acting Government Agent before the European Court of Human Rights, the general measure for implementation of this decision included the following: "to ensure proper conditions of transportation of persons in custody". There was also expressed the "request" to bring this decision to the attention of prison staff to bring administrative practices into correspondence with the Convention. However, the direction on the implementation of this decision to the heads of territorial authorities of the SPS of Ukraine by the First Deputy Head of the SPSU did not contain a single word on taking general measures in respect of a violation of article 3 of the Convention.

The respective consequences of improper execution of decisions of the ECHR on the conditions of transportation continue resulting in new decisions of the ECHR against Ukraine. For example, there is information in our disposal about the court proceeding of a new case "Matiushonok against Ukraine". Thus, Matiushonok separately complained of the conditions of transportation to the three institutions of SPSU: pre-detention centres of Dnepropetrovsk and Vinnitsa, Ladyzhyn penal colony. He pointed out that during his transportation to the Dnipropetrovsk pre-detention centre, his hands were handcuffed, and it caused him considerable pain. Upon arrival to the institution he did not receive the medical treatment after complaints of pain in hands. According to him, during the transportation to the Vinnytsia pre-detention centre No.1 he received food on March 8 at 6:50, but the next meal was provided only at 12:30 on the next day. Similarly, according to him, during departing to Ladyzhyn colony his hands were handcuffed behind. There was lack of space in the special vehicle for transportation, thus the applicant and other persons (11 people) had to sit on one another.

In context of the case of Matiushonok it shall be separately emphasized that the conditions of departing are poor not only in the carriages, but also in special vehicles. Normative regulation of the transportation and substantive conditions on such transportation as the conditions themselves leave much to be desired.

Thus problems of obsolete vehicles and carriages, unclear regulation of departing process (except for the order No.698/27143, which, however, applies only to convoy to participate in court proceedings) remain unresolved.

### ***State program***

The Resolution of the Cabinet of Ministers of Ukraine No.71 passed dd. March 5, 2014 "Some issues of optimizing state programs and national projects, budgetary savings and ceasing as invalid some acts of the Cabinet of Ministers of Ukraine" terminated implementation of the State Program of Reforming of the State Criminal Executive Service for the years 2013-2017. In accordance with the Specification of the Program, its implementation had to involve UAH 6,011.73 million that is slightly more than UAH 6 bln, it approximately amounted to 1.6% of the planned revenues of the State budget in 2013.

About a third of the funds had to be spent on designing and construction of facilities for carrying out the pre-detention centres and penal facilities from the central part of cities Lviv, Odesa and Kherson (UAH 2,051.7). Although the task, to which the event related, was called in the program "Improving of the detention conditions

of prisoners, transition from detention in barrack dormitories to block (chamber) placement with increasing of living space per prisoner by technical re-equipment and reconstruction of the penal institution, construction of new and reconstruction of existing pre-detention centres" and its general funding was UAH 2,802.07 million, including the aforementioned UAH 2,051.7 million. That is a departure from the collective accommodation in the colonies was not a priority.

The amount of estimated funds for implementation of the task "modernization of engineering and technical means of protection and surveillance, implementation of modern technology to create a multi-level system of centralized protection and video monitoring, automated information and telecommunication systems of the State Penitentiary Service of Ukraine" amounted to UAH 1,107.01 million, whereas the task "improving the catering for convicted persons and persons taken into custody, system of food and the necessities of life procurement, and provision of utility equipment" had to involve in total UAH 123.96 million; the modernization of engineering infrastructure facilities (such important areas as heating, water supply, drainage facilities, etc.) had to involve - UAH 400.52 million, to enhance the effectiveness of the punishment other than imprisonment (including to found the probation service) - UAH 0.64 million.

UAH 179.57 million was allocated for the health care system for convicted persons and persons taken into custody, and for improving the quality of medical care, that is only about 1/33 of the overall funding of the program, and only 1/4 of the amount that had to be spent on the modernization of the penal institutions.

In any case the cancellation of the Program significantly complicated the conditions of detention. However, even if the document has not been cancelled, the allocation of budget funds pointed out that human rights and improvement of detention conditions were not a major priority, the most important were the economic and security priorities. Therefore, the Program needs restoring with the rational redistribution of funds to improve the material living conditions and other aspects related to the rights of prisoners.

#### ***As for the construction of new prisons***

On October 7, 2015 the Cabinet of Ministers of Ukraine adopted Resolution No. 1066-p "Some questions of reforming the functioning of penal institutions and detention centres". According to the document, following decisions were taken:

1. To accept the proposal of the State Penitentiary Service of Ukraine to liquidate the Chernivtsi penitentiary department of the State Penitentiary Service in Chernivtsi region (No. 33) due to ultimate limit state of buildings and structures, where the specified establishment is located, and due to its location in close proximity to the historic centre of the city Chernivtsi, objects belonging to the UNESCO World Heritage List, and educational institutions. According to the applicable legislation the State Penitentiary Service shall develop and adopt an action plan to liquidate the Chernivtsi penitentiary department of the State Penitentiary Service in Chernivtsi region (No. 33).

2. Within two months (at the first phase of reforming) the Ministry of Justice shall make proposals on feasibility of taking away from cities Kyiv, Lviv, Odesa and Khmelnytsky the detention centres and penal institutions of the State Penitentiary Service.

