



CPT/Inf (2007) 22

**Report to the Ukrainian Government  
on the visit to Ukraine  
carried out by the European Committee  
for the Prevention of Torture and Inhuman  
or Degrading Treatment or Punishment (CPT)**

**from 9 to 21 October 2005**

The Ukrainian Government has agreed to the publication of this report and of its response. The Government's response is set out in document CPT/Inf (2007) 23.

Strasbourg, 20 June 2007

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**Copy of the letter transmitting the CPT's report**

Strasbourg, 12 April 2006

Dear Mr Lagoda,

In pursuance of Article 10, paragraph 1, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, I enclose herewith the report to the Ukrainian Government drawn up by the European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) after its visit to Ukraine from 9 to 21 October 2005. The report was adopted by the CPT at its 59<sup>th</sup> meeting, held from 6 to 10 March 2006.

The various recommendations, comments and requests for information formulated by the CPT are listed in Appendix I. As regards more particularly the CPT's recommendations, having regard to Article 10 of the Convention, the Committee requests the Ukrainian authorities to provide **within six months** a response giving a full account of action taken to implement them. The CPT trusts that it will also be possible for the Ukrainian authorities to provide, in the above-mentioned response, reactions to the comments formulated in this report which are listed in Appendix I as well as replies to the requests for information made.

Further, I wish to draw to your attention that, in respect of the request for information made in paragraph 73 of the report, the Committee requests the Ukrainian authorities to provide a response **within one month**. In respect of the recommendations made in paragraphs 42, third sub-paragraph, and 103, second sub-paragraph, the Committee requests the Ukrainian authorities to submit a response **within three months**.

The CPT would ask, in the event of the responses being forwarded in Ukrainian language, that they be accompanied by an English or French translation. It would be most helpful if the Ukrainian authorities could provide a copy of the response in a computer-readable form.

I am at your entire disposal if you have any questions concerning either the CPT's visit report or the future procedure.

Yours sincerely,

Silvia CASALE

President of the European Committee for the prevention of torture and inhuman  
or degrading treatment or punishment

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UKRAINE

## I. INTRODUCTION

### A. Dates of the visit and composition of the delegation

1. In pursuance of Article 7 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the Convention”), a delegation of the CPT visited Ukraine from 9 to 21 October 2005. The visit formed part of the Committee’s programme of periodic visits for 2005. It was the CPT’s fifth visit to Ukraine<sup>1</sup>.

2. The visit was carried out by the following members of the CPT:

- Marc NEVE, 2<sup>nd</sup> Vice-President of the CPT (Head of the Delegation)
- Veronica PIMENOFF
- Joan-Miquel RASCAGNERES
- Pierre SCHMIT

who were supported by Geneviève MAYER, Deputy Executive Secretary of the CPT, Johan FRIESTEDT and Elvin ALIYEV from the CPT's Secretariat.

They were assisted by:

- Dan DERMENGIU, Head of Forensic Medicine Department, Medical Faculty "Carol Davila", Bucharest, Romania (expert)
- Timothy HARDING, Director of the University Institute of Forensic Medicine, Geneva, Switzerland (expert)
- Erik SVANIDZE, former Head of the Internal Law Department of the Prosecutor General’s Office of Georgia (expert)
- Vadim KASTELLI (interpreter)
- Boris KOVALCHUK (interpreter)
- Vasyl KRUKOVSKY (interpreter)
- Vikentiy SHIMANSKIY (interpreter)
- Larissa SYCH (interpreter)
- Serhiy SYZENKO (interpreter).

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<sup>1</sup> The first visit took place in February 1998, the second in July 1999, the third in September 2000 and the fourth in November/December 2002. The CPT’s reports on these visits, as well as the responses of the Ukrainian authorities, have all been made public at the request of the Ukrainian authorities (CPT/Inf (2002) 19 and CPT/Inf (2002) 20; CPT/Inf (2002) 21 and CPT/Inf (2002) 22; CPT/Inf (2002) 23 and CPT/Inf (2002) 24; CPT/Inf (2004) 34 and CPT/Inf (2004) 35).

**B. Establishments visited**

3. The delegation visited the following places of detention:

Ministry of Internal Affairs

*Kyiv City*

- Ministry of Internal Affairs Temporary Holding Facility (ITT), Kosogirnyi Street\*
- Dniprovske District Command of Internal Affairs, Sub-Division No. 4, Kaunaska Street
- Golosyivske District Command of Internal Affairs, Golosiyvska Street
- Centre for the reception and distribution of vagrants and special detention centre, Remontna Street

*Kherson City*

- Komsomolskyi District Command of Internal Affairs, Filatova Street

*Lviv Region*

- Ministry of Internal Affairs Temporary Holding Facility (ITT), S. Bandera Street, Lviv
- Shevchenkivskyi District Command of Internal Affairs, Akademika Kuchera Street, Lviv
- Zaliznychnyi District Command of Internal Affairs, Gorodotska Street, Lviv
- Centre for the reception and distribution of vagrants, Sinna Street, Lviv
- Centre for the reception and distribution of minors, Shevchenka Street, Lviv
- Department of Internal Affairs, Budzinovskovo Street, Mostyska

*Poltava City*

- Ministry of Internal Affairs Temporary Holding Facility (ITT), Marshala Byryuzova Street
- Oktyabrskyi District Command of Internal Affairs, Komsomolska Street

*Transcarpathian Region*

- Ministry of Internal Affairs Temporary Holding Facility (ITT) and City Department of Internal Affairs, Yaroslav Mudryi Street, Mukachevo\*
- Department of Internal Affairs, Moskovska Street, Mukachevo\*
- Centre for the reception and distribution of vagrants, Drugetiv Street, Uzhgorod

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\* Follow-up visit

State Department for the Execution of Sentences

*Kharkiv Region*

- Temnivka Colony No. 100 for men, including the unit for men sentenced to life imprisonment
- Temporary unit for women sentenced to life imprisonment at Kharkiv Colony No. 54

*Kherson Region*

- Kherson Colony No. 61 for prisoners with tuberculosis

*Poltava Region*

- Bozhkivske Colony No. 65 for women

Border Guard Service

*Lviv Region*

- Temporary Holding Facility (PTT) of Border Guard Detachment 2144, Lichakivska Street, Lviv
- Temporary Holding Facility (PTT) at Border Guard “Prykarpattya” check-point, Yaroslav Mudryi Street, Mostyska

*Transcarpathian Region*

- Temporary Holding Facility (PTT) of Border Guard Detachment 2142, Nedetsyi Street, Mukachevo\*
- Pavshino Temporary Holding Centre for men\*
- Temporary Holding Facility (PTT) at Border Guard “Zakarpattya” check-point, Golovna Street, Chop\*
- Border Guard Unit No. 9, Sobrinetska Street, Uzhgorod

State Security Service

- State Security Service holding facility, Askoldiv Street, Kyiv

Ministry of Health Protection

- Secure ward of the Municipal Clinical Emergency Hospital, Kyiv\*

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\* Follow-up visit.

**C. Consultations held by the delegation and co-operation encountered**

4. The CPT delegation held fruitful discussions with the national authorities, in particular with V. KOSHCHYNETS and A.S. LAGODA, respectively Head and First Deputy Head of the State Department for the Execution of Sentences, V.M. RUDIK, Deputy Minister of Internal Affairs, S.P. BEREZHNOV, Deputy Minister of Health, A.M. MUDROV, Deputy Head of the State Security Service, and B.M. MARCHENKO, Acting Head of the Border Protection Department, Border Guard Service. It also met N. KARPACHOVA, Ombudsperson of Ukraine. At local level, the delegation had also discussions with district judges and prosecutors.

Further, the delegation held consultations with a number of representatives of international and non-governmental organisations active in areas of concern to the CPT.

A list of the governmental authorities, other authorities and international and non-governmental organisations with which the delegation held consultations is set out in Appendix II to this report.

5. As regards co-operation on the ground, the Ministry of Internal Affairs had informed the establishments under its authority of the Committee's mandate and prerogatives. This step deserves to be commended. However, on several occasions, the additional requirement that local officials in charge of *district police stations* request permission from their superiors before allowing the delegation to enter, delayed the latter's access to the premises. In their letter of 23 January 2006, the Ukrainian authorities indicated that the officers concerned "have been brought to responsibility (disciplinary sanctions)". In this respect, the CPT would like to underline that sanctioning persons who obeyed instructions from their hierarchy is not the response that it expected. It is the responsibility of the Ukrainian authorities to clearly explain to all those concerned their obligations under Article 8 of the Convention. **The Committee trusts that in future the Ukrainian authorities will specify in their instructions that as soon as a CPT delegation arrives at a district police station, it must have *immediate* access to the premises (i.e. without having to wait for the arrival of the senior official responsible for the place being visited).**

6. As regards the Border Guard Service, it appeared that the list provided of the places where persons deprived of their liberty may be held was incomplete, especially with respect to check-points and units located on the borders. The relevant Border Guard Service instructions<sup>2</sup> mention only the CPT's access to temporary holding facilities (PTT) and not to premises designed specifically for custodial purposes (SP) under the Border Guards' authority. Lastly, during the visit to Unit No. 9 at Uzhgorod, the delegation was deliberately given misleading information about the existence of a cell within the unit, its use and the custody registers. The delegation gained access to this cell and to the custody registers only after insisting at great length. Such behaviour is incompatible with the principle of co-operation laid down in Article 3 of the Convention.

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<sup>2</sup> Cf. paragraph 13 of Regulation No.494 of the Border Guard Service adopted on 30 June 2004.



Pursuant to Article 8, paragraph 2 of the Convention, **the Committee again insists that the Ukrainian authorities provide, in good time, full and up-to-date information on all the places where persons may be deprived of their liberty. The CPT also recommends that the relevant regulations of the Border Guard Service be amended to ensure that CPT delegations have immediate and unrestricted access to all places where persons deprived of their liberty are held by this Service and that they have access to all the information which is necessary to carry out their task.**

7. As regards the State Department for the Execution of Sentences, the delegation was confronted in two establishments with behaviour that can be regarded as a violation of the principle of co-operation provided for in Article 3 of the Convention.

In Bozhkivske Colony No. 65 for women, prisoners had clearly been instructed to describe an idyllic situation to the delegation. Even more seriously, it was fully apparent from the delegation's interviews with prisoners that the latter were terrified of speaking to the delegation for fear of reprisals. In Temnivka Colony No. 100 for men, some prisoners had been deliberately hidden inside the establishment to prevent them from approaching the delegation. By way of example, two inmates whom the delegation found in the colony had been moved – as soon as the delegation's arrival was announced – between various sections of the establishment, and only returned to the detention section in the evenings, after the delegation's departure. In addition, the delegation received clear indications that a number of prisoners in Colony No. 100 did not feel able to speak freely because they had been advised not to make complaints and feared repercussions. In fact, the delegation had to intervene to stop staff noting the names of those prisoners with whom it spoke.

**The Committee would like to emphasise that all forms of intimidation or reprisal against a person, before or after an interview with a member of a CPT delegation, are incompatible with the obligations of Parties to the Convention.** Such behaviour might prompt the Committee to consider issuing a public statement under Article 10, paragraph 2, of the Convention.

8. As regards co-operation intended to improve the situation in the light of the CPT's recommendations, the Committee notes some very encouraging signs of positive change, such as the improvement in material conditions of detention in the Ministry of Internal Affairs Temporary Holding Facility (ITT) in Kyiv and in the Border Guard Service Holding Facility (PTT) in Mukachevo. Detailed reference to these improvements observed during the visit will be made later in this report. However, on various points (such as the conditions of detention in district police stations), the Committee was compelled to repeat long-standing recommendations, and immediate observations had to be communicated once again.

Pursuant to Article 3, and Article 10, paragraph 2, of the Convention, **the CPT trusts that the Ukrainian authorities will now make every effort to implement all the recommendations set out and/or reiterated in this report.**

**D. Immediate observations under Article 8, paragraph 5 of the Convention**

9. At the end of the visit, the CPT delegation made three immediate observations pursuant to Article 8, paragraph 5 of the Convention.

The first immediate observation concerned the placement of persons deprived of their liberty in district police stations for prolonged periods under intolerable conditions tantamount to inhuman and degrading treatment. Detained persons were held in filthy, overcrowded cells with no ventilation and generally no natural light; they had no means of resting or sleeping, or washing themselves, and the only food given to them was generally brought in by relatives. The CPT's delegation requested that the Ukrainian authorities put an immediate end to the practice of using district police stations for periods of detention of more than a few hours. As this was the second time a CPT delegation was obliged to invoke Article 8, paragraph 5 on this issue, the delegation emphasised that failure on the part of the Ukrainian authorities to take steps in this matter might lead the Committee to consider recourse to Article 10, paragraph 2, of the Convention.

The second immediate observation concerned the situation of persons detained under aliens legislation in the Pavshino Temporary Holding Centre for men. Three years after the CPT's first visit to this establishment, the facility – in terms of material conditions, staff and medical care – was still clearly unsuited to the needs of the persons being held there. The delegation requested that this facility be withdrawn from service and that new facilities, which adequately meet the needs of persons detained under aliens legislation, be designed and put in place without delay. Such measures will entail ensuring that the authority appointed to take charge of foreign nationals becomes fully operational and is provided with the necessary – including budgetary – resources.

In the third immediate observation, the delegation asked the Ukrainian authorities to immediately provide female prisoners working in Colony No. 65 with a day of rest every week and to ensure full compliance with labour legislation, in particular as regards daily and weekly working hours, permissible overtime and night-time work. It stressed that the steps taken must on no account impair the good material conditions observed in the establishment.

10. By letter dated 23 January 2006, the Ukrainian authorities provided information on the steps taken as a result of these immediate observations. This information, which will be addressed at a later stage in the report, failed to adequately respond to the main concerns expressed by the delegation. The CPT must stress that the failure to respond in an adequate manner to an immediate observation constitutes a significant violation of the principle of co-operation set out in Article 3 of the Convention.

## II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

### A. Establishments under the authority of the Ministry of Internal Affairs

#### 1. Preliminary remarks

11. The relevant legal provisions of the Code of Criminal Procedure (CCP) governing the detention of suspects by Internal Affairs officers was described in the report on the 2002 visit<sup>3</sup>. It should be recalled in this regard that the Militia can, on its own authority, hold a person suspected of a criminal offence for a maximum period of 72 hours, during which period the investigating bodies are required to bring the suspect before a judge. The latter can order that the suspect be remanded in custody for up to 15 days and, thereafter, grant extensions for a maximum total period of 18 months<sup>4</sup>.

12. Pursuant to Section 11 (5) of the Law on the Militia, persons suspected of having committed administrative offences may be held by the Militia for up to three days (provided that the public prosecutor is given notice in writing within 24 hours of the moment of detention) to establish the identity of such a person and verify whether he has committed any offences. If found guilty, such persons may be sentenced by a judge for up to 15 days of administrative detention<sup>5</sup>.

Under the same provision, a person suspected of vagrancy may be detained by the Militia for up to 30 days, with the sole approval of the prosecutor (i.e. without any judicial intervention)<sup>6</sup>. In its report on the 2002 visit, the CPT asked whether the Ukrainian authorities intended to take steps to bring this provision into line with Article 29 of the Constitution<sup>7</sup>. In their response, the Ukrainian authorities indicated that the relevant provision of the Law on the Militia did not contravene the Constitution since it related to administrative detention. For its part, and bearing in mind the delegation's findings during the 2005 visit in respect of administrative detention (cf. in particular paragraphs 13 and 17 below), the Committee considers that it would be highly desirable for such persons to benefit from the guarantees provided for in Article 29 of the Constitution. **The CPT therefore invites the Ukrainian authorities to reconsider their position on this matter.**

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<sup>3</sup> Cf. paragraph 11 of CPT/Inf (2004) 34.

<sup>4</sup> A person remanded in custody is in principle transferred to a pre-trial establishment (SIZO). However, the person may be detained in an ITT for up to 10 days.

<sup>5</sup> These persons generally served their sentence in special detention centres run by the Militia.

<sup>6</sup> Such a person is generally held in a centre for the reception and distribution of vagrants.

<sup>7</sup> Article 29: "No one shall be arrested or held in custody other than pursuant to a substantiated court decision and only on the grounds and in accordance with the procedure established by law".

13. The reprehensible practice of using provisions of the Code of Administrative Offences and the above-mentioned Section 11 (5) of the Law on the Militia for criminal investigation purposes was still continuing on a large scale. The examination of individual files and registers showed that, in many instances, administrative detainees<sup>8</sup> were regularly interrogated for criminal offences without benefiting from the fundamental safeguards guaranteed by the CCP. **The Committee calls upon the Ukrainian authorities to take immediate and decisive steps to eradicate this practice and to ensure that the detention and interrogation of persons suspected of a criminal offence are always carried out in full compliance with the provisions of the CCP.**

14. The Committee describes hereafter the facts found by the delegation as concerns conditions of detention in Internal Affairs facilities. In this context, the 2005 visit highlighted the efforts made to improve the conditions of detention in ITTs. The Ministry has manifestly embarked on a large-scale refurbishment and construction of ITTs, estimated at at least 250 million hryvnas (equivalent to 40.8 million Euros). In 2005, 11.3 million hryvnas (approximately 1.85 million Euros) were allocated and the Ministry intended to spend 30 million more (equivalent to 4.9 million Euros); 60 million hryvnas were planned to be allocated to this end for the year 2006. However, representatives of the Ministry of Internal Affairs underlined that such resources were clearly insufficient and efforts were being made to develop partnerships with local administrations (*oblast*) in order to involve them in the renovation and maintenance of ITTs.

In their letter of 23 January 2006, the Ukrainian authorities informed the CPT that a new programme for the construction, reconstruction and repair of Internal Affairs detention facilities had been approved for the year 2006. This should allow in particular the refurbishment of 98 ITTs and the construction of an additional 21 new ITTs in 16 regions.

The Committee takes note of the ongoing efforts and **recommends once more that all the governmental agencies concerned (in particular the Finance Ministry and local administrations) support the efforts made by the Ministry of Internal Affairs to improve conditions of detention in all detention facilities under its authority (i.e. ITTs, district police stations, centres for the reception and distribution of vagrants and special detention centres).**

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<sup>8</sup> Such detainees were either suspected of having committed an administrative offence or convicted for such an offence for up to fifteen days (e.g. for having failed to comply with an order given by Internal Affairs staff under Section 185 of the Code of Administrative Offences) or held for vagrancy.

## **2. Torture and other forms of ill-treatment**

15. Since the CPT's first visit to Ukraine, the treatment of persons deprived of their liberty by Internal Affairs staff has been a cause of very serious concern. The 2005 visit revealed a slight reduction as regards the scale of the phenomenon of ill-treatment, although not sufficient to dispel the Committee's misgivings. Indeed, in the course of the 2005 visit, the Committee's delegation received a significant number of allegations of deliberate physical ill-treatment of detainees (including juveniles) inflicted by operational officers, in particular during initial questioning in district police stations with a view to securing confessions in respect of the criminal offence for which the persons in question were detained or additional confessions relating to unsolved crimes. The alleged forms of ill-treatment mainly consisted of punches, kicks and baton blows. Allegations were also made about slaps on the ears with open hands, painful handcuffing (behind the back with one arm over the shoulder), belt or baseball bat blows. Further, mention was made of a metal weight placed on a part of the body, of asphyxiation using a gas mask and of being beaten while handcuffed, with hands and feet tied or maintained in a hyperextended position, or of a stick being inserted into the anus. In some cases, the severity of the ill-treatment alleged – which could also consist of a combination of several forms of ill-treatment – was such that it could be considered as amounting to torture.

16. No complaints against staff were made by persons detained at the ITTs visited, the Kyiv special detention centre or the Lviv centre for the reception and distribution of minors. However, the delegation received several allegations of physical ill-treatment and verbal abuse by custodial staff working at centres for the reception and distribution of vagrants.

Moreover, at Uzhgorod centre, all the detainees from sub-Saharan Africa – and only these detainees – were allegedly forced to strip naked in the corridor of the detention area, early in the morning, and to perform physical exercises in front of staff. Such acts, which clearly bear a racist character, would be totally unacceptable. In their letter of 23 January 2006, the Ukrainian authorities indicated that the allegations had been investigated and that several officers had received disciplinary sanctions.

17. In most instances, the allegations of physical ill-treatment pre-dated the delegation's visit by several weeks or months. As a result, any marks which might have been caused by the types of ill-treatment alleged would almost certainly have disappeared in the intervening period. However, several detainees were found on examination by the delegation's doctors to display visible marks consistent with their allegations of recent ill-treatment. By way of illustration, reference can be made to the following cases:

- a person interviewed by the delegation at a district police station in Kyiv alleged that, nine days before the visit, he had been handcuffed painfully tightly, slapped, punched, kicked and hit with truncheons mainly on the arms by several police officers. He also indicated that he had lost consciousness after the beating. Upon examination by a medical member of the delegation, he displayed: on the antero-lateral aspect of the left elbow, one superficial laceration (4.5 x 0.3 cm), covered with brownish-red crusts and two deep linear abrasions (5 x 0.2 cm; 7 x 0.2 cm), partially healed and partially covered with brownish crusts; over the middle third of the cubital margin of the left forearm, two parallel abrasions (1.2 x 0.2 cm each), covered with a thin brown crust; on the lateral aspect of the left elbow, a large pustule oozing pus spontaneously.
- another person detained in an ITT indicated that, about one week before the visit, he had been punched and kicked on the head while in custody in a district police station and that he had subsequently experienced intense headache and recurrent nose-bleeds for two days. Upon examination by a medical member of the delegation, he displayed: two linear superficial lacerated wounds, 1.2 cm and respectively 1.5 cm long, covered by a brown crust on the nose; three parallel linear red-brown abrasions (0.4 x 0.2 cm; 0.5 x 0.2 cm and 0.8 x 0.2 cm) on the left eyebrow region.
- a third person interviewed at a centre for the reception and distribution of vagrants alleged that, six days before the visit, he was repeatedly punched and kicked by Militia officers to obtain a confession. He said he was transferred 24 hours later to a centre for vagrants where he received a similar treatment as well as baton blows by custodial staff on several occasions – including on the very day of the delegation’s visit – all over the body. Upon examination by a medical member of the delegation, the person in question displayed an impressive number (16) of very recent injuries (haematomas, red-purple in colour, abrasions and lacerations) on the face, ears, posterior thorax, upper and lower limbs, with dimensions ranging from 0.5 x 0.2 cm to 30 x 0.5 cm.

18. In the light of the delegation’s findings, the Committee has no alternative but to revert back to the conclusion it reached in paragraph 20 of its 2002 visit report. Three years later, it has to be said that persons deprived of their liberty by Internal Affairs staff still run a significant risk of being subject to ill-treatment – on occasion, severe ill-treatment/torture – by operational officers, in particular during interrogation.

19. The CPT takes note of the views expressed by the Ukrainian authorities in their letter of 23 January 2006, according to which they firmly condemned resort to torture and other forms of ill-treatment, and stated that, despite the measures taken, such practices had not been eradicated. It also notes that measures had been adopted since the last visit in this area: amendment to Section 127 of the Criminal Code (torture crime), which strengthened sanctions against the perpetrators of such crimes; establishment of a Human Rights Adviser within the Ministry of Internal Affairs; strengthening of human rights training; establishment of mobile groups tasked with the prevention of reprehensible behaviour by Militia officers by means of continuing supervision of operational activities.

However, many of these measures are too recent to have borne fruit and, in this respect, other measures are required to combat the root causes of the problem of ill-treatment. Several of these measures correspond to long-standing recommendations made by the Committee, which may yet have to be implemented. Only their full implementation will give clear indications as to the willingness of the Ukrainian authorities to put an end to the phenomenon of ill-treatment.

20. In this context, it remains of utmost importance that the highest political authorities show their strong commitment to combating torture and other forms of ill-treatment. This will underpin the action being taken at all other levels. The Committee welcomes the statement of 26 September 2003 made by the then Minister of Internal Affairs in this context. However, the information gathered during the 2005 visit demonstrates that such statements need to be reiterated. **The CPT therefore recommends that a clear message of “zero tolerance” of torture and other forms of ill-treatment be delivered at the highest level and at regular intervals to all Internal Affairs staff.**

21. This message must be relayed through professional training. There is indeed no better guarantee against ill-treatment than for all law enforcement officials themselves to unambiguously reject resort to such methods; this is particularly relevant in the context of questioning of a detainee. The CPT took note that the Ukrainian authorities adopted a number of measures to incorporate international human rights standards into training programmes and to reinforce the legal component of such programmes. At the same time, it considers that practical professional training in Ukraine should further aim at ensuring that the philosophy of going “from the evidence to the suspect” rather than “from the suspect to the evidence” prevails in the daily practice of all those involved in the criminal justice process (operational officers, investigators, prosecutors and judges). **The CPT therefore calls upon the Ukrainian authorities to make a major investment in the field of professional training, with particular emphasis being placed on advanced methods of crime investigation, including forensic evidence. This should be combined with the adoption of detailed regulations on the questioning of criminal suspects (including initial interviews by operational officers), on the basis of already existing guidelines.**

22. In this connection, it is equally important to promote a culture respectful of the law and where it is regarded as unprofessional – and unsafe from a career path standpoint – to work and associate with colleagues who have resort to ill-treatment. This implies the existence of a clear reporting line, including the adoption of whistle-blower protective measures. During the 2005 visit, the delegation noted, through the examination of registers in the places visited, instances of detained persons who alleged ill-treatment without engendering any reaction on the part of staff working in those places of detention.

**The CPT recommends that the Ukrainian authorities establish, within Internal Affairs services, a reporting line for information indicative of ill-treatment (which implies the obligation for staff to immediately forward such information to the competent authorities), in the light of the above remarks.**

23. The Committee repeatedly underlined that one of the most effective means of preventing ill-treatment lies in the diligent examination by the authorities of all relevant information indicative of ill-treatment brought to their attention, whether this information takes the form of an official complaint or not. Similarly, when ill-treatment has been proven, an appropriate penalty should be imposed. This constitutes a prerequisite for combating impunity.

24. In 2005, the delegation received a number of allegations of persons detained according to which, when they were before a judge, complaints relating to ill-treatment did not give rise to any reaction on the latter's part. In its previous report, the Committee welcomed the amendments to the CCP by which detainees for whom a measure of remand in custody was requested had to be physically brought before the responsible judge. This indeed constituted an excellent opportunity for such persons to indicate whether or not they had been ill-treated; such a safeguard should not remain a dead letter.

**The CPT recommends once more that whenever a detained person brought before a judge alleges ill-treatment by Internal Affairs officers, these allegations be recorded in writing, a forensic medical examination immediately ordered, and the necessary steps taken to ensure that the allegations are properly investigated (the latter steps being a requirement under Section 97 of the CCP). Such an approach should be followed whether or not the person concerned bears visible external injuries. Moreover, even in the absence of an express allegation of ill-treatment, a forensic medical examination should be requested whenever there are other grounds to believe that a person could have been the victim of ill-treatment.**

25. Further, the essential role of prosecutors in this field must be underlined as they constitute the authority in charge of criminal investigations into allegations of ill-treatment against law-enforcement agencies. The Committee took note of the information submitted to it by the Prosecutor General's Office<sup>9</sup>. However, the delegation's findings in 2005 raised a number of issues as to the concrete manner in which such investigations had been carried out. By way of example, at the Mukachevo Prosecutor's Office, in relation to a recent complaint of ill-treatment lodged by the lawyer of a person detained for an administrative offence whose status would subsequently have been converted from "administrative" to "criminal", the competent prosecutor limited his action to interviewing both of the Internal Affairs officers concerned and, on that basis, decided not to initiate a criminal investigation.

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<sup>9</sup> More specifically, from January to October 2005, Ukrainian prosecutors' offices received 102,580 allegations related to investigation and interrogation (against 82,708 in 2004). At the same time, 16,914 Internal Affairs staff had disciplinary sanctions imposed upon them at the prosecutors' request (against 16,189 in 2004), and 36 criminal cases were initiated with respect to torture crimes and the use of other forbidden methods of investigation and interrogation.



26. For investigations into cases of ill-treatment to be effective, they must be carried out thoroughly; in other words, they must be capable of leading to a determination of whether force or other methods used were or were not justified under the circumstances, and to the identification and, if appropriate, the punishment of those concerned. They require that all reasonable steps be taken to secure evidence concerning the treatment in question, including, *inter alia*, identifying and interviewing the alleged victims, suspects and eyewitnesses (e.g. Militia officers on duty, other detainees), seizing instruments which may have been used in ill-treatment, and gathering forensic evidence. The investigations must also be conducted in a comprehensive manner, i.e. by ensuring that significant episodes and surrounding circumstances indicative of ill-treatment are not disregarded, and in a prompt and reasonably expeditious manner.

**The CPT recommends that the Ukrainian authorities circulate, through appropriate channels, the necessary instructions so that these fundamental principles are effectively followed by the prosecutors in their daily practice.**

27. In this context, it is also important that no barriers be placed between persons who allege ill-treatment and doctors who can provide forensic reports recognised by the prosecutorial and judicial authorities. According to information gathered during the 2005 visit, access to such examinations was made subject to prior authorisation by the Militia, the investigating authority or the prosecutor.

**The CPT recommends that persons who allege ill-treatment, or their lawyers, have the right to directly request (without prior authorisation from the Militia, the Prosecutor's Office or the judge) a medical examination/certificate from a doctor with recognised forensic medical training. If necessary, the relevant regulations should be amended accordingly.**

28. In the light of other facts found by the delegation as to the content of medical certificates with respect to persons who display visible injuries, **the CPT reiterates its recommendation made in paragraph 26 of the report on the 2000 visit, namely that medical certificates should include:**

- i) an account of the statements made by the person concerned which are relevant to the medical examination (including the description of his/her state of health and any allegations of ill-treatment);**
- ii) a list of objective medical findings based on a thorough examination;**
- iii) the doctor's conclusions in the light of i) and ii). In these conclusions, the doctor should indicate the degree of consistency between any allegations and the objective medical findings; this will allow the competent authorities, in particular prosecutors, to make a suitable assessment of the information contained in the file.**

**The detained person, as well as his/her lawyer, should be provided with a copy of this certificate.**

As concerns other aspects relating to medical examinations of detained persons, reference is made to paragraph 57 below.

29. For many years, the CPT has recommended that the practice by ITTs of refusing to admit detainees displaying visible injuries, and of returning them to the district police station from whence they came or other Internal Affairs facilities, if Militia officers escorting them could not present a medical certificate recording the lesions, be discontinued (cf. in particular paragraphs 26 and 46 of the report on the 2002 visit). However, this practice persisted in 2005. In the light of the above, **the CPT calls upon the Ukrainian authorities to implement henceforth this essential recommendation in the context of the prevention of ill-treatment. This implies the establishment of a suitable procedure applicable to all admitting Internal Affairs holding facilities in order that a doctor be immediately called when a detainee brought to such facilities displays visible injuries.**

### 3. Fundamental safeguards against ill-treatment

30. In previous visit reports, the CPT made a series of recommendations and comments as regards fundamental safeguards against the ill-treatment of persons deprived of liberty by Internal Affairs staff. In this connection, the Committee recalls that it attaches particular importance to three rights, namely the right of detained persons to inform a close relative or another third party of their situation, the right of access to a lawyer, and the right of access to a doctor. It should be emphasised that these rights should be enjoyed not only by criminal suspects, but also by all other categories of persons, whatever their legal status, from the very outset of their deprivation of liberty, i.e. from the moment when the persons concerned are obliged to remain with the law enforcement agency. It is also essential that persons detained by law enforcement agencies be informed without delay of all their rights, including those mentioned above, in a language they understand.

Following the 2005 amendments to the Law on the Militia, most of these rights have been incorporated into Section 5 of the Law<sup>10</sup>. This is a step in the right direction. However, information gathered by the delegation during the 2005 visit revealed that the legal framework still requires improvement and that there continues to be a huge gap between the current legislation and practice.

31. As concerns the right of a detained person to inform a close relative or another third party of his detention, it is now provided that the detention must be immediately – and not later than two hours after detention – notified to a relative. During the 2005 visit, detainees met by the delegation generally indicated that their detention had been notified to a family member. However, a number of detainees complained about undue delays (i.e. of up to five days). **The CPT recommends that the Ukrainian authorities ensure that the new provisions are strictly implemented.**

32. Access to a lawyer has been a constant area of concern for the Committee since its first visit to Ukraine, seven years ago. The situation observed on the spot in 2005 was still not acceptable. Very few criminal suspects interviewed by the delegation actually had access to a lawyer. A large number of them claimed that access was denied and that they were forced to sign a statement renouncing this right, or were told that they did not need one. Persons detained under the Code of Administrative Offences still did not have any access to a lawyer during their detention by the Militia.

Certainly, Section 5 of the Law on the Militia now includes provisions expressly referring to access to a “defence counsel” for persons “detained or arrested (remand in custody)”. In this respect, if such persons ask for it orally or in writing, the Militia must immediately – and not later than two hours from the moment of detention – inform the counsel; they should receive information on the right to defend their rights and interests [...] with the assistance of a counsel as from the moment of detention or arrest (remand in custody) and to refuse to give any explanations or evidence before the arrival of the counsel”, as well as to be “assured of the possibility to be legally assisted by a defence counsel as from the moment of detention or arrest (remand in custody)”. Still, these legal amendments had not led to the necessary changes in the CCP as recommended by the CPT with respect to access to a lawyer (cf. paragraph 29 of the report on the 2002 visit)<sup>11</sup>. The lack of clarity of the current legal framework as a whole therefore still leaves the door open for personal interpretations on the part of the Militia as to the right of access to a lawyer for persons deprived of their liberty.

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<sup>10</sup> As amended by Law No. 2322-IV on 12 January 2005.

<sup>11</sup> Cf. also the expert opinion on the draft CCP prepared in 2003 by the Directorate General of Legal Affairs of the Council of Europe on the Ukrainian authorities’ request.

**The CPT calls upon the Ukrainian authorities to finally ensure by all appropriate means that all persons deprived of their liberty by the Militia have the right of access to a lawyer as from the moment when such persons are required to remain with the Militia. This moment must be understood as being the time when they are taken to or are under a legal obligation to attend – and remain at – an Internal Affairs establishment.**

33. In this connection, Section 45 of the CCP provides that the assistance of a lawyer is mandatory when a person under 18 has become a suspect or when the latter has been informed of the charges against him/her. However, a large number of juvenile detainees met by the delegation in 2005 indicated that they were interrogated by Internal Affairs staff without any legal assistance. The CPT must stress that juveniles detained by the Militia constitute a particularly vulnerable group of detainees due to their age, and in this context, they should not make decisions with important legal implications on their own. **The CPT recommends that the Ukrainian authorities take the necessary measures to ensure that juvenile detainees do not make any statement or sign any document related to the offence of which they are suspected without a lawyer being present.**

34. In its reports on the 1998 and 2000 visits, the Committee examined the issue of the content of access to a lawyer. In this regard, it stresses again that the right of access to a lawyer should include the right for the person concerned to talk to him in private (i.e. without the presence of Internal Affairs officers/other representatives of the administration of the place of detention, an investigator, a prosecutor or a judge). Moreover, the person concerned should also be entitled to have a lawyer present during any interrogation/questioning, whether it take place before he is officially deemed a suspect or after, and whether it be conducted by bodies of the inquiry, investigating officers, prosecutors or judges.

**The CPT recommends that the Ukrainian authorities take the necessary steps to ensure that the content of the right of access to a lawyer for persons deprived of liberty meets the above requirements.**

35. For as long as there is no effective system of qualified and free legal aid for indigent persons deprived of their liberty, any right of access to a lawyer will remain, in most cases, purely theoretical. In Ukraine, there are many such persons, and in 2005, no system had been established to ensure that they may be granted the services of an *ex officio* lawyer<sup>12</sup>. **The CPT recommends that the Ukrainian authorities take, without delay, the required legal and other measures to establish a system of qualified legal aid for persons deprived of their liberty by Internal Affairs staff who are not in a position to pay for a lawyer; the recommendations, resolutions and expert opinions of the Council of Europe in this area should be taken into account.**

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<sup>12</sup> A Bar Association has still not been set up at national level in Ukraine. Groups of lawyers have established associations in certain regions of the country. However, in many instances, lawyers have refused to work *ex officio* as it is considered to be a low-profit activity. Further, at present in Ukraine, any practising legal specialist (not necessarily a qualified lawyer) may act as a “defence counsel” for persons suspected or accused of a criminal offence.

36. Although the delegation's findings during the 2005 visit suggest that Internal Affairs staff, in most instances, called for an ambulance when required, there was still no legal provision on the right of a person detained to have access to a medical doctor. As shown by the amendments to the Law on the Militia<sup>13</sup>, the assessment of the need for medical intervention was still left to the discretion of Internal Affairs staff. **The CPT once again recommends that such a right be formally guaranteed.**

37. Pursuant to Section 5 of the Law on the Militia, the detainee should be verbally informed of his/her rights and, at the same time, provided with a printed form explaining these rights. Nevertheless, during the 2005 visit, the overwhelming majority of detainees were not informed of their rights as from the very outset of their detention. Further, when information was provided, it only referred to legal provisions without any further explanation (e.g. relevant Sections of the Constitution and the CCP for criminal suspects and Section 268 of the Code of Administrative Offences for administrative detainees), such as clearly specifying their content and the rights concerned. **The CPT therefore calls upon the Ukrainian authorities to systematically provide all persons held by Internal Affairs staff with a form setting out their rights, as from the very outset of their detention. This form should be available in an appropriate range of languages.**

38. It appears from the information gathered during the 2005 visit that the prompt and accurate recording of a person's detention (i.e. from the moment he/she is obliged to remain with the Internal Affairs staff) remains a considerable area of concern. The delegation's findings revealed that, in many instances, periods of detention (from several hours up to one day) went unrecorded in the protocols of detention. At the same time, custody registers often contained incorrect data, and on occasion, misleading information. By way of illustration, the register of a district police station indicated that a person was detained there for two hours while it was subsequently established that the person in question was in fact held at the police station concerned for three days. Resolute action is required on the part of the Ukrainian authorities to put an end to this state of affairs.