3. The Ministry of Justice and the Ministry of Economic Development and Trade and the Ministry of Finance, considering the initiatives of local governments (if any), within three months shall submit proposals on ways and sources of financing of the construction of the modern European detention centres and penal institutions, including public tenders for attraction of private partners in the framework of the principles of public-private partnership under the Law of Ukraine "On public-private partnership" applying the principles of transparency, objectivity and non-discrimination.

4. The Ministry of Justice, the State Penitentiary Service, and the State Service of Ukraine for Geodesy, Cartography and Cadastre, in cooperation with regional state administrations shall elaborate the issue of search the land plots for the construction of modern detention centres and penal institutions of the State Penitentiary Service.

Available information indicates that these provisions are the initiative of the Ministry of Justice of Ukraine, which considers the possibility of selling the land where there are located the detention centres in the city centre; it will partially allow financing of the construction of more compact and comfortable facilities outside the cities.

The public has certain concerns that the activities outlined in the public-private partnership regarding the construction of new detention facilities bear serious corruption risks, which ultimately could affect the upholding of the rights of prisoners. Particularly worrying is the closure of institutions such as detention centres without availability of nearby newly built facilities, to which the prisoners could be transferred. It can cause a number of problems:

- prisoners will be transferred to pre-detention centres of other regions;
- distance from the courts, reduced opportunities for direct participation in court hearings, resulting in violation of the right for adequate protection;
- distance from the investigators leading to complications and delay of the investigation process;
- distance from home, difficulties for relatives concerning visits, provision of food and etc.

It must be emphasized that according to supervisors of certain pre-detention centres, business entities are not ready to invest in construction of new facilities, with the prospect of obtaining land where the pre-detention centres are located, after the prisoners will be transferred to the new institution, built by the same business entity. Instead, business entities are willing to invest in construction of new institutions providing immediate release of land for the pre-detention centre, taking no interest in the place where the prisoners will be transferred.

Therefore, it is necessary to ensure the detailed planning of such serious steps as demolition or closure of some institutions to avoid serious violation of human rights. An additional threat within "spending" of funds of investors, planned to attract to construct and reconstruct the institutions is the abuse within involving prisoners to work.

It shall be also noted that on June 22, 2015, the First Deputy Minister of Justice of Ukraine N. Sevostyanova announced the government's intention to remove from operation or liquidate 19 prisons "the performance of which is economically impractical". These steps shall be thoroughly planned, because, despite the significant reduction in the number of prisoners in recent years, closing of certain facilities may lead to disproportionate location of prisoners (which among other can cause a violation of privacy because of the distance from homes) and overcrowding in some institutions.

### **Management**

In addition to the above mentioned problem of prison management, which is associated with their specific architectural features, other aspects can be also added:

#### **A) Financing penitentiary facilities**

According to SPSU penitentiary facilities receive only 34-37% of standard required financing<sup>12</sup>. Extreme underfinancing, besides the obvious effect on upholding human rights and providing adequate detention conditions, has a negative impact on prison management. This means, that penitentiary facilities are forced to "seek" the missing funds (i.e. more than a half of the standard required financing) on their own. In other words a clear policy of financial self-sustainment is introduced. This policy was widely implemented in the Soviet period, when prisons were viewed as not just self-sustaining but also had to contribute a large share of the budget revenues. The penitentiary industry was considered a common source of budget revenues.

Self-sustainment places a huge burden on the establishments' management. Hence, the management is primarily concerned with financial survival, rather than managing prisoner, since a more or less successful operating of the system depends on it. Department heads and consequently chief officers of penitentiary facilities are forced to search for sources of funding, "so that inmates would not starve to death". Penitentiary facilities operation is focused mainly on production figures. One of the primary objectives often pointed out by the chief officer at morning staff meetings of an average penitentiary facility is the issue of production targets: "How much did you do yesterday?" and "How much will you do today?"

As to the current operating the legal framework for self-sustainment philosophy of penitentiary facilities was prescribed by article 13 of Law of Ukraine "On the State Criminal Executive Service of Ukraine". Besides, previously the article provided that enterprises of penitentiary institutions were "state-owned enterprises carrying

<sup>12</sup> Priority areas of SPS of Ukraine for 2015 // [http://kvs.gov.ua/Dost\\_publik/Propozicii\\_2015.pdf](http://kvs.gov.ua/Dost_publik/Propozicii_2015.pdf)

out non-commercial activities for non-profit reasons to provide vocational training of the inmates and engage them in work". Thus, officially the entire income was used to finance the institution. In 2012 this article was amended and now enterprises of a penitentiary institution are "public enterprise carrying out business and vocational training of inmates". Thus the pursuit of financial profit became even more evident and the profit gained could be used for purposes other than self-sustaining the prison.

The main objective of prison enterprises i.e. helping convicts and other inmates develop skills that they may find useful after returning back to society is being overshadowed by business priorities. During the visit to Ukraine from 1 to 10 December 2012 CPT stressed this issue (clause 26 of the Report): "The CPT recommends that staff-inmate relations in correctional colonies be geared towards facilitating social reintegration of prisoners, safe progress towards release and reducing the risk of re-offending after release through a program of purposeful activities tailored to their individual needs. As regards in particular work, the interests of the prisoners should not be subordinated to the pursuit of financial profit from industries in the establishments concerned". Also CPT reminded the rule 26.8 of European Prison Rules that: "Although the pursuit of financial profit from industries in the institutions can be valuable in raising standards and improving the quality and relevance of training, the interests of the prisoners should not be subordinated to that purpose".