**The CPT recommends that steps be taken immediately to ensure that whenever a person is deprived of liberty by the Militia, for whatever reason, this fact is formally recorded without delay. Further, once a detained person has been placed in a cell, all instances of his/her subsequent removal from the cell should be recorded; that record should state the date and time the detained person is removed from the cell, the location to which he/she is taken and the officers responsible for taking him/her, the purpose for which he/she has been removed from the cell, and the date and time of his/her return.**

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<sup>13</sup> Section 5 of the Law on the Militia provides that the Militia "shall... when necessary, take measures to provide immediate medical or other assistance to the persons in detention or arrest (on remand)".

#### 4. Conditions of detention in Internal Affairs establishments

##### a. Internal Affairs district stations and temporary holding facilities (ITTs)

39. As had been the case during the 2002 visit, persons could be detained for prolonged periods – ranging from several days, weeks, and even several months – locked up for 24 hours a day in overcrowded (in particular in Kyiv<sup>14</sup>), small, narrow<sup>15</sup>, filthy, dark, and very poorly ventilated cells (and in some instances, without any adequate heating system) at district police stations; the only means of resting or sleeping for detainees consisted of narrow benches (measuring from 20 to 40 cm wide) without mattresses or blankets. As in the past, detained persons were let out of their cells at fixed times to go to the toilet, while for the rest of the time, they had to use buckets to comply with the needs of nature. With one exception (at Shevchenkivskyi District Command of Internal Affairs in Lviv), there were no arrangements for detainees to wash themselves. Likewise, detained persons had to rely on relatives for food and they did not always have access to drinking water.

40. As was already made clear by the CPT in its report on the 2002 visit, to detain persons for prolonged periods in such conditions could easily be qualified as inhuman and degrading treatment. This prompted its delegation to invoke, at the end of the 2005 visit – and for the second time – Article 8, paragraph 5 of the Convention, and to request that the Ukrainian authorities put an end to the practice of detaining persons in such facilities for prolonged periods.

41. In their response of 23 January 2006, the Ukrainian authorities indicated that they had prepared – within the framework of the programme for the renovation and reconstruction of Militia holding facilities – a draft Order of the Ministry of Internal Affairs which would include the necessary requirements as regards the conditions of detention at the holding premises of district police stations.

42. The CPT takes note of this initiative. That said, the response of the Ukrainian authorities does not address the CPT's major concern which calls for an end to be put to the intolerable practice of detaining persons for prolonged periods in district police stations.

The time has indeed come to entirely review the use of district police stations. Up to now, these facilities have been a forgotten part of the system, the authorities paying little attention to conditions of detention in such places. As indicated in paragraph 38 of the report on the 2002 visit, such premises will never be suitable for prolonged periods of detention. However, they could easily and quickly be turned into premises that could accommodate persons placed in detention for a few hours without an excessive financial outlay being imposed on the Ukrainian authorities. It should be underlined that the Ministry of Internal Affairs has facilities intended for prolonged periods of detention (ITTs, centres for the reception and distribution of vagrants and special detention centres, etc.).

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<sup>14</sup> For instance, 10 persons were accommodated in a cell measuring approximately 14 m<sup>2</sup>.

<sup>15</sup> By way of illustration, two cells measured 1.4 m<sup>2</sup> (1.7 x 0.8 m) and 3.4 m<sup>2</sup> (2.15 x 1.6 m) respectively in Oktyabrskyi District Command of Internal Affairs in Poltava and one cell measured 4.12 m<sup>2</sup> (2.75 x 1.5) in Mukachevo City Department of Internal Affairs.

Consequently, **the CPT calls upon the Ukrainian authorities once and for all to put an end to the practice of detaining persons in district police stations for periods exceeding a few hours; if necessary, the law and relevant regulations should be amended. The Committee requests confirmation, within three months, that this has indeed been done.**

Further, **in order that detention areas of district police stations offer acceptable conditions for detention periods of a few hours, the Ukrainian authorities must:**

- **ensure that all cells in district police stations have appropriate artificial lighting and ventilation, and that, when the need arises, they are adequately heated;**
- **equip the detention areas with sanitary facilities (including at least one toilet and one washbasin);**
- **define for each cell, taking into account its size, a maximum occupancy level that should under no circumstances be exceeded and withdraw from service all cells measuring less than 2 m<sup>2</sup>;**
- **secure access to drinking water;**
- **give strict instructions that all detained persons have ready access to toilet facilities;**
- **keep the premises in a satisfactory state of cleanliness.**

43. By contrast, as concerns the ITTs visited, the CPT wishes to express its satisfaction at the refurbishment work carried out at the *Kyiv ITT*. The cells had adequate access to natural light due to the enlargement of windows and the removal of shutters, were properly ventilated and heated and had access to running hot and cold water. They were equipped with beds, clean mattresses and bedding. In-cell toilets were fully partitioned. The detained persons had access to shower facilities on admission and thereafter once a week. Moreover, they had access to TV as well as to reading material. The establishment was equipped with three outdoor exercise yards (measuring between 11 and 16 m<sup>2</sup>), two of them partially sheltered. However, a significant number of detained persons claimed that outdoor exercise did not exceed 30 minutes and was offered only twice or three times a week.

At the Mukachevo *ITT*, which had been recently renovated, material conditions were also in many respects satisfactory (e.g. in-cell toilets, call bells, etc.). However, where cells had windows to the street, the windows were still covered with shutters, preventing adequate access to natural light. Moreover, it would be desirable to increase the access to shower facilities by following the example of the *Kyiv ITT*.

Conditions of detention at the *Lviv* and *Poltava ITTs* left a lot to be desired: many cells were poorly lit (some of them had no access to natural light at all) and poorly ventilated. In *Poltava*, in-cell toilets were not partitioned whereas, in *Lviv*, administrative detainees (contrary to other categories of detainees who had ready access to toilet facilities) had to use buckets most of the time to comply with the needs of nature. At the *Poltava ITT*, detained persons had no access to shower facilities. In both ITTs, no outdoor exercise was offered (the *Lviv ITT* had no exercise yard and, at the *Poltava ITT*, the existing exercise yard (measuring some 50 m<sup>2</sup>) was not being used). The Ukrainian authorities informed the CPT in their letter of 23 January 2006 that a new ITT would be built in *Lviv* in 2006 and that it was planned to reconstruct the *Poltava ITT*. These measures should be welcomed.

44. More generally, a common feature of the ITTs visited was the excessive official occupancy levels in the cells: for example, seven beds in a 19 m<sup>2</sup> cell in *Kyiv*, 4 beds in a 9 m<sup>2</sup> cell in *Mukachevo*, four beds in a 6 m<sup>2</sup> cell in *Lviv* or two beds in a 6 m<sup>2</sup> cell in *Poltava*. Further, cells of less than 5 m<sup>2</sup> – and designed for double occupancy – were seen at *Lviv ITT*.

45. Further, in a number of the ITTs visited, access to personal hygiene items (including sanitary items for women) remained difficult. In fact, much depended on the proactive attitudes of Internal Affairs staff.

46. **The CPT recommends that a high priority be given to the building of a new ITT in *Lviv* and the reconstruction of the *Poltava ITT*. Further, it recommends that:**

- **appropriate measures be taken to ensure that all cells at the *Mukachevo ITT* have adequate access to natural light;**
- **access to shower facilities be increased at the *Mukachevo ITT*;**
- **immediate measures be taken to ensure that all detained persons have ready access to toilet facilities at the *Lviv ITT*;**
- **detained persons be provided with essential personal hygiene items;**
- **the current exercise yard at the *Poltava ITT* be brought into use without delay and that all detained persons be offered at least one hour of outdoor exercise every day.**

In addition, **the CPT recommends that the Ukrainian authorities significantly reduce the maximum occupancy levels in the cells of all the ITTs visited, the objective being to offer at least 4 m<sup>2</sup> of living space per detainee. Moreover, all cells measuring less than 6 m<sup>2</sup> should be taken out of use as detention cells.**



47. In three of the ITTs visited, namely in Kyiv, Lviv and Mukachevo, cells were equipped with closed-circuit video surveillance systems (CCTV). As a matter of principle, the CPT has no objection to the use of CCTV for keeping detention areas under surveillance, provided that the privacy of the detained persons is observed when they were using the toilets and when washing themselves. Moreover, such systems should not prevent detainees from having direct contact with staff. They must not, under any circumstances, replace the regular inspection of cells by members of staff to ensure the safety of detained persons. **The CPT invites the Ukrainian authorities to take due account of the above remarks in their current policy relating to CCTV in the detention areas. The Committee would also like to receive a copy of the regulations governing the use of CCTV.**

48. As for contact with the outside world, although efforts had been made to increase the duration of visits and to equip ITTs with special rooms, very few detainees were allowed by the investigating bodies to receive visits. **The CPT recommends that measures be taken in order to ensure that persons remanded in custody are entitled to receive visits as a matter of principle. Any refusal by investigating bodies to allow such visits should be specifically substantiated by the needs of the investigation, require the approval of a body unconnected with the case at hand and be applied for a specified period of time.**

b. other Internal Affairs facilities

49. Material conditions at the Kyiv, Lviv and Uzhgorod centres for the reception and distribution of vagrants were deficient in many respects, bearing in mind the possible length of detention (i.e. up to 30 days). Cells were often severely overcrowded (e.g. 38 detainees in a 75 m<sup>2</sup> cell in Kyiv or seven persons in a cell measuring 9.5 m<sup>2</sup> in Uzhgorod). In-cell lighting (natural and/or artificial light) and ventilation were inadequate in certain of the establishments visited and the toilets were either not partitioned or insufficiently partitioned. In Uzhgorod, where cells were not equipped with toilet facilities, access to these facilities was granted two or three times a day; for the rest of the time, detainees had to use buckets. Moreover, in Kyiv, detainees were not provided with mattresses and blankets. Further, some of the shower facilities (in Kyiv and Lviv) were in an advanced state of dilapidation.

As far as Kyiv is concerned, the delegation was informed that its capacity would be extended by occupying the third floor of the building, which was at the time being occupied by the special detention centre (cf. paragraph 50 below). The authorities also informed the CPT that a new centre for vagrants would be built in Uzhgorod.

50. At the Kyiv special detention centre, which accommodated persons sentenced to administrative detention for up to 15 days of deprivation of liberty, material conditions left something to be desired, in particular as regards access to natural light in certain cells where the windows were covered with a metal grid. Further, toilets in the cells which were all supposed to accommodate several detainees, were not partitioned off. That said, this centre should be transferred to the renovated section of the building which could offer proper conditions if the authorities ensured that in-cell toilets were fully partitioned and removed metal shutters from the windows.

51. As regards the regime of activities in centres for the reception and distribution of vagrants and the Kyiv special detention centre, most detainees spent their time locked up in their cells without being offered an hour of outdoor exercise every day, although the centres for vagrants were equipped with exercise yards to this end. Moreover, detainees had no access to radio or TV.

Likewise, the internal rules of these centres comprised several elements which were not acceptable, such as the prohibition of contact with the outside world and the suppression of outdoor exercise as a disciplinary sanction for persons accommodated in centres for vagrants.

52. In the light of the above, **the CPT recommends that the Ukrainian authorities:**

- **significantly reduce the maximum occupancy levels in the cells of all establishments visited, the objective being to offer at least 4 m<sup>2</sup> of living space per detainee;**
- **remedy all the above deficiencies as concerns access to natural light, artificial lighting and ventilation in the Kyiv and Lviv centres for the reception and distribution of vagrants and Kyiv special detention centre;**
- **ensure that all detainees at the centres for the reception and distribution of vagrants are given clean mattresses and bedding;**
- **take immediate steps to ensure that all detainees, irrespective of their legal status, are offered at least one hour of outdoor exercise every day, and review the regulations to ensure that outdoor exercise is never denied as a disciplinary sanction;**
- **offer the detainees a minimum regime of activities (access to radio/TV and to reading matter);**
- **review the regulations and practice to ensure that detainees are able to receive visits and to send/receive letters;**
- **ensure that the new Uzhgorod centre for the reception and distribution of vagrants is built as soon as possible.**

**Further, the CPT would like to receive detailed information on the planned changes to the facilities of the Kyiv centre for the reception and distribution of vagrants and special detention centre.**

53. In some cases, the delegation observed that persons sentenced to administrative detention were placed at the disposal of local outside companies, although such persons were not remunerated for their work. The said companies transferred the corresponding salaries to the administration of these centres which allocated the sums of money received to the refurbishment of the facilities. The CPT always welcomes efforts to provide work activities for persons detained. However, those engaged in work for market economy companies should receive an equitable remuneration. **The Committee wishes to receive the comments of the Ukrainian authorities on this matter.**

54. Persons at the Lviv centre for the reception and distribution of minors could be detained for up to two months. The material conditions in the dormitories could be considered generally acceptable, except for the maximum occupancy level (e.g. 7 beds in an 18 m<sup>2</sup> room). In addition, the toilets in the quarantine unit and shower facilities were in an advanced state of dilapidation.

Despite the scarce financial resources available, efforts were being made to provide the minors with a number of activities (e.g. education, access to TV/radio, reading material, board games). Detainees had access to a pleasant outdoor recreation area (for up to 3 hours a day). Nevertheless, persons held in the quarantine unit (generally for a couple of days, and in exceptional cases, for up to 15 days) were, as a rule, deprived of any outdoor exercise.

Arrangements for contact with the outside world (visits, telephone) could be considered as acceptable.

55. **The Committee recommends that steps be taken to:**

- **reduce the maximum occupancy levels in the rooms, with the view to ensuring adequate living space per person (at least 4 m<sup>2</sup>);**
- **refurbish the toilets in the quarantine unit and the shower facilities;**
- **ensure that detainees held in the quarantine unit be offered at least one hour of outdoor exercise every day.**

Moreover, **the CPT encourages the Ukrainian authorities to pursue their efforts to offer a broad range of activities to detainees.**

- c. health care and tuberculosis in Internal Affairs facilities

56. The issue of right of access to a medical doctor for persons deprived of their liberty by Internal Affairs staff has been addressed in paragraph 36 above. Health care for such persons in the ITTs remains a matter of concern for the Committee, as the presence of a *feldsher* was still not guaranteed in most of the ITTs visited. As in the past, Militia officers on duty asked questions of a medical nature. **The CPT once again calls upon the Ukrainian authorities to take the necessary steps to ensure that all ITTs benefit from the regular presence of a *feldsher*. Naturally, hours of attendance should take into account the particularities (size, occupancy levels, turnover, etc.) of each ITT. In any event, every newly admitted person must be examined by qualified health-care staff within 24 hours of his/her arrival.**

57. Likewise, in the ITTs (where the presence of a feldsher was guaranteed), centres for the reception and distribution of vagrants and the special detention centre visited, medical screening upon arrival was performed in a cursory manner, often without a proper physical examination of the persons concerned. This is of particular concern, not only in terms of health care, but also in the context of the prevention of ill-treatment. In fact, it appeared that the aim of such screening was primarily focussed on the detection of persons with visible injuries in order to protect custodial staff from possible accusations of ill-treatment. Moreover, all medical examinations and records were compromised by the fact that the examinations were systematically carried out in the presence of Militia officers.

**The CPT recommends that strict instructions be given to ensure that every medical screening is carried out in a thorough manner and includes a proper physical examination of the person concerned. Further, it once again recommends that all examinations be conducted out of the hearing and – unless the health-care staff concerned expressly requests otherwise in a given case – out of the sight of Militia officers.**

58. The delegation's observations in relation to tuberculosis are a source of great concern. There were often considerable delays in screening for tuberculosis. Further, persons who were receiving anti-tuberculosis treatment at the time of their apprehension frequently did not continue to receive this treatment while detained in district police stations. Such unscreened and untreated persons were kept for weeks, even months, in district police stations under the intolerable conditions described in paragraph 39 above. The problem was exacerbated by the refusal of ITTs to accept persons suffering from tuberculosis. This state of affairs engenders unacceptable risks of transmission of tuberculosis between detained persons and also to staff. Furthermore, interruption of treatment can seriously accelerate the advance of the disease for tuberculosis patients. The CPT takes note of the joint plan of the Ministries of Health and of Internal Affairs to tackle the problem of the treatment of detainees suffering from tuberculosis (cf. Joint Order No. 331/645 of 6 July 2004). This Order provides that persons suffering from tuberculosis and detained by the Militia may receive treatment at local medical establishments. In their letter of 23 January 2006, the Ukrainian authorities indicated that 407 detainees could be accommodated in 95 secured rooms in community tuberculosis hospitals. This development is promising but remains insufficient. **The Committee therefore recommends that the joint plan of the Ministries of Health and of Internal Affairs to ensure adequate treatment of detainees suffering from tuberculosis in community hospitals be fully implemented without delay. In this connection, the CPT would also like to receive detailed information about this plan and its implementation, including a list of medical establishments with units for the treatment of persons suffering from tuberculosis held by the Militia, in each region of the country.**

Further, it recommends that the Ukrainian authorities ensure:

- **the early and effective screening for tuberculosis of all persons detained by the Militia;**
- **the provision of uninterrupted treatment for persons already receiving anti-tuberculosis drugs at the time of apprehension.**

## **B. Foreign nationals detained under aliens legislation**

### **1. Preliminary remarks**

59. The legal provisions applicable to foreign nationals held under aliens legislation were described in the CPT report on the 2002 visit (cf. paragraph 50 of CPT/Inf (2004) 34). In this context, particular reference should be made to Section 263 of the Code of Administrative Offences, according to which the Militia or the Border Guard Service may detain a person suspected of having infringed the aliens legislation for up to 72 hours, provided that the public prosecutor has been notified in writing “within 24 hours as from the moment of detention”, or for up to 10 days with the public prosecutor’s prior authorisation (for persons who do not have identity documents in their possession). The CPT takes note that the Ukrainian authorities have amended Section 32 of the Law “On the Legal Status of Foreigners and Stateless Persons” whereby further extension of detention is limited to a maximum of 6 months and that the lawfulness of such a detention is reviewed by an administrative court<sup>16</sup>.

However, the Committee notes that paragraph 3 of the 2003 Model Regulations on Temporary Holding Centres for Foreign Nationals and Stateless Persons Illegally Residing in Ukraine<sup>17</sup> refers to a list of exceptional cases where periods of detention may exceed six months for health reasons (illness), administrative reasons (official notice about the specific date of delivery of passport documents or funds necessary for return) or on “similar grounds”. **The CPT would like to receive clarification of the “similar grounds” which may be invoked to extend the detention of foreign nationals beyond six months. Further, it would like to know whether the lawfulness of such an extension is reviewed by a court.**

60. During the 2005 visit, the Border Guard Service had under its authority or control three main types of facilities where persons may be deprived of their liberty: Border Guard units, where persons may be held for up to three days in premises designed specifically for custodial purposes (SPs); Temporary Holding Facilities (PTTs), where persons may be held for up to 10 days<sup>18</sup>, and Temporary Holding Centres, where persons may be held for up to six months (in this connection, cf. paragraph 61 below)<sup>19</sup>. The delegation visited Uzhgorod Border Guard Unit No. 9, Lviv, Mostyska, Chop and Mukachevo PTTs as well as the Pavshino Temporary Holding Centre for men (near Mukachevo).

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<sup>16</sup> Cf. Law No. 1277-IV of 18 November 2003 and item 12-2 of the Final and Transitional Provisions (Part VII) of the revised Code of Administrative Procedure, adopted on 6 July 2005 and entered into force on 1 September 2005.

<sup>17</sup> For more detailed information, cf. Resolution of the Cabinet of Ministers of Ukraine No. 1110 dated 17 July 2003 on the approval of the Model Regulations on Temporary Holding Centres for Foreign Nationals and Stateless Persons Illegally Residing in Ukraine.

<sup>18</sup> As concerns these two types of premises, cf. Order No. 494 of the Border Guard Service of 30 June 2004.

<sup>19</sup> Cf. Section 32 of the Law “On the Legal Status of Foreigners and Stateless Persons”, as amended, and the above-mentioned Council of Ministers’ resolution No. 1110 of 17 July 2003.

61. The situation in 2005 in respect of detained foreign nationals was quite confusing. The Council of Ministers decided in September 2005<sup>20</sup> to entrust the Ministry of Internal Affairs with the setting-up and re-organisation of temporary holding centres (like Pavshino Centre). However, it appeared that the Ministry of Internal Affairs would only take on new centres and not a centre like Pavshino, whereas the Border Guard Service considered itself no longer responsible for this centre<sup>21</sup>. This state of affairs led to an intolerable situation for the persons held in Pavshino (cf. paragraphs 70-73 below).

In their letter dated 23 January 2006, the Ukrainian authorities confirmed that they had allocated funds for the creation of such centres and indicated that, in the meantime, immigration detainees would be held in Border Guard PTTs and Ministry of Internal Affairs detention centres for vagrants. The CPT would like to stress that such facilities are not suitable for detention periods which may last for up to six months. **It therefore recommends that a high priority be given to the setting up of centres specifically designed for the detention of foreigners under aliens legislation, offering material conditions and a regime appropriate to their status and length of detention, and staffed by suitably qualified personnel. In so doing, the Ukrainian authorities should take account of the standards developed by the CPT in its 7<sup>th</sup> General Report** (see doc CPT/Inf/E (2002) 1, available in Ukrainian).

## 2. Ill-treatment

62. During the 2005 visit, the delegation received a significant number of allegations of physical ill-treatment, mainly referring to punches and kicks, at the time of apprehension by the Border Guard staff or during initial periods of detention in Border Guard units. Furthermore, several detainees complained of slaps, kicks and baton blows while being accommodated at Chop Temporary Holding Facility, when they refused to carry out maintenance and cleaning work within the compound. They also complained that they were frequently insulted by staff.

At Pavshino Temporary Holding Centre for men, similar allegations referring to the period before July 2005 were heard. However, the delegation was informed that Border Guard staff had been replaced and the detainees confirmed that the situation had improved since then.

63. Although the replacement of staff can be a one-off solution in the latter case as described above, more emphasis should be placed on long-term measures to eradicate ill-treatment by Border Guard staff. **The CPT recommends that Border Guard officers be firmly reminded at regular intervals that:**

- **ill-treatment of persons deprived of liberty and verbal abuse is unacceptable and will be severely sanctioned;**
- **no more force than is necessary should be used when effecting an apprehension and that, once apprehended persons have been brought under control, there can be no justification for striking them.**

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<sup>20</sup> Cf. Council of Ministers' decision No. 945 of 24 September 2005.

<sup>21</sup> However, they continued to ensure the day-to-day running of the Pavshino centre.

### 3. Conditions of detention

- a. Border Guard premises designed specifically for custodial purposes (SPs) and Temporary Holding Facilities (PTTs)

64. Order No. 494 of the Border Guard Service, dated 30 June 2004, describes in detail the conditions under which persons are held in Border Guard holding premises; in particular, the Order provides that premises designed specifically for custodial purposes (SPs) must be situated in Border Guard units. Material conditions in the 8 m<sup>2</sup> cell at Border Guard Unit No. 9 could be considered as acceptable, if the ventilation and heating were to be improved. However, the delegation was informed by staff that detainees were generally held in Border Guards' dormitories, the cell being apparently reserved for agitated or violent detainees. At the same time, many detainees met claimed that they had been detained for several days in an unequipped room (such as a laundry room) or an office, without being given mattresses or food. It is noteworthy that these allegations concerned not only Border Guard Unit No. 9, but also other units in the region.

65. The CPT welcomes the refurbishment work carried out at the Border Guard PTT of Mukachevo Detachment 2142, which was first visited in 2002. Serious efforts have been made to reduce overcrowding and to improve in-cell lighting and ventilation. There were also new sanitary facilities. In addition, the facility was now equipped with an outdoor exercise yard adjacent to the detention area.

That said, there were still too many beds for the size of the cells (e.g. four beds in a cell measuring less than 8 m<sup>2</sup>).

66. Conditions were less favourable at the Chop, Lviv and Mostyska Border Guard PTTs. Again, the maximum occupancy levels were too high (e.g. 12 beds in an 18 m<sup>2</sup> cell in Lviv or 17 beds in a 28 m<sup>2</sup> cell in Chop). Further, although the Mostyska PTT had been renovated, access to natural light and ventilation were still poor. The same remark applies to Lviv, where, in addition, the delegation observed a very small cell (i.e. cell No. 4 measuring some 4 m<sup>2</sup> and equipped with two beds), which had no access to natural light. Further, in Lviv, access to toilet facilities was restricted to five minutes after each meal. However, in Chop and Lviv, the building of two new PTT premises had started.

Personal hygiene products were only provided at Chop PTT, with external humanitarian assistance. With the notable exception of Chop, many complaints about the quantity and quality of food were received.

67. In all the PTTs visited, detainees spent most of the day – if not the whole day – locked up in a state of complete inactivity. They did not even have reading material at their disposal. Moreover, none of the detained persons in Lviv were offered outdoor exercise. In Chop, due to the lack of a secure area, detainees were handcuffed in pairs during outdoor exercise. Such a practice is not acceptable; other means to ensure security can and must be found.

68. On the positive side, health care was, on the whole, acceptable; more particularly, detainees were screened by a *feldsher* upon admission. However, individual medical files were most often kept at the PTT facilities and did not accompany detained persons when the latter were transferred to another holding facility.

69. In the light of the above findings, **the CPT recommends that:**

- **all Border Guard units which may accommodate foreign nationals be equipped with rooms/cells designed specifically for custodial purposes, as provided by the regulations;**
- **heating and ventilation be improved in the cell of Uzhgorod Unit No. 9;**
- **the maximum occupancy levels of the cells of all Border Guard PTTs visited be reduced, the objective being to offer at least 4 m<sup>2</sup> of living space per person;**
- **the construction of the new PTT buildings in Chop and Lviv be completed without delay;**
- **cell No. 4 at Lviv PTT be immediately withdrawn from service for detention purposes;**
- **access to in-cell lighting and ventilation be improved in the Mostyska PTT;**
- **ready access to toilet facilities be immediately secured for all detainees at Lviv PTT;**
- **detained persons at Lviv and Mostyska PTTs be provided with essential personal hygiene products (e.g. soap, towel, sanitary items for women's monthly needs, etc.);**
- **the quantity and quality of food offered to detainees be verified at Lviv and Mostyska PTTs;**
- **detainees be immediately offered one hour of outdoor exercise at Lviv and Chop PTTs and that the practice of handcuffing detainees during outdoor exercise at Chop be immediately discontinued;**
- **efforts be made to provide detainees with some form of activity (e.g. reading material, radio/TV);**
- **steps be taken to ensure that individual medical files accompany detained persons when they are transferred from a PTT to another holding facility.**



b. Pavshino Temporary Holding Centre for men

70. Pavshino Temporary Holding Centre for men was first visited by the CPT in 2002. The facts found at that time prompted the delegation to make an immediate observation pursuant to Article 8, paragraph 5, of the Convention.

Some improvements were observed during the 2005 visit in respect of material conditions (refurbishment of dormitories, the central heating system – though rudimentary – and outdoor toilet facilities). However, these developments were cancelled out by a large number of negative factors. The centre was much more overcrowded than in 2002, with 393 detainees for an official capacity of 250 persons. As a result, detainees were given mattresses to sleep on the floor while others shared a bed between two. By way of illustration, 21 persons were being accommodated in a 16 m<sup>2</sup> room, equipped with only 14 beds. Despite external humanitarian assistance, the provision of clothing and shoes was not at all suited to the needs of the persons concerned, in particular as the winter was approaching. Foreign nationals held at the centre generally had to use buckets or even plastic bags to comply with the needs of nature between 8 p.m. and 8 a.m. Detainees complained that a few of them could have access to the only shower room of the establishment, which was being under repair during the visit. As in 2002, food was prepared and served outdoors in unsuitable conditions.

The lack of activities generally left detainees in a state of inactivity for prolonged periods, as had been the case in 2002 (the only positive element being the open-door regime during the day).

71. The CPT's delegation was far from convinced as to whether a *feldsher* was present at the establishment on a regular basis. Further, the provision of health care was problematic in many respects: no systematic medical check-up upon admission, inadequate screening of infectious diseases and serious lack of epidemiological control. By way of example, one detainee had an intense icteric coloration of the skin, which should have raised suspicion of viral hepatitis; however, no particular attention was being paid to this case.

72. In short, the Pavshino Temporary Holding Centre for men failed to respond to the basic needs of the persons detained at this establishment. The cumulative effect of serious deficiencies, relating to many aspects of their conditions of detention and the provision of health care as well as to the resources<sup>22</sup> involved in the operation of the centre, placed the detainees in such a situation that their conditions of detention could fairly be described as an inhuman and degrading treatment. It should be recalled in this regard that external humanitarian assistance does not discharge the State from its responsibility towards detained persons.

Consequently, and for the second time, the CPT's delegation invoked Article 8, paragraph 5, of the Convention, requesting that the Pavshino Temporary Holding Centre for men be withdrawn from service and that the Ukrainian authorities design and put in place without delay new facilities to adequately meet the needs of the persons held there (cf. paragraph 9 above). However, the Ukrainian authorities failed to provide a response on the concrete steps taken with a view to implementing this immediate observation.

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<sup>22</sup> Including human resources. The staffing situation at Pavshino centre was clearly inadequate to address the needs of the persons detained there (only 50% of the posts were filled).

73. It is not the Committee's intention to enter into a dialogue as to the reasons why the Ministry of Internal Affairs and the Border Guard Service have shifted the responsibility from one to the other with regard to which body is in charge of this centre (cf. paragraph 61 above) and why the situation had now reached deadlock. It wishes to stress once again that it is the responsibility of the State to ensure that persons it deprives of their liberty are held in decent conditions. Further, the State is under an obligation to adopt reasonable measures to protect such persons from inhuman and degrading treatment. Consequently, **the CPT would like to receive, within one month, detailed information on the measures taken by the Ukrainian authorities in response to its delegation's immediate observation.**

c. other issues

74. With respect to contact with the outside world, the regulations<sup>23</sup> allow foreign nationals held at Border Guard PTTs to write or receive letters, have access to a telephone (depending on the equipment available at the facilities concerned) and to receive visits from relatives and representatives of relevant organisations, such as the UNHCR. However, during the 2005 visit, such contacts were virtually non-existent at Border Guard PTTs. Detainees held at Pavshino Centre were in a better situation and had access to a telephone; they shared a limited number of phone cards distributed with external humanitarian assistance. **The CPT invites the Ukrainian authorities to pursue their efforts to allow persons held under aliens legislation to maintain contact with the outside world, in particular as regards access to a telephone.**

75. As concerns discipline, detainees met at Pavshino Centre alleged that, having refused to comply with orders given by staff, they had been locked up in a room (located on the ground floor of the administrative building) for up to one week, without any means of rest and any access to outdoor exercise, or to toilet facilities (they had to use buckets). Food was allegedly provided by co-detainees through a window. Such treatment would clearly be unacceptable.

Further, there were no written rules on discipline and no disciplinary registers. Although this problem was acknowledged by the Head of the Border Guard staff during the visit to the establishment, the CPT must stress that it is in the interests of both detainees and staff that clear disciplinary procedures be formally established and applied in practice; any grey areas involve the risk of an unofficial and uncontrolled system developing.

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<sup>23</sup> Cf. the above-mentioned Order No. 494 of the Border Guard Service of 30 June 2004 and Council of Ministers' resolution No. 1110 of 17 July 2003.

**The CPT therefore recommends that:**

- **formal disciplinary regulations be drafted for holding centres for foreign nationals detained under aliens legislation. These regulations should provide detainees with a right to be heard on the subject of the offences which they are alleged to have committed, and to appeal to a higher authority against any sanctions imposed;**
- **if segregation is imposed as a possible disciplinary sanction, detainees have a means of rest at their disposal and ready access to toilet facilities, as well as at least one hour of outdoor exercise every day and access to reading matter.**

76. Some improvements had been observed during the 2005 visit in respect of record keeping; in particular, individualised detention records had been introduced. However, registers were not always complete or accurate at Border Guard PTTs, and at Pavshino Centre the respective decisions justifying deprivation of liberty were missing in many instances. At Border Guard Unit No. 9, the delegation had gathered indications that the detention of several persons had not been recorded. **The CPT trusts that the Ukrainian authorities will ensure that detention registers are maintained in a complete and accurate manner.**

#### **4. Safeguards for persons detained under aliens legislation**

##### a. safeguards during detention

77. As for other categories of persons deprived of their liberty, persons held under aliens legislation should enjoy certain fundamental rights as from the outset of their detention, i.e. the right to inform a person of their choice of their situation, and to have access to a lawyer and a doctor. It is equally fundamental that foreign nationals detained by law enforcement authorities be informed without delay of all their rights, including those mentioned above, in a language they understand. If necessary, recourse should be had to the services of an interpreter.

However, the information collected during the 2005 visit did not reveal any improvements with respect to the implementation of the above safeguards.

78. Although the regulations provide for the right of detainees to promptly inform a relative or a third party of their deprivation of liberty<sup>24</sup>, only very few of them were able to do so in practice.

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<sup>24</sup> For instance, cf. Order 494 of 30 June 2004.

79. During the 2005 visit, the delegation received assurances from the Ukrainian authorities that persons held under aliens legislation were provided with the services of a lawyer or legal advisers in strict compliance with the legislation and that no complaints had been received in this respect since 2003. However, the delegation's findings suggest that access to a lawyer as from the outset of deprivation of liberty was denied in most instances and at many stages of the detention, if not all.

80. As concerns information on rights and the procedure applicable to detainees, the situation did not differ from the one observed in 2002. Such information was rarely given to detainees as from the outset of deprivation of liberty, even verbally, and when written information was provided, it did not refer to the amended Refugee Act (cf. paragraph 82 below).

Moreover, very few detainees had access to an interpreter when necessary. Further, when interpretation was available, detainees complained that the information provided was not comprehensible.

81. In the light of the above, **the CPT must reiterate all its recommendations made in paragraph 73 of its report on the 2002 visit, namely to ensure that all persons held under aliens legislation (wherever they are detained):**

- **have an effective right, as from the very outset of their deprivation of liberty (i.e. from the moment when the persons concerned are obliged to remain with a law enforcement agency), to inform a relative or a third party of their choice of their situation;**
- **have an effective right of access to a lawyer as from the very outset of their deprivation of liberty and at all stages of the proceedings;**
- **receive, when necessary, the assistance of a qualified interpreter;**
- **are fully informed of their situation, their rights and the procedure applicable to them. In this context, an up-to-date printed form available in the languages most commonly spoken by those detained under aliens legislation should be distributed to them as from the very outset of their deprivation of liberty.**

b. risk of ill-treatment after expulsion

82. The CPT welcomes the fact that the Refugee Act was amended in 2005 so that no time limit is now required for submitting an application for asylum. Likewise, the law now requires that the migration authority examine an application within 15 days from the date of registration<sup>25</sup>. Decisions taken by the migration authority can be appealed in court<sup>26</sup>.

Nevertheless, problems were identified in practice in the early stages of the procedure. A number of detainees met by the delegation during the 2005 visit claimed that they were unable to send an application, mainly due to their having been provided with misleading information. **The CPT recommends that clear and firm instructions be given to both Border Guard and Internal Affairs staff to ensure that all detained persons wishing to apply for asylum are in a position to effectively make use of the new legislation.**

83. According to the regulations currently in force, in order to identify the foreign nationals concerned and organise their prompt deportation to their country of origin, Border Guard staff should make contact with institutions representing the country of origin or consulates, not later than “12 hours following the time of detention”, unless the detainees concerned ask for asylum, either verbally or in writing<sup>27</sup>. In the CPT’s view, this deadline is far too short to ensure that a person is not sent back to a country where he or she runs a real risk of being subjected to torture and ill-treatment. **The Committee therefore recommends that the Ukrainian authorities amend the regulations with a view to substantially extending the time by which consulates or relevant institutions may be contacted.**

**It would also like to receive information on practical measures taken in compliance with Guideline 12 (2) and (4) of the Council of Europe’s Committee of Ministers’ Guidelines on forced return adopted on 4 May 2005<sup>28</sup>.**

**Further, the CPT would like to receive information on existing and draft bilateral readmission agreements allowing the Ukrainian authorities to promptly deport persons infringing the State border to what is considered as being a safe third country.**

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<sup>25</sup> Cf. Sections 9 and 12 of the Refugee Act, as amended by Law No. 2601-IV of 31 May 2005.

<sup>26</sup> Cf. Section 16 of the Refugee Act.

<sup>27</sup> Cf. Order No. 494 of the Administration of the State Border Guard Service, dated 30 June 2004 (item 3.4. of the Instructions on the procedures for keeping persons administratively detained by the State Border Guard Service of Ukraine who have infringed the laws on the State border of Ukraine and those who are suspected of having committed criminal offences).

<sup>28</sup> Guideline 12: “2. [...] the host state and the state of return shall respect the restrictions imposed on the processing of personal data relating to the reasons for which a person is being returned. [...]