Hence major underfinancing of penitentiary facilities has a direct negative impact on management of the establishments concerned. Business activity of correctional facilities' management impairs regulation, daily routine and security, and the true objectives of the penitentiary system - individual rehabilitation and facilitating future reintegration - are being lost. Furthermore, such underfinancing causes a string of negative implications for ensuring prisoners' rights, as well as the right to be detained in appropriate conditions.

### ***B) Dynamic approach to security***

Prisons' management in Ukraine is based on the static approach. This means that management relies mainly on special means and techniques grossly interfering with the private life (regular, unjustified searches, including strip searches, systematic application of handcuffs, force and abuse of video surveillance technology). Dynamic approach implies close contact of the prison staff with inmates, which helps the latter to stay in touch with the "out-side world". The principle guiding that staff and inmates should be closer ("friendly but not friends") effects the ability of the prison staff to keep track of hidden matters among inmates. This approach requires a change of the staff-to-inmate ratio, since it implies closer relations and a tailored approach to their needs. Similarly this approach cannot be properly implemented in multiple-occupancy cells and requires construction of new penitentiary facilities with separate cells.

In accordance with Law of Ukraine "On personnel of the State Criminal Executive Service of Ukraine" total personnel working in penitentiary facilities and pretrial detention facilities should make up 33% of total inmates. However this ratio concerns the entire staff working for the Service, as well as management and administrative staff. Thus, the staff-to-inmate ratio of personnel in direct contact with inmates can be extremely low. As mentioned above one senior unit officer can be assigned to supervise up to a hundred prisoners.

The issue is aggravated by the fact that a substantial decrease in inmate numbers (about in half) demands a similar decrease in staff. There is a concern that this, along with the lack of highly qualified personnel willing to work in penitentiary institutions, can result in collapse of prison management and overall operation of penitentiary facilities. For normal operation of a penitentiary institution it's essential to insure a fixed number of staff, which could only be slightly downsized upon inmates' decrease, since the number of staff required for security and supervision remains practically the same even when several dormitories are being temporarily closed down.

Considering this the existing principle for estimating a marginal staff-to-inmate ratio can have serious negative implications. Hence estimation of the staff-to-inmate ratio should be customized to requirements of each establishment. Additionally implementation of the dynamic approach based on positive staff-inmate relations is essential for preventing abuse and can only be possible upon a sufficient increase in staff in direct contact with inmates.

Moreover, the importance of implementing the dynamic approach to security was defined by SPSU, that outlined the implementation framework in the Explanatory Statement by the Ministry of Justice "Creating a

training system for penitentiary personnel is the underlying condition for actual changes in the State Penitentiary Service" dated June 11, 2012. However, no practical steps in that direction have been made.

### **C) Key performance indicators**

Performance assessment and setting clear, attainable and measurable goals of penitentiary facilities is vital for sound prison management. This has direct impact on efficient and effective operation of these establishments. Furthermore it's important to note that the purposes of serving the sentence differ from the purposes of criminal punishment. By being defined and targeted the purposes of criminal punishment become precise and measurable. These practical purposes should be prescribed by the law and have performance indicators. At present the law prescribes only the purposes of the criminal punishment and the criminal executive law set out in the Criminal Code and the Criminal Executive Code. However these purposes are rather philosophical than practical and cannot be appraised without proper performance indicators.

Thus the national law and practice do not indicate clear prison performance assessment criteria. Specific statistical data on application of sanctions and rewards, early release, suicides, death rate etc. are insufficient for such assessment. SPSU does not have an exact methodology to assess improvement or impairment of performance of subordinated establishments, save the unofficial criteria such as death rate and disciplinary measures. In fact no prison performance assessment is carried out with regard to risk of re-offending after release.

### **D) Risk assessment**

Ukrainian penitentiary system has no established practice of inmate risk assessment. At present there is no official methodology for assessing risks thus complicating prison management. This poses a serious threat to internal security of these establishments and to public safety. Lack of risk assessment also encourages a "one size fits all" approach to human rights that contravenes the European Convention (*Dickson v. United Kingdom*, *Trosin v. Ukraine*). This approach invokes imposition of unjustified and non-personalized limitation of rights. For example closed visits, regular searches, mail censorship, phone tapping all said limitations are implemented on regular bases without consideration to individual risk assessment. Importance of developing a proper risk assessment system will continue to grow if the parliament passes the recently registered draft laws (No. 2685, 2291a) prescribing a list of regulations requiring risk assessment every time the penitentiary management decides on imposing certain limitations on rights with respect to security or public interest.

Risk should be assessed for the following purposes:

- inmate classification to determine the level of security of the establishment where they are to be placed in. Pursuant to the law of Ukraine there are several official criteria of this classification: gender, charged offence under the article of the Criminal Code, prior conviction and prior jail sentences. These factors are relevant to risk assessment, however they are unreliable with regard to determining the actual risk of violent behavior. For example, pursuant to the law of Ukraine it's not required to take into consideration the age of a person for the purpose of classification. There are many other similar criteria not referred to in the law of Ukraine (education, family ties etc.). At present individual approach to classification for the purpose of prisoner placement leaves much to be desired.