4. The host state shall exercise due diligence to ensure that the exchange of information between its authorities and the authorities of the state of return will not put the returnee, or his/her relatives, in danger upon return. In particular, the host state should not share information relating to the asylum application.”

C. State Security Service holding facilities and secure hospital wards

1. **Holding facilities under the authority of the State Security Service (SBU)**

84. The CPT was informed that, in accordance with the Presidential Decree No. 344 of 21 April 2003, all pre-trial establishments (SIZOs) under the authority of the State Security Service (SBU) were withdrawn from service.

During the 2005 visit to Ukraine, the delegation found that the State Security Service holding facility in Kyiv (the former *SBU SIZO*) was used for the detention of persons for up to 72 hours. Conditions of detention were, on the whole, satisfactory, similar to the situation described in the CPT report on the 1998 visit to Ukraine (cf. paragraphs 177-180 of CPT/Inf (2002) 19). **The CPT would like to receive detailed information from the Ukrainian authorities on the legal status of this facility.**

85. Examination of individual files at Uzhgorod centre for the reception and distribution of vagrants revealed that some detainees stayed overnight at *SBU Headquarters in Uzhgorod*. According to the detainees concerned, they were kept in an empty room, without mattresses, blankets or food. **The CPT would like to receive the comments of the Ukrainian authorities on this matter.**

86. **The CPT must stress that the recommendations made in Section II.A.3 (Fundamental safeguards against ill-treatment) apply equally to persons deprived of their liberty by the State Security Service.**

2. **Secure ward at Kyiv Municipal Clinical Emergency Hospital**

87. The CPT first visited the secure ward at Kyiv Emergency Hospital in 1998. In 2005, the ward comprised one three-bed room (for female detainees) and one six-bed room (for male detainees).

88. The delegation ascertained that patients were systematically fixated to the bed by a metal chain cuffed to one wrist. Patients interviewed alleged that many examinations and treatments were carried out while they were fixated. This unacceptable state of affairs was already highlighted in paragraph 245 of the report on the 1998 visit<sup>29</sup>. **The Committee calls upon the Ukrainian authorities to discontinue the practice of chaining detainees to hospital beds for security reasons at Kyiv Emergency Hospital.**

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<sup>29</sup> Cf. document CPT/Inf (2002) 19.

89. Internal Affairs staff were always present during medical interventions and nursing procedures. The CPT recalls once again that medical examinations must be conducted out of the hearing and – unless the health-care staff concerned expressly request otherwise in a particular case – out of the sight of Internal Affairs staff and **recommends that measures be taken accordingly at the secure ward of the Kyiv Emergency Hospital.**

90. During the 2005 visit, the CPT's delegation also observed that Internal Affairs officers carried truncheons, firearms and gas canisters in full view of patients. The Committee considers that openly carrying firearms and such devices when working in direct contact with persons held in other places of deprivation of liberty (e.g. prisons) potentially places both detainees and staff at risk and is clearly not conducive to the development of positive staff-detainee relations; it must stress that this is even less acceptable in secure wards of a hospital. Preferably, staff should not carry them at all. If deemed necessary, truncheons and gas canisters should be hidden from view. Further, firearms should be deposited in a safe place when staff enter the hospital. **The CPT recommends that the Ukrainian authorities take the necessary steps in the light of the above remarks.**

**D. Establishments under the authority of the State Department for the Execution of Sentences**

**1. Preliminary remarks**

91. The CPT delegation visited three penitentiary establishments: Kherson Colony No. 61 for prisoners with tuberculosis, Bozhkivske Colony No. 65 for women (Poltava region) and Temnivka Colony No. 100 for men (Kharkiv region). In addition, the delegation visited Kharkiv Colony No. 54 to examine the treatment of women sentenced to life imprisonment.

92. According to the information provided by the Ukrainian authorities, the downward trend in overcrowding in the establishments under the authority of the Department for the Execution of Sentences seems to have continued. In 2005, the Department had a total of 170,098 places in its establishments, for a prison population numbering 178,057<sup>30</sup> as of 1 October 2005 (compared to 197,222 in 2002). More particularly, the situation appears to have improved in the remand establishments (SIZOs) with 34,420 prisoners for a capacity of 36,900, while it remains more precarious in the colonies – 143,198 prisoners for a capacity of 133,198.

93. However, notwithstanding the aforementioned figures, the continuing difficulties must not be underestimated. Seven years after the Committee's first visit to Ukraine, the unacceptable norm of 2.5 m<sup>2</sup> of living space per prisoner in SIZOs is still in force; with a few exceptions<sup>31</sup>, the Code on the Execution of Sentences which entered into force in January 2004 still provides for an inadequate norm of living space of 3 m<sup>2</sup> per prisoner in colonies.

There is clearly still much to be done to reduce overcrowding, which is essential if the Ukrainian authorities' efforts to improve detention conditions are to be truly successful. Apparently, the reduction in the prison population is primarily the result of amnesties<sup>32</sup>, rather than the results of recourse to alternatives to imprisonment or parole or the early release measures introduced in 2001 (cf. paragraph 82 of the 2002 visit report).

94. The Ukrainian authorities indicated their determination to pursue their efforts to resolve the problem of overcrowding in prisons. In particular, a draft law amending the Criminal Code was prepared in 2005 with a view to a more differentiated approach to sentencing and a broader range of non-custodial measures as well as replacing certain custodial sentences with alternative measures.

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<sup>30</sup> Of which 439 persons were held in two labour therapeutic-prophylactic centres.

<sup>31</sup> Colonies for women and minors (4 m<sup>2</sup>), care facilities and colonies for prisoners with tuberculosis (5 m<sup>2</sup>).

<sup>32</sup> In 2005, of 8,414 persons meeting the conditions for an amnesty, 6,369 were released and 1,592 had their sentence reduced.



The CPT trusts that a high priority will be given to the adoption of this draft law. In this connection, it reiterates the importance of drawing up a coherent strategy covering both admission and release from prison, to ensure that imprisonment really is the measure of last resort. Emphasis should be placed on the full range of non-custodial measures capable of providing judicial supervision during the period preceding the imposition of a sentence, as well as on measures to accelerate a prisoner's release, including through supervisory means tailored, *inter alia*, to the prisoner's personality and the nature of the sentence.

**The CPT recommends that the Ukrainian authorities step up their efforts to give tangible form and practical application to a coherent strategy to combat overcrowding, based on the full set of principles listed in the Council of Europe Committee of Ministers Recommendations R (80) 11 concerning custody pending trial, R (99) 22 concerning prison overcrowding and prison population inflation, and R (2003) 22 on conditional release (parole).** In the latter recommendation, the Committee of Ministers stresses in particular that "the financial cost of imprisonment places a severe burden on society and that research has shown that detention often has adverse effects and fails to rehabilitate offenders" and that "conditional release is one of the most effective and constructive means of preventing re-offending and promoting resettlement, providing the prisoner with planned, assisted and supervised reintegration into the community".

**The CPT also recommends that the Ukrainian authorities review as soon as possible the norms fixed by legislation for living space per prisoner, ensuring that these are at least 4 m<sup>2</sup> in all the establishments under the authority of the Department for the Execution of Sentences (SIZOs included).**

95. As regards conditions of detention in penitentiary establishments, the 2005 visit revealed positive changes resulting from the entry into force of the Code on the Execution of Sentences and, to a large extent, from the dynamic and autonomous approach of the Department for the Execution of Sentences in reforming the prison system. **The CPT recommends that the Ukrainian authorities actively persevere in their efforts to improve conditions of detention and humanise the prison system.**

In this respect, the CPT wishes to stress that the improvements and the good material conditions observed in the colonies visited were largely the result of the productive work and additional labour of prisoners, as well as the support of their relatives. At Colony No. 61, prisoners were, moreover, encouraged to make "voluntary donations" to the refurbishment of the premises, apparently in exchange, *inter alia*, for promises of supplementary advantages/privileges (e.g. support in obtaining early conditional release).

While it is possible to conceive that in times of economic crisis, such as those experienced in Ukraine, the authorities strive by all possible means (including contributions from prisoners and/or their families) to improve material conditions in the penitentiary establishments, such an approach must remain the exception. Moreover, it would be totally unacceptable to solicit financial contributions from prisoners in return for promising them advantages or privileges. **The CPT would like to receive the comments of the Ukrainian authorities on the above remarks.**

96. During the 2005 visit, the national representatives of the Department for the Execution of Sentences voiced an urgent need for a specialised training centre for prison staff, in view of their specific tasks. **The CPT invites the Ukrainian authorities to take due account of the needs expressed by the Department for the Execution of Sentences for prison staff training.**

## 2. Torture and other forms of ill-treatment

97. With the exception of one establishment, the CPT delegation heard no recent allegations of deliberate physical ill-treatment of prisoners by staff in the colonies visited.

At Kharkiv Colony No. 54, all women sentenced to life imprisonment gave a very positive assessment of their treatment by the staff in their detention unit (the disciplinary and isolation unit – DIZO/PKT). At Kherson Colony No. 61 for prisoners with tuberculosis, inmates with whom the delegation spoke emphasised the marked improvement in attitude of the vast majority of staff over the previous eighteen months.

98. The aforementioned exception relates to Temnivka Colony No. 100 for men, where the delegation heard a certain number of allegations of severe beatings of prisoners when they were transferred to the disciplinary and isolation section (DIZO/PKT). This treatment was said to have taken place in padded cell 01, in a recurring pattern: namely, the prisoners were handcuffed at the back, held face down on the floor by prison staff and, after their trousers had been taken down, beaten on the buttocks with a long wooden truncheon, usually while being verbally abused. In one case, a prisoner also alleged that he had been beaten on the soles of his feet and that a *feldsher* had thrown cold water in his face; in another case, a prisoner alleged that prison staff had also urinated on his bleeding bare buttocks.

Several of the incidents were said to have occurred following a protest movement by a group of prisoners over their working conditions.

99. When examined by a medical member of the delegation some seven weeks later, certain of these prisoners still displayed lesions consistent with their allegations, for example: prisoner “A” had a linear scar 7 cm long and 2 cm wide orientated obliquely on the right buttock with scar tissue; prisoner “B” had a 10 cm x 4 cm lesion with a dark scab oriented in a horizontal direction on the right buttock; prisoner “C” had a 15 cm x 5 cm area of healing scar tissue at the margin of the right buttock and upper leg, and in the centre of this area, a 4 cm x 3 cm black scab.

After such a period of time, many lesions caused by beatings of this kind would have completely healed and left no traces. The fact that the lesions were still visible, their size, the tissue loss and the persistence of dark scabs suggest that the initial lesions must have been extensive, with breaks in the skin, bleeding, swelling and haematomas.

100. Moreover, it emerged from the medical reports, drawn up by the health-care service following the use of “special means” by members of prison staff in the DIZO/PKT section<sup>33</sup> that the use of force was recorded in ten cases between May and September 2005 – eight of them between 19 August and 3 September (and 4 of these on the same day – 28 August). For the ten prisoners concerned, the same type of lesion was recorded each time (hyperaemia/haematomas on the buttocks of varying dimensions); however, in several cases it emerged that the extent and seriousness of the lesions had been underestimated. Furthermore, the medical reports made no mention of any statements by prisoners or circumstances in which the lesions could have occurred.

When confronted with these facts, the head doctor of the health-care service and a *feldsher* could not provide any credible explanation for virtually identical lesions, particularly when observed on the same day.

101. Given this state of affairs, the CPT’s delegation asked for a thorough investigation to be carried out, without delay, into the allegations of ill-treatment inflicted in cell 01 in the DIZO /PKT section. It also requested that this cell be immediately taken out of use; completely padded with black material, soundproofed, windowless, without ventilation or any equipment other than wall-mounted artificial lighting, it had no place in a modern penitentiary system.

102. The Ukrainian authorities informed the CPT by letter of 23 January 2006 that cell 01 had been converted into a storage area for prisoners' belongings and that a cell in the DIZO/PKT section had been equipped for accommodating agitated or violent prisoners. **The CPT would like to receive detailed information on the layout of this cell (dimensions, natural light and artificial lighting, fittings, etc.). It further recommends that the Ukrainian authorities verify, in all the country's penitentiary establishments, whether there are cells similar to cell 01 found in Colony No. 100 and, if so, that they be taken out of use.**

103. The authorities' reply as regards the investigation called for by the delegation is not acceptable; it merely stated that the investigation concluded that the application of “special means” had complied with Ukrainian legislation and the European Prison Rules.

There are legitimate grounds for doubt over the manner in which this investigation was carried out, if only because of the reports of Colony No. 100's own health-care service, which are disturbing to say the least. The CPT stresses that the authorities should be able to provide plausible explanations for the causes of injuries sustained by persons deprived of their liberty, and that to date they have not provided those explanations. Consequently, **the CPT recommends that the Ukrainian authorities undertake without delay an independent, thorough and comprehensive investigation into the ten cases involving the use of “special means” between 12 May and 3 September 2005 which gave rise to medical reports, and that they submit detailed conclusions to the Committee within three months regarding the findings of the investigation and any measures taken as a result.** It is axiomatic that this investigation must meet the basic requirements in terms of effectiveness set out in paragraph 26 above.

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<sup>33</sup> A medical report must be drawn up for every case of use of force by staff (known as use of PR73).

**The CPT further recommends that the administration and all staff of Colony No. 100 be given a firm and clear reminder that ill-treatment, in any form, is unacceptable and that any member of staff committing, abetting or tolerating such abuses will be severely punished.**

104. As mentioned above, the use of force against a prisoner is subject to a specific procedure according to which staff inform the *feldsher* who calls a doctor to carry out a medical examination of the inmate. The doctor records the results of the examination on a standard form in the prisoner's medical file as well as in a specific register kept by the health-care staff. However, it appeared that the medical examination of such prisoners was carried out in the presence of prison staff. As for the records of the results of the examination, their overly succinct character has already been noted above.

**The CPT recommends that all medical examinations of prisoners, in respect of whom physical force has been used, be carried out by a doctor out of the hearing and – save if the doctor expressly requests otherwise in a particular case – out of the sight of non-medical staff. The content of the medical certificate to be drawn up following the examination must meet the requirements set out in the recommendation made in paragraph 28 above, and a copy of the medical certificate must be made available to the prisoner concerned. This approach should be followed in all penitentiary establishments in Ukraine.**

105. The above findings highlight the important contribution prison health-care staff can make to the prevention of ill-treatment. Improvements to the procedure followed by health-care staff when physical force has been used against prisoners are recommended in the previous paragraph. It is axiomatic that these recommendations apply to all violent episodes in prison irrespective of their origin (ill-treatment inflicted by staff, inter-prisoner violence). Further, in such cases, it is essential that medical services inform, in an appropriate manner, the administration of the establishment, or when deemed necessary, an external authority (e.g. the competent prosecutor) of cases of injuries in relation to allegations of ill-treatment, whether they are made against staff members or involve inter-prisoner violence, in order that an inquiry be conducted and preventive measures taken (in particular in terms of victim protection). This approach should also be followed when the reported circumstances under which the injuries were sustained are not consistent with the former<sup>34</sup>. It must be borne in mind that the victims of abuse, deterred by fear and perhaps shame, are often reluctant to take the step of making a formal complaint.

**The CPT recommends that the necessary measures be taken so that the prison medical services in Ukraine adopt a line of action with respect to ill-treatment of prisoners, whatever the origin, which takes due account of the above remarks.**

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<sup>34</sup> In this respect, it appeared that, in August 2005, at Colony No. 100, a prisoner sustained serious injuries (numerous deep head wounds with cerebral contusion, fracture of right scapula, closed fracture of right tibia, closed fracture of II and IV metacarpal bones in the right hand, torn wound on anterior shoulder, soft tissue contusions) requiring hospitalisation, which clearly could not result from the reported circumstances, namely: the prisoner concerned reportedly “fell while going down metal steps due to imprudence”. Indeed, one of the delegation's medical doctors observed that a fall down the stairs in question could not have resulted in these injuries.

### **3. Prisoners sentenced to life imprisonment**

106. Since its first visit to Ukraine, the CPT has monitored very closely the treatment of prisoners serving life sentences. In 2005, the CPT delegation carried out a detailed review of the situation of women (in Kharkiv Colony No. 54) and men (in Temnivka Colony No. 100) falling into this category.

107. At the time of the visit, Kharkiv Colony No. 54, a minimum-security establishment, was holding eleven women sentenced to life imprisonment. On 11 October 2005, seven of them had been transferred from Chernigiv Colony No. 44 to Colony No. 54. The latter was entrusted with the setting-up of conditions of detention for this category of prisoners, on the basis of instructions from the Department for the Execution of Sentences, adapted to the medium-security regime to be applied to them since the introduction of the new Code on the Execution of Sentences. In particular, the colony was given the task of building a unit specially designed for the detention of these women. At the time of the visit, it was still awaiting specific instructions in order to determine the practical regime governing these women and proceed with the construction of the said unit (cf. paragraph 110 below).

**The CPT would like to receive a copy of the instructions of the Department for the Execution of Sentences concerning the new regime applicable to women sentenced to life imprisonment.**

108. In the meantime, the eleven women had been placed in the renovated area of the disciplinary and isolation section (DIZO/PKT). The living space per prisoner does not call for comment (six prisoners in a cell of about 30 m<sup>2</sup>, and one or two in cells of between 10 and 15 m<sup>2</sup> or more) and the cells were properly equipped, although the toilets were only partially partitioned-off. The artificial lighting was satisfactory; however, it was left on, albeit at a dimmer level, at night. Access to natural light was reasonable in some cells but very poor in others.

Given the new unit project, the CPT is not recommending any immediate improvements for these cells, **other than to review the practice of leaving the light on at all times in the cells at night. The lighting should only be switched on at night in case of necessity.**

**The CPT also trusts that once the women have been transferred to the new unit, and the cells have reverted to their original role, all necessary measures will be taken to remedy the aforementioned shortcomings as regards the partitioning of the toilets and access to natural light.**

109. As regards the prisoners' provisional regime, a sewing workshop had been set up in a cell for shift-work and some women were also working in their cells (assembling boxes). They had reading material – and several of them had a television. All were allowed one hour of exercise per day.

110. The CPT's delegation took a close interest in the construction of the new unit, whose planned capacity is about 20 prisoners. The unit, which will occupy three floors in a building separate from the rest of the establishment, will operate an open-door regime, allowing prisoners to move around the unit freely during the day. This feature is welcomed by the CPT.

In the light of the plans submitted to the delegation, the CPT reiterates the comments it made on the spot to the establishment's management, namely:

- the cells measuring 9.5 to 9.7 m<sup>2</sup> should be reserved for single occupancy;
- more space should be provided for workshops (only one workshop of 17 m<sup>2</sup> is planned for) and there should be sufficient space for socio-educative activities;
- the three exercise areas designated as "in reserve" should be enlarged (the planned dimensions are between 10 and 16.6 m<sup>2</sup>);
- the cells designated for quarantine (from 4.7 m<sup>2</sup> to 5.3 m<sup>2</sup>, intended for placements of up to ten days) and also the disciplinary cell (5.7 m<sup>2</sup>) should be enlarged;
- all in-cell toilets should be fully partitioned;
- the opinion of the medical staff should be sought concerning the layout of the area for medical consultations.

**The CPT recommends that all necessary steps be taken so that the unit for women sentenced to life imprisonment at Kharkiv Colony No. 54 can be set up without delay, and that the above comments be taken into account in the implementation of the project.**

111. In addition, **the CPT recommends that, as of now, all possible aspects of the medium-security regime be gradually introduced in the present DIZO/PKT section, with a view to ensuring that the transition of these prisoners from years under a high-security regime to their new regime is as harmonious as possible.** One means of doing this would be to organise periods of group leisure and educational activities, allowing the prisoners out of their cells for several hours a day.

**It also recommends that steps be taken to ensure that the prisoners are duly informed of all their rights and obligations under the new regime.**

Further, **the CPT would like to obtain precise information on the new rules governing contact with the outside world for these prisoners (type, frequency and duration of visits; correspondence; access to telephone).**

112. As regards men sentenced to life imprisonment whose situation was examined in Colony No. 100<sup>35</sup>, the findings were unsatisfactory, with no action having been taken on numerous long-standing CPT recommendations.

In terms of material conditions, they were certainly accommodated in a modern unit, in well-lit cells (with both natural and artificial light) and properly or even very well-equipped. However, the cells were relatively cramped (two prisoners in cells measuring a little over 9 m<sup>2</sup> and four in cells of slightly more than 15 m<sup>2</sup>), particularly as the prisoners spent 23 hours a day in their cell and their living space was further eroded by sewing machines installed in the cells so that they could work.

The detention regime had not changed since the 2002 visit; neither had the rules for visits from outside and for the receiving of parcels (cf. paragraphs 96 and 97 of the report on the 2002 visit).

113. Further, whereas the unacceptable practice of systematic handcuffing whenever a prisoner was taken out of a cell has at last been abolished for women, the Ukrainian authorities have still not ceased this practice for men.

More generally, the attitude towards this category of prisoners at Colony No. 100 was extremely security-oriented, with staff constantly stressing their “dangerousness”. In addition, the delegation noticed a wire cage in the staff office, in which the prisoners said they were systematically locked when interviewed by members of staff.

114. In short, the prisoner management policy recommended by the Committee for over five years for this category of male prisoners is still not in place, despite the adoption of the new Code on the Execution of Sentences. The Ukrainian authorities' failure to act in this respect is no longer acceptable. **The Committee calls upon the Ukrainian authorities to act now on the Committee's recommendations in this field, taking account of all the guidelines set out in paragraph 75 of its report on the 2000 visit as well as in Recommendation (2003) 23 of the Council of Europe Committee of Ministers on the management by prison administrations of life-sentence and other long-term prisoners. It further recommends that:**

- **the practice of systematically handcuffing men whenever they are taken out of their cell cease with immediate effect;**
- **the use of the wire cage for holding prisoners during interviews with staff at Colony No. 100 be prohibited;**
- **more purposeful out-of-cell communal activities (educative, leisure) be made available to prisoners sentenced to life imprisonment;**
- **the entitlement to visits be substantially increased, with the final objective of bringing this entitlement on a par with that of other prisoners.**

Further, the recommendation made in paragraph 108 above on the lighting of cells at night applies equally here. The exercise yards, which are too small (less than 13 m<sup>2</sup>), should also be enlarged.

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<sup>35</sup> At the time of the visit the unit designed for these prisoners was holding fifty-nine persons.

115. Access to medical care in specialised facilities remains problematic for this category of prisoner, both male and female.

At Colony No. 54, three women had major psychiatric disorders (dementia, serious depression with suicidal ideation, paranoid psychosis), requiring care in a specialised facility. In one case, the prisoner refused any kind of treatment for cancer, her refusal obviously being a result of her psychiatric disorder.

Further, the transfer of life-sentenced prisoners suffering from tuberculosis to specialised medical penitentiary facilities was still not possible. Such persons were kept in their detention units, isolated in their cells, sometimes for many months.

The CPT recalls that obliging prisoners to stay in an establishment where they cannot receive appropriate treatment due to a lack of suitable facilities or because such facilities refuse to admit them, is an unacceptable state of affairs which could amount to inhuman and degrading treatment.

**The CPT recommends that the Ukrainian authorities ensure that life sentenced prisoners – men and women – who require treatment in a specialised hospital facility can be transferred to such a facility without undue delay.**

116. Further, an end should be put to certain practices that are pointless in terms of security and perceived by life-sentenced prisoners as humiliating, namely: i) indicating the nature of the sentence on the new prison uniform for men and women (cf. on this point Rule 20.2 of Recommendation Rec (2006) 2 of the Committee of Ministers to Member States on the European Prison Rules<sup>36</sup>); ii) forcing men to have shaven heads; iii) obliging prisoners to stand facing the wall whenever staff or visitors are present.

**The CPT recommends that the necessary measures be taken in all penitentiary establishments holding prisoners sentenced to life imprisonment in the light of the above remarks.**

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<sup>36</sup> Rule 20.2 provides that prisoners' clothing "shall not be degrading or humiliating".



#### 4. Conditions of detention of the general prison population

##### a. introduction

117. Colony No. 65 for women was opened at the end of November 2000. It is a minimum-security establishment for recidivists serving fixed sentences. With an official capacity of 600 places, at the time of the visit it was holding 607 women, 571 of them held inside the colony (“on the territory of the zone”) and 36 placed in the “social rehabilitation” division<sup>37</sup>, located outside the perimeter (“territory”) of the prison.

118. Colony No. 100 for men was opened some 25 years ago. It is a medium-security establishment, intended for recidivists convicted of serious offences. With an official capacity of 1,600 places, it was holding 1,388 prisoners at the time of the visit (59 of them were serving life sentences: cf. paragraphs 112-116 above). Of the entire prison population, there were seven prisoners in the establishment's social rehabilitation division.

##### b. conditions of detention

119. Material conditions of detention in Colonies Nos. 65 and 100 were the best ever seen by a CPT delegation in the five visits made to Ukraine. In particular, the conditions in the women’s colony were an impressive achievement: brightly lit, well-equipped and decorated dormitories, pleasant communal areas, modern sanitary installations. **It would be desirable for there to be a permanent supply of hot water in the cell blocks to enable women to maintain an adequate level of personal hygiene, in view of their specific physiological needs.**

At Colony No. 100 for men, the conditions were very satisfactory in section 3, particularly on the first and second floors of the building, where dormitory capacities had been reduced and small units of 4 to 12 beds installed. In the other sections visited, the material conditions ranged from good (in sections 14 and 15, for example) to acceptable (in sections 4, 7 and 13, for example), the standard largely depending on the resources at the disposal of the prisoners and their families to fit out the premises. **The CPT recommends that the Ukrainian authorities make every effort to ensure that material conditions in all the colony’s sections equal those in section 3.**

120. As for the detention regime, in both establishments, there had been substantial efforts to provide the prisoners with paid work. The establishments had an impressive array of workshops (workshops producing clothing, including army uniforms at Colony No. 65; workshops producing spare parts for tractors and manufacturing bikes, sleds, clothes, bags, packaging materials at Colony No. 100). In the women's colony, 480 prisoners (out of 607) were employed in workshops and most of the others (apart from a few who were ill or did not work for various reasons) carried out a variety of chores (laundry work, repairs/renovation, kitchen duties, etc.). Among the men, 682 (out of 1,388) had paid work, mostly in the workshops.

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<sup>37</sup> The social rehabilitation divisions house prisoners nearing the end of their sentence or eligible for early release, with a view to preparing them for life outside prison.

121. However, the work regime imposed on the women at Colony No. 65 prompted grave concerns for the delegation (cf. paragraph 9 above), which observed a general state of physical and mental exhaustion among the women, as a result of the work-rate imposed upon them – which was reduced just before the visit.

The delegation established that, up to 7 October 2005, the actual daily working hours of each of the two workshop teams had amounted to 12 hours, and – with a few rare exceptions – for seven days a week (making an 84-hour week). In addition, there were two unpaid hours of daily chores – which all prisoners were obliged to undertake (maintenance of outside areas, etc.). This forced work-rate was an inadmissible exploitation of working women prisoners which, given the effects observed on their physical and mental state, could be easily qualified as inhuman treatment. Moreover, an examination of accounting documents showed, on the one hand, that only seven hours of work a day (and five hours on one day of the week) had been entered in the accounts and, on the other hand, that the salaries actually paid after various levies and deductions (in particular to cover the costs of food, water, electricity, provision of clothing by the prison, and heating) were extremely low.

122. The delegation asked the Director of the Department for the Execution of Sentences, pursuant to Article 8, paragraph 5 of the Convention, to immediately guarantee one rest-day a week for the women prisoners working in Colony No. 65 and to ensure that labour legislation was fully complied with. It pointed out in this connection that the measures to be implemented should not have an adverse effect on the good material conditions in the prison.

In a letter of 23 January 2006, the authorities stated that the working hours and rest time conformed to national labour legislation and that compliance was strictly monitored. **The CPT would like to be informed of the other measures taken concerning its delegation's observations on the prisoners' remuneration. It would also like to receive confirmation of the authorities' commitment to maintaining the standard of material conditions in the colony.**

123. Regarding other types of educational and training activities, Colony No. 65 had 81 places for evening classes and 120 places for apprenticeship training (needlework, cookery, masonry, plastering). However, given the working hours previously imposed on the prisoners, access to these activities was hypothetical, to say the least. Colony No. 100 provided general education for 113 prisoners and training as a lathe operator or joiner for 30 individuals.

Compared with the findings of CPT delegations on previous visits to Ukraine, there were laudable efforts on the part of the authorities to develop access to education and training. However, the emphasis is still on productive labour at the expense of these other activities. In this respect, **a balance should gradually be established between the two legitimate objectives which work and education represent, in full conformity with Rule 26.16 of the revised European Prison Rules under which prisoners "shall have [...] sufficient time for education and other activities"<sup>38</sup>.**

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<sup>38</sup> See also the Commentary to Recommendation Rec(2006) of the Committee of Ministers to member states on the European Prison Rules stating that this rule "recognises that while work may form a key part of the daily routine of prisoners, it should not be required to the exclusion of other activities".

## 5. Health care

### a. Colonies Nos. 65 and 100

124. The presence of adequate numbers of medical and qualified health-care staff in penitentiary establishments is a fundamental requirement for the provision of appropriate health care.

Colony No. 65 had a team comprising one chief doctor, one general practitioner working full-time, one dentist working half-time, one gynaecologist working half-time (on leave at the time of the visit) and seven *feldshers*. This level of cover is not adequate to care for 607 prisoners.

At Colony No. 100, which had some 1,400 prisoners (and capacity for 1,600), the health-care team was made up of four doctors (two general practitioners working full-time, one half-time otorhinolaryngologist, one half-time ophthalmologist and one full-time dentist). The psychiatrist had been absent for three months and had not been replaced. The team was assisted by three *feldshers*. Clearly, the staffing level of the health care team was not adequate; that said, there were interactions between the adjacent prison hospital and the colony.

**The CPT recommends that the Ukrainian authorities ensure the full-time attendance of a dentist and a gynaecologist at Colony No. 65. It would also be desirable to ensure the regular attendance of a radiologist in the establishment.**

**As for Colony No. 100, the Committee recommends that the health-care team be reinforced, in particular as concerns *feldshers*, and that measures be taken to fill the gap left by the prolonged absence of the psychiatrist.**

125. Some of the delegation's findings in Colony No. 65 raise questions regarding the medical care of prisoners. In the case of a prisoner who died on 3 August 2005, the medical file revealed that, five days before her death, the deceased person had been sent to Poltava hospital with suspected meningoencephalitis. The post-mortem examination subsequently confirmed this as the cause of death. However, the individual medical file indicated that, as early as 25 July 2005, the prisoner's condition was so alarming (intense headaches and repeated vomiting) as to raise the suspicion of "acute meningoencephalitis or poisoning". In spite of this, no further investigations were performed and no treatment was given. The seriousness of the prisoner's condition was blatantly underestimated, resulting in an unacceptable delay (6 days) in transferring her to hospital. In another case, a positive reaction to a test for a sexually transmitted disease was not followed up by further investigation or other specific treatment required by the infection.

**The CPT recommends that the Ukrainian authorities ensure that all prisoners in Colony No. 65 receive the care demanded by their state of health, and when transfer to or specialised consultation in a hospital facility is required, prisoners are taken there within a time period and in conditions that take account of their state of health.**

126. In the light of other observations in the establishments visited, **the CPT recommends once more that any medical examination or treatment of prisoners (regardless of the nature of their conviction) take place out of hearing and – unless the doctor/feldsher requests otherwise in a particular case – out of the sight of prison staff.**

b. Colony No. 61 for prisoners suffering from tuberculosis

127. Colony No. 61 in Kherson is a prison hospital specialising in all forms of tuberculosis treatment. It is located in a former military barracks built under Catherine the Great in the 18th century. It had a capacity of 850 beds, and was holding 773 male prisoners at the time of the visit<sup>39</sup>.

The buildings, in a rectangular configuration, comprised the old original two-storey edifices to which three-storey constructions dating from the 1960s and 70s had been added. The patients were housed in twelve units, according to diagnosis-based criteria, except for the admissions and surgical units<sup>40</sup>.

i. *conditions of detention*

128. The premises were in a tolerable state of maintenance, correctly lit (whether by natural light or artificial lighting), ventilated and heated; each patient had his own bed with adequate and clean bedding. However, given the dilapidated state of the original buildings, the material conditions did not meet the standards that might be expected of a hospital establishment (such as those observed, by way of comparison, at the civil dispensary treating tuberculosis in the city of Kherson). In addition, there was one shortcoming common to all the sections visited: the very cramped living space – a far cry from the objective of 5 m<sup>2</sup> per person fixed by the Code on the Execution of Sentences. In section no. 3 (smear-positive patients, some of whom were terminally ill) there were as many as five patients in just 7 m<sup>2</sup>, seven in less than 28 m<sup>2</sup>, eight in just over 29 m<sup>2</sup>, and in section no. 5 (for non-contagious patients) there were up to 12 in about 33 m<sup>2</sup>; in the admissions section, living space per person fluctuated around the 3 m<sup>2</sup> mark.

Further, in the cell-type regime section, where additionally - and in contrast to the other sections – the prisoners were locked up 22 hours out of 24, there was a whole host of shortcomings. In addition to meagre living space (ranging from less than 2 m<sup>2</sup> to less than 4 m<sup>2</sup> per person), many cells had poor natural lighting and ventilation.

129. The CPT wishes to underline the efforts made at Colony No. 61, since 2004, to ensure that patients are provided with a diet consistent with the requirements of their state of health; their monthly weigh-ins indicate steady weight gains for most patients.

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<sup>39</sup> Including 14 not suffering from tuberculosis, employed in the kitchens and bakery and performing maintenance work.

<sup>40</sup> Section no. 1 for chronic patients; sections nos. 2, 5, 6 for non-contagious patients; sections nos. 10, 11, 12 for the patients under observation and sections nos. 3 and 7 for smear-positive patients. In the cell-type section (section no. 4), patients were also distributed in the cells on the basis of their diagnoses.

On the other hand, substantial efforts are required to ensure that the patients have appropriate clothing, can maintain satisfactory personal hygiene and are provided with the necessary cleaning products. There was no budget item allocated for this; neither has any provision been made in the 2006 budget.

In this connection, the patients must also be granted more frequent access to the showers, as once a week is hardly sufficient for tuberculosis sufferers.

130. In the light of the above, **the CPT recommends that:**

- **the living space for patients be increased to attain as soon as possible the standard of 5 m<sup>2</sup> of living space per patient provided in the Code on the Execution of Sentences;**
- **access to natural light and ventilation in the cells in the cell-type regime section be improved wherever necessary;**
- **prisoners be provided with appropriate clothing (suited to the climatic conditions) and personal hygiene and basic cleaning products;**
- **more frequent access to showers be arranged;**
- **efforts be increased to ensure that all material conditions of prisoner accommodation meet hospital standards.**

131. As for the detention regime, all sections, apart from the cell-type regime section, practised an “open-door” policy. All the prisoners were allowed two hours of exercise a day. Unfortunately, a number of chronic patients housed on the top floor of section no. 1 suffered such shortness of breath that they were unable to use the stairs and were *de facto* deprived of open-air exercise. A suitable solution (such as ground-floor accommodation) must be found to remedy this problem.

Further, the exercise areas for the prisoners in the cell-type regime section were cramped (8 m<sup>2</sup> for the small areas and 17.5 m<sup>2</sup> for the larger one); in addition, they were located above the prison's hen-house and pervaded by sickening smells.

Where out-of-cell activities were concerned, the establishment provided paid work for up to thirty prisoners at a work-rate scaled back in line with medical advice. Otherwise, however, no other kind of activity (apart from some half-hearted attempts to install table-tennis tables) was on offer. The prisoners were left to their own devices, with nothing else to do but watch television or read.

**The CPT recommends that a solution be found to provide the patients in section no. 1, whose state of health does not allow them to use the stairs, with access to daily outdoor exercise. It also recommends that the exercise areas for the cell-type regime section be enlarged. Finally, it invites the Ukrainian authorities to broaden the range of activities available to prisoners at Colony No. 61.**

ii. *medical care*

132. The establishment's medical team comprised 59 full-time doctors including various specialists, assisted by 99 *feldshers* and qualified nurses. The team was seconded by 49 orderlies, remunerated patient prisoners with the task of helping other patients who had difficulty in performing everyday tasks.

It may be the case that the practice of employing prisoners as orderlies has the advantage of providing a certain number of them with useful work. **However, this approach must be seen as a very last resort and prisoners should never be involved in the distribution of medicines or health care to patients. In addition, they should not have access to any medical records and they should not be able to see or hear prisoners during the latter's medical examinations.**

133. The facilities were generally satisfactory and might even be considered excellent once the new laboratory, which was being set up at the time of the visit, is in operation. However, the surgical equipment was obsolete and rudimentary, and **the CPT trusts that the work to improve the operating theatre will be completed as soon as possible.**

As previously mentioned, patients were allocated to the sections according to diagnosis-based criteria – except for the admissions and surgical units where there were clearly difficulties in separating smear-positive patients from smear-negative patients. **The CPT recommends that steps be taken to remedy this situation**, which is not satisfactory from a medical point of view.

134. As regards pharmaceutical treatment for tuberculosis, supplies of all the first-line drugs had been regular and sufficient for the past three years. However, this was not the case for the second-line drugs and the prisoners could be asked to pay for these drugs.