- internal prisoner classification within the establishment. Current approach does not provide for thorough risk assessment to prevent housing vulnerable prisoners with those having a history of violence, and to pay more attention to security of convicts in administrative segregation i.e. held in enhance control units (such as PKT);

- assessment of risk to society posed by prisoners pending release. This assessment comprises risks posed by inmates to be released after completing prison sentence and eligible for early release. Current risk evaluation with regards to the latter is based on correction of the prisoner which is not an objective criterion. In practice its ambiguity always leads to conflicts between the inmate and the penitentiary facility's management.

- risk assessment for individual sentence planning. Present system of individual sentence planning is based on impractical tools and methodology. It does not meet the actual needs of inmates and is mostly focused on issues without outlining clear measures to provide the effective solution for the latter. Individual sentence plan essentially does not include practical rehabilitation programs and does not consider treatment of drug and alcohol addictions, psychological and psychiatric treatment and other types of psychological and psychiatric assistance.



Thus, current approach adopted by prison staff does not imply application of standard risk assessment instruments. Risk assessment instruments and technique should be developed based on relevant measurable behavioral indicators. Respective instruments and technique should be outlined in detailed regulations.

#### Non-custodial sanctions

Ukraine is making first steps towards developing probation practice which intended is among other things to decrease custodial sanctions. At the same time probation should be introduced alongside with the change in philosophy of the criminal law policy that still fails to consider a progressive trend toward reducing prison population.

Despite the fact that the new Criminal Code of Ukraine was adopted in 2001 it presents some features of the Soviet penitentiary policy focused on excessive repression even toward non-violent crimes. It's a common practice in Ukraine to be charged with a 2-5 year sentence for a petty theft (bicycle, mobile phone, food or alcohol theft), as well as minor drug offences (as of October 1, 2015 6.9 thousand people were serving a sentence for illicit trade of narcotic drugs, psychotropic substances, analogues of narcotic drugs or precursors and other crimes against public health).

Sentence terms in Ukraine are excessive as compared to the EU states. As of October 1, 2015 1,528 inmates were serving a life sentence and 8.1 thousand were sentenced to over 10 years. In 2014 1,181 persons was sentenced to 1 year in prison, 3,220 - 1 to 2 years, 4,950 - 2 to 3 years in prison, 7,364 - 3 to 5 years, 3,207 - 5 to 10 years, and 350 - 10 to 15 years. Thus the most common sentence was 3 to 5 years. This figure indicates high level of repression when compared to other countries. For example, in 2006 in Germany 75% of prison sentences were 12 months or less. Likewise in Netherlands in 2012 most sentences (91%) were one year of imprisonment or less. In 2013 the average sentence term in England and Wales was 15.4 months.

To solve the issue a new reduction strategy or so called "front door" policy is required. Instead, according to clauses 204-210 of the Government Periodic Report, a decrease in the prison population is mainly achieved by "back door" policy i.e. release on parole, amnesty etc. It should be noted that a decrease in prison population presented by the government in the Report results directly from the decrease in inmates of pretrial detention facilities owing to the new CPC, as well as due to Ukraine losing some of its territories - at least 20 thousand inmates in 29 facilities remain in Donbas and about 5 thousand in the Autonomous Crimean Republic. And if the number of convicts did decrease, it was due to "back door" policy.

So far there are no signs of introducing "front door" policy that would reduce criminal repressions, prison overcrowding, and criminalization of society in Ukraine.

According to recognized Ukrainian researches the Criminal Code requires serious changes since it's overburdened with excessive articles complicating classification of felonies, and sets forth inconsistent sanctions. As of January 1, 2015 the Criminal Code contained 487 articles, as well as 366 articles on elements of offences in the Special Part of the Code. Most of said articles have two-three, often four, and in some cases five sections. Thus it can be estimated that the Criminal Code contains over one thousand elements of offences. Furthermore there is a repetition of the same felonies in over 300 articles of the Criminal Code. At that same criminal acts are repeated in over 300 articles of the Criminal Code. Bullying (torment, causing suffering) are provided for in 5 articles concurrently, premeditated murder of a person in the exercise of duty - in 7 articles, malicious infliction of bodily harm - in 11 articles, theft of property - in 12 articles, and extortion of property - in 12 articles, other unlawful possession of property - in 15 articles, forgery (falsification) of documents - in 17 articles, willful destruction of property - in 28 articles, malicious infliction of grievous bodily harm - in 17 articles, and malicious infliction of violence endangering human life and health - in 47 articles, threat of violence - in 50 articles<sup>13</sup>.

Hence, the reform of the criminal law requires a range of measures to ease criminal repressions and introduce reduction strategies as part of "front door" policy. This calls for reduction of sentence terms for certain

<sup>13</sup> [http://gazeta.dt.ua/internal/chi-znayesh-ti-ukroyincyu-za-scho-tebe-posadyat-i-skilki-dadut-\\_.html](http://gazeta.dt.ua/internal/chi-znayesh-ti-ukroyincyu-za-scho-tebe-posadyat-i-skilki-dadut-_.html)

felonies and of the number of existing elements of felonies.

It should also be noted that criminal offences are to be introduced by several registered draft laws. However, despite of the fact that these actions are necessary for the purpose of Criminal Justice Reform in Ukraine (Decree of the President of Ukraine dated April 8, 2008 No. 311/2008) criminal offences have not yet been determined by the law.