The tuberculosis treatments were monitored on an ongoing basis; nevertheless, evaluation of the otological toxicity of drugs, such as streptomycin and kanamycin, should preferably be carried out by an otorhinolaryngologist and be regularly recorded.

**The CPT recommends that the necessary measures be taken in the light of the above remarks.**

135. To sum up, the overall standard of care had improved considerably in the past five years, as was demonstrated in particular by the fall in mortality rate recorded in the prison during that period, and was equivalent to the standard provided in the local community outside.

136. Unfortunately, the health care of patients with terminal illnesses (in section no. 1 and the surgical unit) presented serious shortcomings. A substantial number of patients were dying in particularly difficult conditions: they were not given the individual nursing care required by their condition and depended on other patients employed as orderlies for their basic needs, with a complete lack of privacy. Further, they were living out their last days in a climate of anxiety (shared by the other patients who saw them dying) and a feeling of extreme solitude. Many expressed their fear of dying, and their feelings of being ostracised by fellow patients and of being abandoned by the staff, who they felt had given up any hope for them. This was exacerbated by the fact that *feldshers* and nurses were generally reluctant, particularly in section no. 1, to take time to care for patients. The prisoners' feeling of desperation was made worse by their being cut off from their relatives, who were not allowed to visit them inside the colony. **The CPT recommends that the Ukrainian authorities:**

- **increase qualified health-care staff cover for prisoners close to death, so as to provide them with the necessary physical care and psychological end-of-life care;**
- **create the material conditions to ensure that such persons are adequately cared for in an environment respectful of human dignity;**
- **ensure that relatives can visit prisoners close to death (regardless of where they are accommodated); if necessary, the rules should be revised accordingly.**

137. In accordance with the legislation, staff prepared early-release applications for these patients with a short-term fatal prognosis<sup>41</sup>.

However, it appeared in the course of the visit, including during the delegation's discussion with the competent judge, that the vast majority of those applications were dismissed by the district court concerned (between 2.6% and 16.4% of applications had been successful over the past seven years). In the CPT's view, prisoners with a short-term fatal prognosis are a typical example of prisoners unsuited to continued detention. **The CPT would like to receive the comments of the Ukrainian authorities on this issue.**

138. Finally, the CPT considers that the practice of placing psychiatric patients in the establishment's DIZO section for prolonged periods on medical grounds, owing to a lack of adequate care arrangements in Colony No. 61, is not acceptable. **The CPT recommends that the necessary steps be taken without delay to cease this practice and guarantee adequate care for these patients, where necessary by resorting to specialised facilities.**

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<sup>41</sup> Provided for on medical grounds in Section 154, paragraph 5, of the Code on the Execution of Sentences and chapter 10 of Joint Instruction 3.6 of the Department for the Execution of Sentences and the Ministry of Health.

## 6. Other issues

### a. disciplinary measures

139. The Code on the Execution of Sentences which entered into force in 2004 provides for placement in a disciplinary cell (DIZO/*kartzer*) for up to 15 days (10 days for women) and under strict cellular regime (PKT) for up to 3 months<sup>42</sup>. The prisoners must be heard with regard to the charges against them, they must be notified in writing of the decisions taken and – this is an important new development – they may be assisted by a lawyer or other legal specialist. They may also appeal the decision taken to a higher authority.

However, during the visit, the delegation encountered hardly any prisoners who had been informed of the new provisions of the Code on the Execution of Sentences. **The CPT recommends that the Ukrainian authorities ensure that all prisoners are informed of their right to legal assistance and of the means available to them to challenge a decision to place them in a disciplinary cell or strict cellular regime. It would also like to know whether the means of appeal available to these prisoners include the right to appeal to an authority outside the establishment, including a judge.**

140. In the establishments visited, the material conditions in the disciplinary cells (DIZO/*kartzer*) and the PKT section were similar, replicating major failings pointed out over the years by the Committee (even in renovated DIZO/PKT sections). None of the cells seen in the three colonies visited had adequate access to natural light, suitable ventilation or adequate heating (or even, as in Colony No. 65 for women, any heating at all). Moreover, in the cells intended for several occupants, the toilets were not fully partitioned. More specifically, the DIZO/PKT cells at medical Colony No. 61 were badly run-down and the state of the prisoners' mattresses and bedding was appalling.

In addition, the cells were clearly equipped in such a manner as to cause additional physical hardship for the prisoners: tables and stools were very small in size (in Colony No. 100, for example, the stool in a *kartzer* cell for prisoners serving life sentences measured 30 cm x 30 cm and the table 40 cm x 29 cm), and the general DIZO/PKT cells were equipped with benches with sharp metal protuberances so that it was almost impossible to sit on them; the folding platforms in the renovated sectors reproduced the old-fashioned layout of the previous DIZO/PKT cells).

**The CPT recommends that the Ukrainian authorities ensure that the DIZO/*kartzer*/PKT cells in Colonies Nos. 61, 65 and 100 are fitted out so as to have adequate access to natural light and adequate ventilation and heating. It also recommends that the equipment in these cells be re-arranged to ensure that prisoners can sit down and sleep properly, and that they have a proper table. The run-down DIZO/PKT cells in Colony No. 61 should be repaired and the bedding replaced.**

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<sup>42</sup> Placement in a *kartzer* only concerns those prisoners under strict cellular regime and prisoners sentenced to life-imprisonment.



141. It should be emphasised, however, that the authorities have at last acted on the long-standing CPT recommendation that all prisoners placed in disciplinary cells must be allowed at least one hour of outdoor exercise a day (which was already the case for those in PKT sections). On the other hand, reading in cells was still prohibited. **The CPT reiterates once again its recommendation that reading material be made available to these prisoners.**

142. In all cases, the exercise areas (in fact, exercise boxes) were too cramped (between 11 and 21 m<sup>2</sup>) to allow the prisoners placed in disciplinary cells or in a PKT section any proper physical exercise. **The CPT recommends that these areas be enlarged accordingly.**

143. In paragraph 133 of the report on the 2002 visit, the CPT had recommended that the strict cellular regime be reviewed as a matter of urgency in order to ensure that all the prisoners concerned, throughout the penitentiary system, were entitled to visits. The CPT's findings in 2005 showed that this was still not the case everywhere. Further, despite the Committee's recommendation to lift the ban on parcels during a prisoner's placement in a PKT section, parcels were not allowed in all the colonies visited. Consequently, **the Committee reiterates these two recommendations.**

144. It also emerged, particularly in Colonies Nos. 61 and 100, that placement in a disciplinary cell and a PKT section was subject to approval by a doctor, who had to certify whether the prisoner "may/may not be detained" in DIZO/PKT facilities. The CPT would like to stress in this connection that medical practitioners working in prisons act as the personal doctor of prisoners; ensuring that there is a positive doctor/patient relationship between them is a major factor in safeguarding the prisoners' health and welfare. Obliging prison doctors to certify that prisoners are fit to undergo punishment that might have an adverse effect on their health is hardly likely to promote that relationship.

**The CPT recommends that the Ukrainian authorities take the necessary steps, including amendments to the relevant regulations where required, to ensure that prison doctors are no longer tasked with approving prisoners' placement in a disciplinary cell or in a PKT section. Further, the regulations and practice must take fully into account the principles set forth in Rules 43.2 and 43.3 of the revised European Prison Rules<sup>43</sup>.**

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<sup>43</sup> The above-mentioned Rules read as follows:

“43.2 The medical practitioner or a qualified nurse reporting to such a medical practitioner shall pay particular attention to the health of prisoners held under conditions of solitary confinement, shall visit such prisoners daily, and shall provide them with prompt medical assistance and treatment at the request of such persons or the prison staff.

43.3 The medical practitioner shall report to the director whenever it is considered that a prisoner's physical or mental health is being put seriously at risk by continued imprisonment or by any condition of imprisonment, including conditions of solitary confinement.”

Cf. also the relevant part of the Commentary to the revised European Prison Rules, which states in particular that: “Medical practitioners or qualified nurses should not be obliged to pronounce prisoners fit for punishment but may advise prison authorities of the risks that certain measures may pose to the health of prisoners. [...]”.

b. contact with the outside world

145. In the three colonies visited, the prisoners were allowed one "short visit" of 2 to 4 hours a month and one "long visit" of up to 72 hours every three months. The conditions in which long visits took place ranged from good to excellent (as in Colony No. 65).

As in the past, short visits took place in glass booths, with prisoners and visitors speaking to each other by telephone (some of which, at Colony No. 65 for example, were not in service). The Ukrainian authorities stated in this connection that the installation of visit facilities without a glass separation was envisaged as part of major renovation work of the visiting areas.

146. Regarding access to the telephone, the Code on the Execution of Sentences provides that sentenced prisoners may make four fifteen-minute telephone calls a year. This was possible at Colony No. 100, at the discretion of the director at Colony No. 65, and impossible at Colony No. 61. **The CPT trusts that the Ukrainian authorities will ensure that this legislation is applied in all colonies.**

147. In its report on the 2002 visit (paragraphs 135 and 136), the CPT raised the issue of the financial contributions requested from prisoners for visits. It recommended that "short visits" be exempted, without delay, from any financial contribution on the part of the prisoners or their relatives. But this practice was still commonplace in 2005 (e.g. at Colony No. 65, the examination of accounting documents revealed a levy of 4 hryvnas per visit). **Consequently, the CPT reiterates its previous recommendation.** As regards long visits, the contributions demanded varied according to the establishment from around 9 to 15 hryvnas per person per day (or even far more depending on the type of apartment). **The CPT reiterates its invitation to the Ukrainian authorities to abolish this practice as soon as possible.**

c. issues linked to order and security

148. In its report on the 2002 visit (paragraph 92), the CPT recommended that the Ukrainian authorities ensure that no duty prisoner (*dnevalniy*) was entrusted with tasks relating to the maintenance of good order and control. However, this was still the case in 2005, notably in Colony No. 61 where, in addition, duty prisoners also had a say as regards the disciplinary sanctions to be imposed. **The CPT recommends that this practice be stopped forthwith** (cf. in this connection Rule 62 of the revised European Prison Rules which provides that "no prisoner shall be employed or given authority in the prison in any disciplinary capacity").

149. At Colony No. 100, the delegation received a large number of complaints from prisoners regarding the way in which searches were carried out when they left the workshops each day. Prisoners claimed that they were obliged to queue up naked in unheated premises for up to half an hour.

**The CPT recommends that the Ukrainian authorities verify the conditions under which searches of prisoners leaving the workshops at Colony No. 100 are carried out and, if necessary, take the measures required to ensure that the searches are performed under humane and decent conditions.**

150. Finally, at both Colony No. 65 and Colony No. 100, there were widespread complaints regarding the conditions in which roll calls were carried out. Roll calls took place outside in all types of weather, and prisoners were not supplied with appropriate clothing to protect them from bad weather (unlike the staff). **The CPT would like to obtain the comments of the Ukrainian authorities on this point.**

d. complaints and inspection procedures

151. Section 113 of the Code on the Execution of Sentences provides that letters sent to the Parliamentary Commissioner for Human Rights and the Prosecutor shall not be read. **The CPT would like to be informed whether this rule also applies in respect of international bodies empowered to receive complaints.**

In practice, complaints were still received from prisoners to the effect that such correspondence was still being read by the administration. **The CPT recommends that the Ukrainian authorities ensure that the provisions of the Code on the Execution of Sentences regarding the confidentiality of correspondence with the Parliamentary Commissioner for Human Rights and the Prosecutor are strictly applied.**

152. Section 24 of the Code enshrines the right to inspect prison establishments for a whole host of entities including the President of the Republic, the Parliamentary Commissioner for human rights, members of parliament, local elected representatives and prosecutors. The CPT welcomes this and **trusts that these bodies will make full use of their right to visit Ukraine's penitentiary establishments.**

## APPENDIX I

### **LIST OF THE CPT'S RECOMMENDATIONS, COMMENTS AND REQUESTS FOR INFORMATION**

#### **Cooperation**

##### recommendations

- the relevant regulations of the Border Guard Service to be amended to ensure that CPT delegations have immediate and unrestricted access to all places where persons deprived of their liberty are held by this Service and that they have access to all the information which is necessary to carry out their task (paragraph 6).

##### comments

- the Committee trusts that in future the Ukrainian authorities will specify in their instructions that as soon as a CPT delegation arrives at a district police station, it must have *immediate* access to the premises (i.e. without having to wait for the arrival of the senior official responsible for the place being visited) (paragraph 5);
- the CPT insists that the Ukrainian authorities provide, in good time, full and up-to-date information on all the places where persons may be deprived of their liberty (paragraph 6);
- all forms of intimidation or reprisal against a person before or after an interview with a member of a CPT delegation are incompatible with the obligations of Parties to the Convention (paragraph 7);
- the CPT trusts that the Ukrainian authorities will now make every effort to implement all the recommendations set out and/or reiterated in this report (paragraph 8).

#### **Establishments under the authority of the Ministry of Internal Affairs**

##### **Preliminary remarks**

##### recommendations

- immediate and decisive steps to be taken to eradicate the practice mentioned in paragraph 13 and to ensure that the detention and interrogation of persons suspected of a criminal offence are always carried out in full compliance with the provisions of the CCP (paragraph 13);
- all governmental agencies concerned (in particular the Finance Ministry and local administrations) to support the efforts made by the Ministry of Internal Affairs to improve conditions of detention in all detention facilities under its authority (i.e. ITTs, district police stations, centres for the reception and distribution of vagrants and special detention centres) (paragraph 14).

comments

- the Ukrainian authorities are invited to reconsider their position with a view to extending the guarantees provided for in Article 29 of the Constitution to persons detained on suspicion of vagrancy (paragraph 12).

**Torture and other forms of ill-treatment**

recommendations

- a clear message of “zero tolerance” of torture and other forms of ill-treatment to be delivered at the highest level and at regular intervals to all Internal Affairs staff (paragraph 20);
- a major investment to be made in the field of professional training, with particular emphasis being placed on advanced methods of crime investigation, including forensic evidence. This should be combined with the adoption of detailed regulations on the questioning of criminal suspects (including initial interviews by operational officers), on the basis of already existing guidelines (paragraph 21);
- a reporting line for information indicative of ill-treatment to be established within Internal Affairs services (which implies the obligation for staff to immediately forward such information to the competent authorities), in the light of the remarks made in paragraph 22 of the report (paragraph 22);
- whenever a detained person brought before a judge alleges ill-treatment by Internal Affairs officers, these allegations to be recorded in writing, a forensic medical examination to be immediately ordered, and the necessary steps to be taken to ensure that the allegations are properly investigated. Such an approach should be followed whether or not the person concerned bears visible external injuries. Even in the absence of an express allegation of ill-treatment, a forensic medical examination should be requested whenever there are other grounds to believe that a person could have been the victim of ill-treatment (paragraph 24);
- the Ukrainian authorities to circulate, through appropriate channels, the necessary instructions so that the fundamental principles referred to in paragraph 26 are effectively followed by prosecutors in their daily practice (paragraph 26);
- persons who allege ill-treatment, or their lawyers, to have the right to directly request (without prior authorisation from the Militia, the Prosecutor’s Office or the judge) a medical examination/certificate from a doctor with recognised forensic medical training. If necessary, the relevant regulations should be amended accordingly (paragraph 27);
- the content of medical certificates to include: i) an account of the statements made by the person concerned which are relevant to the medical examination (including the description of his/her state of health and any allegations of ill-treatment); ii) a list of objective medical findings based on a thorough examination; iii) the doctor's conclusions in the light of the i) and ii). In these conclusions, the doctor should indicate the degree of consistency between the allegations and the objective medical findings. Further, the detained person, as well as his/her lawyer, should be provided with a copy of the certificate (paragraph 28);

- the practice by ITTs of refusing to admit detained persons displaying visible injuries (and of returning them to the district police stations from whence they came or other Internal Affairs facilities) if Militia officers are unable to provide a medical certificate recording the lesions, to be definitively discontinued. This implies the establishment of a suitable procedure applicable to all admitting Internal Affairs holding facilities in order that a doctor be immediately called when a detainee brought to such facilities displays visible injuries (paragraph 29).

### **Fundamental safeguards against ill-treatment**

#### recommendations

- the Ukrainian authorities to ensure that the provisions in the Law on the Militia concerning the right of a detained person to inform a close relative or another third party of his detention are strictly implemented (paragraph 31);
- the Ukrainian authorities to ensure by all appropriate means that all persons deprived of their liberty by the Militia have the right of access to a lawyer as from the moment when they are required to remain with the Militia. This moment must be understood as being the moment when they are taken to or are under a legal obligation to attend – and remain at – an Internal Affairs establishment (paragraph 32);
- the necessary measures to be taken to ensure that juvenile detainees do not make any statement or sign any document related to the offence of which they are suspected without a lawyer being present (paragraph 33);
- the necessary steps to be taken to ensure that the content of the right of access to a lawyer for persons deprived of liberty meets the requirements specified in paragraph 34 (paragraph 34);
- the required legal and other measures to be taken without delay in order to establish a system of qualified legal aid for persons deprived of their liberty by Internal Affairs staff who are not in a position to pay for a lawyer; the recommendations, resolutions and expert opinions of the Council of Europe in the area of legal aid should be taken into account (paragraph 35);
- the right of detained persons to have access to a medical doctor to be formally guaranteed (paragraph 36);
- all persons held by Internal Affairs to be systematically provided with a form setting out their rights, as from the very outset of their detention. This form should be available in an appropriate range of languages (paragraph 37);
- steps to be taken immediately to ensure that whenever a person is deprived of his liberty by the Militia, for whatever reason, this fact is formally recorded without delay. Further, once a detained person has been placed in a cell, all instances of his/her subsequent removal from the cell should be recorded; that record should state the date and time the detained person is removed from the cell, the location to which he/she is taken and the officers responsible for taking him/her, the purpose for which he/she has been removed from the cell, and the date and time of his/her return (paragraph 38).