## **Concerning the item 20 of the List of recommendations (Provision of health care in places of detention) relating to SPSU**

### *Subordination of penitentiary health-care*

One of the key reasons for the lack of proper medical care in penitentiary facilities is administrative subordination of penitentiary health-care services.

Health-care staff of penitentiary facilities is subordinated to the establishment's management. Furthermore, a part of this staff is military personnel i.e. has respective military ranks.

Budgetary funding of health care under such conditions is closely related to general funding of the establishment. In its turn, considering the mentioned underfunding of the penitentiary system, provision of adequate medical care is especially challenging.

Subordination of the health-care staff to penitentiary facilities' management also proves that it's not independent. Incidence of ill-treatment and torture can be left unreported or misreported. Moreover, the role of the health-care staff to report poor hygiene and sanitation is reduced to nothing. Reports on ill-treatment or degrading detention conditions addressed to assigned preventive authorities (the Prosecutor's Office, the Ombudsman's Office and the penitentiary management) by dependent health-care staff is virtually impossible.

Re-subordination of penitentiary medical care remains a burning issue. International, intergovernmental and national human rights organizations have repeatedly emphasized the need to re-subordinate penitentiary health-care staff to the Ministry of Health of Ukraine. Thus making it possible to bring health care standards in penitentiary facilities in line with the same standards outside these establishments. Besides, this would guarantee independence of health-care staff and consequently facilitate its role in preventing ill-treatment and detention in degrading conditions.

SPSU has supported this idea for some time. However, after a while the idea was rejected thus showing a serious concern that health care in penitentiary facilities can drop to a critical level. Among the factors on the long list are unwillingness of the civil medical staff subordinated to MoH to work in prisons for the pay offered and without allowances for special ranks awarded to some current prison staff; and transition of health care services in MoH institutions to fee-paying basis (unofficially) that would leave prisoners without any free-of-charge medical care, as well as free medication. Medical services provided to prisoners serving a sentence in a correctional center is one example of such consequences. It often happens that inmates have no access to free treatment in civil medical facilities subordinated to MoH whatsoever, and would seek medical care in correctional centers rather than in civil clinics.

For the purpose of the aforesaid, on September 3, 2015 during SPSU round table on the right to health care SPSU senior officers presented a possible compromise regarding subordination of penitentiary health care services. The idea is to cancel health-care staff subordination to penitentiary facilities' management while they remain subordinated to SPSU penitentiary health care. Thus, the medical service would become a separate legal entity free from accountability to penitentiary facilities with its own budgetary funding. At the same time the health-care unit staff would be subordinated only to the health-care staff of local penitentiary administrations, which in their turn are accountable to SPSU Head of Medical Department, who remains subordinated to the Head of SPSU.

Representatives of human rights organizations have found the presented model acceptable and that it could become a transition model and meet the primary requirements to health-care staff independence.

It should be noted that the European Union Advisory Mission for Civilian Security Sector Reform Ukraine (EUAM Ukraine) made recommendations with respect to the Action Plan on Implementation the National Strategy in the Sphere of Human Rights for the period until 2020 (President's Decree No. 501/2015). These recommendations were, in particular, "To elaborate and submit for consideration the draft law on amending



Law of Ukraine "On the State Criminal Executive Service of Ukraine" providing for independence of medical services of SPS of Ukraine at the national and local levels, and at the level of medical units of penitentiary institutions and preliminary detention facilities by cancelling subordination of the health-care staff to the other staff of the State Criminal Executive Service of Ukraine, except the Head of SPSU. The draft law should provide for legal and financial independence of the health-care service, grant it a status of a legal entity with a separate budget and the authority to allocate its funds. As of the end of October 2015 the Action Plan is at the final stage of development.

### *Amendments to the law*

June 15, 2014 Joint Decree of the Ministry of Justice and the Ministry of Health "On approval of the Regulation on providing health care to sentenced prisoners" was adopted prescribing a new procedure for providing health care in penitentiary facilities. Already at the stage of drafting and public debate the document raised a lot of comments from the general public. However none of these comments were considered in the draft Decree.

There are a lot of defects in the document. Here is a small share of them.

There are concerns about the new List of Diseases serving as basis for early release from the sentence abiding by section 2, article 84 of the Criminal Code of Ukraine<sup>14</sup>. It turned out to be even worse and more repressive than the previous List. Also the said section 2, article 84 of the Criminal Code of Ukraine does not provide that the list of diseases should be exclusive or restricted by some document, and rather defines the grounds for release as "a severe disease incompatible with serving the sentence" i.e. a judgment-based notion to be decided in court. At the same time the new List may become a hindrance to submitting to court documents of a person with a disease not on the List. The requirement as to non-exclusive nature of the List of Diseases and due consideration to the general status of a patient and his ability to serve the sentence is provided for in ECHR case practice (inter alia, judgments on cases *Yermolenko v. Ukraine* no. 49218/10 (§61) and *Melnyk v. Ukraine* no. 72286/01 (§94)). Furthermore, in case of *Yermolenko v. Ukraine* (*Yermolenko*, Application no. 49218/10, §61) it was established "that, given the absolute prohibition of torture, inhuman and degrading treatment, it is not acceptable that the compatibility of the applicant's state of health with his detention was assessed solely by reference to an exclusive list of diseases and without any appropriate review by national judicial authorities". Hence the Court was strongly opposed to the fact that the List of Diseases serving as a basis for release should be exclusive or fail to consider circumstances of the case, like it is done by the national penitentiary practice<sup>15</sup>. The Decree also failed to consider the requirement in relation to the compatibility of an applicant's health with being in detention: (a) the medical condition of the prisoner, (b) the adequacy of the medical assistance and care provided in detention; and (c) the advisability of maintaining the detention measure in view of the state of health of the applicant (*Melnyk v. Ukraine*, Application no. 72286/01, §94).

As was mentioned above the List itself became more strict. Hence, under the previous and the new version of the Decree only patients with progressive bilateral fibrous-cavernous lung tuberculosis with concomitant cardio-vascular disorder that cannot be treated by adequate chemotherapy are released from serving the

<sup>14</sup> It should be noted that during the visit to Ukraine in 2012 CEC paid special attention to terminal prisoners who were not released due to delays of the establishment's management. In clause 61 of the report stated "that in respect of prisoners who are the subject of a short-term fatal prognosis, special medical commissions preparing applications for their early release on medical grounds should intervene promptly, and such applications should be speedily considered by the courts with a presumption in favor of release". One of the main reasons for such cases was the previous List of Diseases that was too exclusive and resulted in prisoners being released half-dead.

<sup>15</sup> At the same time the Resolution of the Plenum of the Supreme Court of Ukraine No. 8 dated 28.09.1973 "On application of the law on release from a sentence of convicted persons with severe disease" (as amended) recommends courts when deciding cases on release, alongside the medical report, to consider the gravity of the offence, prisoner's behavior during his sentence, work ethic, correction of the prisoner, compliance with prescribed treatment and other circumstances. However in practice this provision is far from adequate implementation and courts consider other irrelevant circumstances with too much formalities without any regard for the terminal state of the patient. It's those formalities, as well as delaying the submission of documents for release by the management, and strict adherence to the List of Diseases serving as a basis for release that cause the death in 10% of convicts just at the stage of review of the documents for release. (M.V. Romanov, *Release From Sentence Due To A Medical Reason: Theoretical And Practical Issues// Theory And Practice Of The Law: Electronic Science Specialized Journal of YaroslavMudryi National Law University*, 2013, Issue 2 (4) // [http://nauka.jur-academy.kharkov.ua/download/el\\_zbirnik/2.2013/36.pdf](http://nauka.jur-academy.kharkov.ua/download/el_zbirnik/2.2013/36.pdf) .

sentence. And if under similar circumstances the disease is localized in one lung it will not serve as a basis for release. Progressive destructive spinal tuberculosis, bilateral renal cavernous tuberculosis are signs of fatal conditions. That means that patients being released are on the brink of death. The matter is even worse with oncological diseases. Patients are practically released to die outside of prison, since the basis for release are stage 4 oncological diseases. Patients like that generally cannot be cured in Ukraine. And the new Decree preserves that provision. Moreover, "Nervous System Diseases" section of the previous version included vascular disorders. Thus, according to the previous version of the Decree prisoners with "confirmed diagnosis of vascular disorders of the brain and spinal cord as embolism, hemorrhagic, ischemic or mixed acute cerebral circulatory disorders, stage 3 chronic vascular encephalopathy, primary (nontraumatic) subarachnoid hemorrhage accompanied by expressive persistent focal brain injuries" were eligible to apply for release. The new version of the Decree does not contain this exclusive list. Hence the release of prisoners even with most severe vascular disorders is complicated. The same applies to meningitis, cerebral abscess, multiple sclerosis, nervous system tuberculosis, Schilder's leukoencephalitis, brain tumor, and craniospinal tumor etc. The list does not include even such severe conditions as amyotrophic lateral sclerosis, spinocerebellar ataxia, and epilepsy.

The same concerns circulatory disorders. The previous List included inoperable constrictive pericarditis, acquired or congenital heart disease, subacute bacterial endocarditis, cardiomyopathy, ischemic heart disease, stage 3 hypertension etc. According to the new List only patients with "any stage 3 cardiac disorder, life-threatening high-graduation ventricular arrhythmia episodes associated with myocardial ischemia and impaired systolic function of the left ventricle" are eligible to apply.

Stricter conditions are also applied to respiratory disorders. According to the previous List patients with chronic obstructive bronchitis, bronchial asthma, bronchiectasis, lung abscess, pleural empyema, sarcoidosis, idiopathic fibrosingalveolitis, pneumoconiosis of different etiology, and emphysema could apply. The new List states that patients eligible to apply are those suffering from any respiratory disorder with stage 3 respiratory failure i.e. when it becomes irreversible.

There are issues with the list of gastrointestinal and kidney disorders. According to the List only patients with liver cirrhosis and intestinal malabsorption with cachexia, protein deficiency, stages 4 and 5 chronic renal disease i.e. when the disease becomes terminal can apply for release. With regard to musculoskeletal and connective tissue disorders permission to apply was given to patients with rheumatoid arthritis, hemorrhagic vasculitis, systemic lupus erythematosus, Bechterew's disease, dermatomyositis, polyarteritis nodosa, and systemic scleroderma. The new List states only high-level amputations of upper and lower extremities, or a combination of high-level amputations of one upper and one lower extremities. In other words to be released from a sentence a prisoner has to have high-level amputation of two extremities i.e. arms below the elbows, or legs below the knees. Consequently, if a person has severed palms and feet he cannot be released. Hence, a person without four limbs can remain in a penitentiary institution.

Some other major defects of the Decree need to be examined separately.

Breach of confidential patient medical information of prisoners remains a common practice, hence the new Regulation should provide respective guarantees. For example, clause 1.15 of the Decree could stipulate that "medical advice, physical examination and treatment should be conducted out of the hearing and, unless the medical practitioner decides otherwise in each specific case, out of the sight of non-medical staff" as required by respective international standards. However the Decree does not stipulate such provisions.

Thus, the Decree does not provide prisoners with confidential access to health-care staff of the establishment (for example, by means of a message in a sealed envelope that prison officers should not seek to screen as recommended in paragraph 34 of the 3rd General Report 1993 (CPT/Inf (93) 12)).

Moreover the confidentiality of medical records is at risk of a breach. In accordance with the Decree the access procedure to medical records is established by a respective order of the facility's chief officer. And the said document does not stipulate any guarantees preventing access of non-medical staff and protecting the right to confidentiality of medical records, including without limitation records on HIV status.

On the other hand, there are no guarantees to provide the prisoner with access to his own medical records. Furthermore, clause 12, Chapter 2 of the Draft provides that "doctor's excuse from work, prescriptions and

other medical documents shall not be made available out to prisoners". At the same time, day-to-day practice proves the need to have access to such records.

Clause 1.16 stipulates that "if further examination is required that cannot be performed by SCES medical facilities (due to the lack of required equipment, laboratories and health care means to carry out such examinations) it will be provided by a health care facility on the assigned list with the means to carry out such examination. The limitations regarding the choice of the facility for examination is unjustified. Firstly, this is the violation of the right to choose treatment options that is an integral part of the right to health care (article 6 Fundamental Principles of the Health Care Legislation of Ukraine). Secondly, available equipment in medical units of national correctional facilities is often out-of-date and worn out, and hence its use to perform any examination (which according to the new version of the Draft, if available on the premises, is the only option) cannot provide results as accurate as the examination carried out off the PI premises.

According to clause 2.4 if a prisoner presents with any physical injuries a member of the health-care staff immediately notifies the PI management and draws a report in three copies detailing the nature, dimensions and locations of injuries. Two copies of the report are attached to the personal file and medical records No.025/o, and the third copy is handed out to the prisoner in person. However, this provision is not in line with international standards for reporting physical injuries (as well as, paragraph 53 of the 2nd General Report CPT 1992 (Ref.: CPT/Inf (92) 3); the 3rd General Report 1993 (Ref.: CPT/Inf (93) 12), in particular paragraphs 60-61; CPT General Report 2013 (CPT/Inf (2013) 29)).

The Decree does not mention the requirement to provide prisoners with information on the access to medical care violating the recommendation of the Committee for the Prevention of Torture in section 2, paragraph 34 of the 3rd General Report 1993 (CPT/Inf (93) 12). The provision also stresses the need of preventive treatment. For example, such notice could give information on the procedure of providing and requesting medical assistance on (including visiting hours of each doctor) and off the premises, the right to choose a doctor, preventive measures for most common diseases in prison, and basic hygiene rules of the establishment.

The Decree prescribes a list of doctors assigned to conduct examinations, including a physician, psychiatrists, dentist and other specialists on referral. We consider it strange that the complete physical examination list does not include examinations of a neurologist and cardiologist considering that cardiac and nervous system disorders are the second and third leading causes of death in prisoners. This comment also applies to preventive examinations (clause 2, Chapter 2 of the Regulation).

The procedure for referring prisoners to be treated off the premises is complicated and overregulated. Prisoners are referred for treatment to medical facilities assigned by SPSU Department of Health Care and Medical and Sanitary Support and assigned by the SPSU local authorities according to the distribution set out in SPSU executive documents. To get an assignment for referral of a prisoner for inpatient treatment to a medical facility of a health care department of SPSU local authority supervising the PI referring the prisoner, PI shall file a request for hospital admission according to the template set out in annex 11 to the Regulation with the report of the PI medical unit doctor requesting treatment for the prisoner in a medical facility. In its turn, according to Annex 11, the local authority should apply for hospital admission to the SPSU headquarters. This is a serious complication of the procedure since it's performed according to the following pattern "IP management - local administration - SPSU" causing excessive delays in treatment that can be observed even today<sup>16</sup>. This algorithm needs to be simplified; and specific deadlines have to be set for the procedures in question. The practice of referring for treatment even to specialized medical facilities in general shows excessive delays with extremely negative consequences<sup>17</sup>.

<sup>16</sup> See the judgment on case Salakhov v. Ukraine illustrating the issue.

<sup>17</sup> This issue, as well as many others associated with ensuring medical rights of prisoners is detailed in "Implementing rights of people living with HIV in institutions of the State Penitentiary Service of Ukraine in 2013" // <http://civic.ua/main/data?t=3&c=1&q=2196049>  
It should be underlined that UN Committee Against Torture will find the contents of this document useful with regard to provision of adequate medical services.

All in all the Decree as well as its previous version have weaknesses in its conceptual design i.e. no provisions on preventive care. CPT stressed the need to pay special attention to preventive health care in the 3rd General Report. Unfortunately this element of health care was not and is not a priority for prison health care services which tend to favor the wrong approach neglecting prevention for the sake of treatment.

### **Concerning the item 21 of the List of recommendations (Redress, including compensation and rehabilitation)**

Currently the government of Ukraine is facing a burning issue of compensating victims for ill-treatment and torture. In most cases compensation is associated with ECHR case practice. A number of ECHR judgments shows not just the lack of adequate compensation, but also the lack of effective protection measures, in particular measures to prevent ill-treatment.

A big number of similar applications on the abovementioned issue could lead to pilot-judgment procedure of the European Court of Human Rights. Taking this into account the Secretariat of the Government Commissioner on European Court of Human Rights Affairs recently began an active process of developing compensation and preventive redress.

In particular, on June 17, 2015 the Ministry of Justice of Ukraine together with the Committee of the Ministers of the Council of Europe hosted a round table to discuss possible ways of implementing preventive and compensation redress for degrading treatment of detainees. The attention was focused on the penitentiary system. Regardless of its comprehensive nature, the drafted document based on the outcome of the discussion presented a general framework for solving the issue. Its contents was not sufficient to provide guidance on organizing preventive and compensation redress.

At the same time the discussion was initiated and needs to be continued to result in actual steps towards establishing such guarantees by the national law. As a result, the Ministry of Justice of Ukraine appointed interdepartmental task force by Decree dated 2.10.2015 No. 283/7 to develop preventive and compensation redress for degrading treatment of detainees in Ukraine. The first meeting of the task force was held on October 22, 2015 chaired by the Government Commissioner on European Court of Human Rights Affairs. It should be noted that the Sub-Committee on SPS affairs of the VerkhovnaRada of Ukraine is also an active participant in the process.

Despite the said actions the government of Ukraine shows little intent to comply in full with article 14 of the Convention against Torture. Said compensation and prevention by definition comprise only two elements of redress set out in article 14 of the Convention - compensation and non-repetition measures. At the same time, in compliance with the General Comment to article 14 of the Committee against Torture No.3 2012 (CAT/C/GC/3), redress includes the following five forms of reparation: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. Respectively in terms of some of the said forms the national government need to take additional actions to comply fully with requirements of article 14 of the Convention.

### **Concerning the item 24 of the List of recommendations (Data collection)**

Due to the adoption of the CEC of Ukraine and considering recent amendments to processing statistical information, it's virtually impossible to conduct a fact-based analysis of the number of convicted law enforcement officers.

The Prosecutor General's Office of Ukraine implemented a new form of reporting as to registering the number of criminal proceedings on crimes committed by law enforcement officers. According to the aforesaid 1,364 criminal proceedings were registered for 9 months of 2015. 1,294 criminal proceedings are on crimes committed by officers of the internal affairs authorities of Ukraine. 24 criminal proceedings against 33 persons were transferred for trial with a bill of indictment.

It's not possible to verify the information on the number of convicted law enforcement officers, since the said statistical data is not being registered in any manner whatsoever. The letter from the State Court Administration of Ukraine states that no separate records of the information on the number of convicted law enforcement officers are made.

Estimation of the number of law enforcement officers who have committed crimes and the number of them who have been convicted is complicated due to a common practice of some departments to dismiss their employees before the actual date of dismissal i.e. before the crime was committed. All this distorts the real picture.

The State Court Administration of Ukraine should introduce a separate collection of statistical data on the number of convicted law enforcement officers (with a breakdown by law enforcement officers, officers of the Security Service, the Prosecutor's Office, the State Penitentiary Service and the State Fiscal Service of Ukraine).

#### *Statistical reporting for combating human trafficking*

As to government reporting on combating human trafficking, it can be ascertained that the level of awareness of the general public regarding actions of the Ministry of Internal Affairs of Ukraine on the issue is low.

According to the information posted on the official web-site dated 29.10.2015, the last report dates back May 2015, although such information should to be updated monthly.

The screenshot shows the official website of the Ministry of Internal Affairs of Ukraine. The header features the Ukrainian coat of arms and the text 'МІНІСТЕРСТВО ВНУТРІШНІХ СПРАВ УКРАЇНИ' (Ministry of Internal Affairs of Ukraine). Below the header is a navigation menu with items like 'Про МВС', 'Контакти', 'Інформаційні запити ЗМВ', 'Преймальні громадяни', and 'Чергова частина'. The main content area displays a news article titled 'ПРО ЗЛОЧИНІСТЬ, ПОВ'ЯЗАНУ З ТОРГІВЕЛЕЮ ЛЮДЬМИ' (On crime related to human trafficking) with a sub-header 'Про злочинність, пов'язану з торгівлею людьми (травень 2015 рік)'. The article text is partially visible, showing a download icon and the text 'отримати - 22 kb'. The sidebar on the right contains several news items with dates and brief descriptions, such as 'Як можна допомогти сім'ям загиблих правоохоронців' and 'Набір тренерів для нової патрульної служби Херсона продовжено'.

Therefore the Ministry of Internal Affairs of Ukraine should engage in providing statistical data on combating human trafficking using departmental information sources, as well as the official web-site of the Ministry.



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Наукове видання

**Alternative interim report by  
Ukrainian Helsinki Human Rights Union  
on implementation of recommendations,  
provided by the Committee against Torture based  
on the consideration of the sixth periodic  
report of Ukraine (CAT/C/UKR/6)**

(англійською мовою)

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