## **Conditions of detention in Internal Affairs establishments**

### recommendations

- the Ukrainian authorities to put an end once and for all to the practice of detaining persons in district police stations for periods exceeding a few hours (if necessary, the law and relevant regulations should be amended) and to confirm within three months that this has indeed been done (paragraph 42);
- in order that detention areas of district police stations offer acceptable conditions for detention periods of a few hours, the Ukrainian authorities to:
  - ensure that all cells in district police stations have appropriate artificial lighting and ventilation, and that, when the need arises, they are adequately heated;
  - equip the detention areas with sanitary facilities (including at least one toilet and one washbasin);
  - define for each cell, taking into account its size, a maximum occupancy level that should under no circumstances be exceeded and withdraw from service all cells measuring less than 2 m<sup>2</sup>;
  - secure access to drinking water;
  - give strict instructions that all detained persons have ready access to toilet facilities;
  - keep the premises in a satisfactory state of cleanliness(paragraph 42);
- a high priority to be given to the building of a new ITT in Lviv and the reconstruction of the Poltava ITT and:
  - appropriate measures to be taken to ensure that all cells at the Mukachevo ITT have adequate access to natural light;
  - access to shower facilities to be increased at the Mukachevo ITT;
  - immediate measures to be taken to ensure that all detained persons have ready access to toilet facilities at the Lviv ITT;
  - detained persons to be provided with essential personal hygiene items;
  - the current exercise yard at the Poltava ITT to be brought into use without delay and all detained persons to be offered at least one hour of outdoor exercise every day

(paragraph 46);

- the maximum occupancy levels in the cells of all the ITTs visited to be significantly reduced, the objective being to offer at least 4 m<sup>2</sup> of living space per detainee. All cells measuring less than 6 m<sup>2</sup> to be taken out of use as detention cells (paragraph 46);
- measures to be taken to ensure that persons remanded in custody are entitled to receive visits as a matter of principle. Any refusal by investigating bodies to allow such visits should be specifically substantiated by the needs of the investigation, require the approval of a body unconnected with the case at hand and be applied for a specified period of time (paragraph 48);
- the maximum occupancy levels in the cells of the Kyiv, Lviv and Uzhgorod centres for the reception and distribution of vagrants and the Kyiv special detention centre to be significantly reduced, the objective being to offer at least 4 m<sup>2</sup> of living space per detainee (paragraph 52);
- the deficiencies described in paragraphs 49 and 50 as concerns access to natural light, artificial lighting and ventilation in the Kyiv and Lviv centres for the reception and distribution of vagrants and the Kyiv special detention centre to be remedied (paragraph 52);
- all detainees at the centres for the reception and distribution of vagrants to be given clean mattresses and bedding (paragraph 52);
- immediate steps to be taken to ensure that all detainees held in the centres visited, irrespective of their legal status, are offered at least one hour of outdoor exercise every day; the regulations to be reviewed to ensure that outdoor exercise is never denied as a disciplinary sanction (paragraph 52);
- detainees to be offered a minimum regime of activities (access to radio/TV and to reading matter) (paragraph 52);
- the regulations and practice to be reviewed to ensure that detainees are able to receive visits and to send/receive letters (paragraph 52);
- the new Uzhgorod centre for the reception and distribution of vagrants to be built as soon as possible (paragraph 52);
- at Lviv centre for the reception and distribution of minors: the maximum occupancy levels in the rooms to be reduced, with the view to ensuring adequate living space per person (at least 4 m<sup>2</sup>); the toilets in the quarantine unit and the shower facilities to be refurbished; detainees held in the quarantine unit to be offered at least one hour of outdoor exercise every day (paragraph 55);
- the necessary steps to be taken to ensure that all ITTs benefit from the regular presence of a *feldsher*. Hours of attendance should take into account the particularities (size, occupancy levels, turnover, etc.) of each ITT. In any event, every newly admitted person must be examined by qualified health-care staff within 24 hours of his/her arrival (paragraph 56);



- strict instructions to be given to ensure that every medical screening is carried out in a thorough manner and includes a proper physical examination of the person concerned. All examinations to be conducted out of the hearing and – unless the health-care staff concerned expressly requests otherwise in a given case – out of the sight of Militia officers (paragraph 57);
- the Ministries of Health and of Internal Affairs’ joint plan to ensure adequate treatment of detainees suffering from tuberculosis in community hospitals to be fully implemented without delay (paragraph 58);
- the Ukrainian authorities to ensure the early and effective screening for tuberculosis of all persons detained by the Militia as well as the provision of uninterrupted treatment for persons already receiving anti-tuberculosis drugs at the time of apprehension (paragraph 58).

#### comments

- the Ukrainian authorities are invited to take due account of the remarks made in paragraph 47 in their current policy relating to CCTV in ITT detention areas (paragraph 47);
- the Ukrainian authorities are encouraged to pursue their efforts to offer a broad range of activities to persons detained at the Lviv centre for the reception and distribution of minors (paragraph 55).

#### requests for information

- a copy of the regulations governing the use of CCTV in ITT detention areas (paragraph 47);
- detailed information on the planned changes to the facilities of the Kyiv centre for the reception and distribution of vagrants and special detention centre (paragraph 52);
- comments of the Ukrainian authorities on the issue raised in paragraph 53 in respect of administrative detainees working for local outside companies (paragraph 53);
- detailed information about the Ministries of Health and of Internal Affairs’ joint plan referred to in paragraph 58 and its implementation, including a list of medical establishments with units for the treatment of persons suffering from tuberculosis held by the Militia, in each region of the country (paragraph 58).

## **Foreign nationals detained under aliens legislation**

### **Preliminary remarks**

#### recommendations

- a high priority to be given to the setting up of centres specifically designed for the detention of foreigners under aliens legislation, offering material conditions and a regime appropriate to their status and length of detention, and staffed by suitably qualified personnel; in so doing, account to be taken of the standards developed by the CPT in its 7<sup>th</sup> General Report (paragraph 61).

#### requests for information

- clarification of the “similar grounds” which may be invoked to extend the detention of foreign nationals beyond six months, and whether the lawfulness of such an extension is reviewed by a court (paragraph 59).

### **Ill-treatment**

#### recommendations

- Border Guard officers to be firmly reminded at regular intervals that: ill-treatment of persons deprived of liberty and verbal abuse is unacceptable and will be severely sanctioned; no more force than is necessary should be used when effecting an apprehension and that, once apprehended persons have been brought under control, there can be no justification for striking them (paragraph 63).

### **Conditions of detention**

#### recommendations

- all Border Guard units which may accommodate foreign nationals to be equipped with rooms/cells designed specifically for custodial purposes, as provided by the regulations (paragraph 69);
- heating and ventilation to be improved in the cell of Uzhgorod Unit No. 9 (paragraph 69);
- the maximum occupancy levels of the cells of all Border Guard PTTs visited to be reduced, the objective being to offer at least 4 m<sup>2</sup> of living space per person (paragraph 69);
- the construction of the new PTT buildings in Chop and Lviv to be completed without delay (paragraph 69);

- cell No. 4 at Lviv PTT to be immediately withdrawn from service for detention purposes (paragraph 69);
- access to in-cell lighting and ventilation to be improved in the Mostyska PTT (paragraph 69);
- ready access to toilet facilities to be immediately secured for all detainees at Lviv PTT (paragraph 69);
- detained persons at Lviv and Mostyska PTTs to be provided with essential personal hygiene products (e.g. soap, towel, sanitary items for women's monthly needs, etc.) (paragraph 69);
- the quantity and quality of food offered to detainees to be verified at Lviv and Mostyska PTTs (paragraph 69);
- detainees to be immediately offered one hour of outdoor exercise at Lviv and Chop PTTs and the practice of handcuffing detainees during outdoor exercise at Chop to be immediately discontinued (paragraph 69);
- efforts to be made to provide detainees in the PTTs visited with some form of activity (e.g. reading material, radio/TV) (paragraph 69);
- steps to be taken to ensure that individual medical files accompany detained persons when they are transferred from a PTT to another holding facility (paragraph 69);
- formal disciplinary regulations to be drafted for holding centres for foreign nationals detained under aliens legislation. They should in particular provide detainees with a right to be heard on the subject of the offences which they are alleged to have committed, and to appeal to a higher authority against any sanctions imposed (paragraph 75);
- if segregation is imposed as a possible disciplinary sanction, detainees to have a means of rest at their disposal and ready access to toilet facilities, as well as at least one hour of outdoor exercise every day and access to reading matter (paragraph 75).

#### comments

- the Ukrainian authorities are invited to pursue their efforts to allow persons held under aliens legislation to maintain contact with the outside world, in particular as regards access to a telephone (paragraph 74);
- the CPT trusts that the Ukrainian authorities will ensure that detention registers are maintained in a complete and accurate manner (paragraph 76).

#### requests for information

- within one month, detailed information on the measures taken by the Ukrainian authorities in response to the CPT delegation's immediate observation requesting that the Pavshino Temporary Holding Centre for men be withdrawn from service and that the Ukrainian authorities design and put in place new facilities to adequately meet the needs of persons held there (paragraph 73).

## **Safeguards for persons detained under aliens legislation**

### recommendations

- all persons held under aliens legislation (wherever they are detained) to:
  - have an effective right, as from the very outset of their deprivation of liberty (i.e. from the moment when the persons concerned are obliged to remain with a law enforcement agency), to inform a relative or a third party of their choice of their situation;
  - have an effective right of access to a lawyer as from the very outset of their deprivation of liberty and at all stages of the proceedings;
  - receive, when necessary, the assistance of a qualified interpreter;
  - be fully informed of their situation, their rights and the procedure applicable to them. In this context, an up-to-date printed form available in the languages most commonly spoken by those detained under aliens legislation should be distributed to them as from the very outset of their deprivation of liberty

(paragraph 81);

- clear and firm instructions to be given to both Border Guard and Internal Affairs staff to ensure that all detained persons wishing to apply for asylum are in a position to effectively make use of the new legislation (paragraph 82);
- the current regulations to be amended with a view to substantially extending the time by which consulates or relevant institutions may be contacted (paragraph 83).

### requests for information

- practical measures taken in compliance with Guideline 12 (2) and (4) of the Council of Europe's Committee of Ministers' Guidelines on forced return (paragraph 83);
- information on existing and draft bilateral readmission agreements allowing the Ukrainian authorities to promptly deport persons infringing the State border to what is considered as being a safe third country (paragraph 83).

## **State Security Service holding facilities and secure hospital wards**

### **Holding facilities under the authority of the State Security Service (SBU)**

#### comments

- the recommendations made in Section II.A.3 (Fundamental safeguards against ill-treatment) apply equally to persons deprived of their liberty by the SBU (paragraph 86).

#### requests for information

- detailed information on the legal status of the holding facility at SBU Headquarters in Kyiv (paragraph 84);
- comments of the Ukrainian authorities on the issue raised in paragraph 85 concerning detention at SBU Headquarters in Uzhgorod (paragraph 85).

### **Secure ward at Kyiv Municipal Clinical Emergency Hospital**

#### recommendations

- the practice of chaining detainees to hospital beds for security reasons to be discontinued (paragraph 88);
- measures to be taken to ensure that medical examinations are conducted out of the hearing and – unless the health-care staff concerned expressly requests otherwise in a particular case – out of the sight of Internal Affairs staff (paragraph 89);
- the necessary steps to be taken to ensure that the carrying of firearms, truncheons and gas canisters by Internal Affairs officers complies with the requirements set out in paragraph 90 (paragraph 90).

## **Establishments under the authority of the State Department for the Execution of Sentences**

### **Preliminary remarks**

#### recommendations

- the Ukrainian authorities to step up their efforts to give tangible form and practical application to a coherent strategy to combat overcrowding, based on the full set of principles listed in the Council of Europe Committee of Ministers Recommendations R (80) 11 concerning custody pending trial, R (99) 22 concerning prison overcrowding and prison population inflation, and R (2003) 22 on conditional release (parole) (paragraph 94);
- the norms fixed by legislation for living space per prisoner to be reviewed as soon as possible, in order to ensure that these are at least 4 m<sup>2</sup> in all the establishments under the authority of the Department for the Execution of Sentences (SIZOs included) (paragraph 94);
- the Ukrainian authorities to actively persevere in their efforts to improve conditions of detention and to humanise the prison system (paragraph 95).

#### comments

- the Ukrainian authorities are invited to take due account of the needs expressed by the Department for the Execution of Sentences in the area of prison staff training (paragraph 96).

#### requests for information

- comments of the Ukrainian authorities on the issues raised in paragraph 95 concerning prisoners' contributions to the improvement of material conditions in penitentiary establishments (paragraph 95).

### **Torture and other forms of ill-treatment**

#### recommendations

- the Ukrainian authorities to verify, in all the country's penitentiary establishments, whether there are cells similar to cell 01 found in Colony No. 100 and, if so, to take them out of use (paragraph 102);
- an independent, thorough and comprehensive investigation to be undertaken without delay into the ten cases involving the use of "special means" between 12 May and 3 September 2005 at Colony No. 100 which gave rise to medical reports, and detailed conclusions regarding the findings of the investigation and any measures taken as a result to be submitted to the Committee within three months (paragraph 103);

- the administration and all staff of Colony No. 100 to be given a firm and clear reminder that ill-treatment, in any form, is unacceptable and that any member of staff committing, abetting or tolerating such abuses will be severely punished (paragraph 103);
- all medical examinations of prisoners, in respect of whom physical force has been used, to be carried out by a doctor out of the hearing and – save if the doctor expressly requests otherwise in a particular case – out of the sight of non-medical staff. The content of the medical certificate to be drawn up following the examination must meet the requirements set out in the recommendation made in paragraph 28, and a copy of the medical certificate must be made available to the prisoner concerned. This approach should be followed in all penitentiary establishments in Ukraine (paragraph 104);
- the necessary measures to be taken so that the prison medical services in Ukraine adopt a line of action with respect to ill-treatment of prisoners, whatever the origin, which takes due account of the remarks made in paragraph 105 (paragraph 105).

#### requests for information

- detailed information on the layout of the cell in the DIZO/PKT section equipped for accommodating agitated or violent prisoners (dimensions, natural light and artificial lighting, fittings, etc.) (paragraph 102).

### **Prisoners sentenced to life imprisonment**

#### recommendations

- the practice of leaving the light on all the time at night in the cells for the life-sentenced prisoners of Colonies Nos. 54 and 100 to be reviewed. The lighting should only be switched on at night in case of necessity (paragraphs 108 and 114);
- all necessary steps to be taken so that the unit for women sentenced to life imprisonment at Kharkiv Colony No. 54 can set up without delay, and the comments made in paragraph 110 to be taken into account in the implementation of the project (paragraph 110);
- as of now, all possible aspects of the medium-security regime to be gradually introduced in the present DIZO/PKT section of Colony No. 54, with a view to ensuring that the transition of the life-sentenced prisoners from years under a high-security regime to their new regime is as harmonious as possible (paragraph 111);
- steps to be taken to ensure that women sentenced to life imprisonment are duly informed of all their rights and obligations under the new regime (paragraph 111);

- the Ukrainian authorities to act now on the Committee's recommendations in the field of prison management policy for male life-sentenced prisoners, taking account of all the guidelines set out in paragraph 75 of its report on the 2000 visit as well as in Recommendation (2003) 23 of the Council of Europe Committee of Ministers on the management by prison administrations of life-sentence and other long-term prisoners. Further:
  - the practice of systematically handcuffing male life-sentenced prisoners whenever they are taken out of their cell to cease with immediate effect;
  - the use of the wire cage for holding such prisoners during interviews with staff at Colony No. 100 to be prohibited;
  - more purposeful out-of-cell communal activities (educative, leisure) to be made available to prisoners sentenced to life imprisonment;
  - the entitlement to visits to be substantially increased, with the final objective of bringing this entitlement on a par with that of other prisoners

(paragraph 114);

- the exercise yards for male life-sentenced prisoners at Colony No. 100, which are too small (less than 13 m<sup>2</sup>), to be enlarged (paragraph 114);
- the Ukrainian authorities to ensure that life-sentenced prisoners – men and women – who require treatment in a specialised hospital facility can be transferred to such a facility without undue delay (paragraph 115);
- the necessary measures to be taken in all penitentiary establishments holding prisoners sentenced to life imprisonment to put an end to the following practices: i) indicating the nature of the sentence on the prison uniform; ii) forcing men to have shaven heads; iii) obliging prisoners to stand facing the wall whenever staff or visitors are present (paragraph 116).

#### comments

- the Committee trusts that once the women sentenced to life imprisonment at Colony No. 54 have been transferred to the new unit, and the cells of the DIZO/PKT section have reverted to their original role, all necessary measures will be taken to remedy the shortcomings as regards the partitioning of the toilets and access to natural light (paragraph 108).

#### requests for information

- a copy of the instructions of the Department for the Execution of Sentences concerning the new regime applicable to women sentenced to life imprisonment (paragraph 107);
- precise information on new rules governing contact with the outside world for women sentenced to life imprisonment (type, frequency and duration of visits, correspondence, access to telephone) (paragraph 111).



## **Conditions of detention of the general prison population**

### recommendations

- every effort to be made to ensure that material conditions in all the sections of Colony No. 100 equal those in section 3 (paragraph 119).

### comments

- it would be desirable for there to be a permanent supply of hot water in the cell blocks of Colony No. 65 to enable women to maintain an adequate level of personal hygiene, in view of their specific physiological needs (paragraph 119);
- a balance should gradually be established between the two legitimate objectives which work and education represent , in full conformity with Rule 26.16 of the revised European Prison Rules under which prisoners “shall have [...] sufficient time for education and other activities” (paragraph 123).

### requests for information

- the measures taken concerning the CPT delegation’s observations on the prisoners’ remuneration at Colony No. 65 as well as confirmation of the authorities’ commitment to maintaining the standard of material conditions in this establishment (paragraph 122).

## **Health care**

### *Colonies No. 65 and 100*

### recommendations

- the full-time attendance of a dentist and a gynaecologist to be ensured at Colony No. 65 (paragraph 124);
- the health care team of Colony No. 100 to be reinforced, in particular as concerns *feldshers*, and measures to be taken to fill the gap left by the prolonged absence of the psychiatrist (paragraph 124);
- all prisoners in Colony No. 65 to receive the care demanded by their state of health, and when transfer to or specialised consultation in a hospital facility is required, prisoners to be taken there within a time period and in conditions that take account of their state of health (paragraph 125);
- any medical examination or treatment of prisoners (regardless of the nature of their conviction) to take place out of hearing and – unless the doctor/feldsher requests otherwise in a particular case – out of the sight of prison staff (paragraph 126).

comments

- it would be desirable to ensure the regular attendance of a radiologist at Colony No. 65 (paragraph 124).

*Colony No. 61 for prisoners with tuberculosis*

recommendations

- the living space for patients to be increased to attain as soon as possible the standard of 5 m<sup>2</sup> of living space per patient provided for in the Code on the Execution of Sentences (paragraph 130);
- access to natural light and ventilation in the cells in the cell-type regime section to be improved wherever necessary (paragraph 130);
- prisoners to be provided with appropriate clothing (suited to the climatic conditions) and personal hygiene and basic cleaning products (paragraph 130);
- more frequent access to showers to be arranged (paragraph 130);
- efforts to be increased to ensure that all material conditions of prisoner accommodation meet hospital standards (paragraph 130);
- a solution to be found to provide the patients in section no. 1, whose state of health does not allow them to use the stairs, with access to daily outdoor exercise (paragraph 131);
- the exercise areas for the cell-type regime section to be enlarged (paragraph 131);
- steps to be taken to ensure that smear-positive patients and smear-negative patients can be accommodated separately in the admissions and surgical units (paragraph 133);
- the necessary measures to be taken in the light of the remarks made in paragraph 134 as regards the supply of second line drugs for the treatment of tuberculosis and the monitoring of treatment (paragraph 134);
- qualified health-care staff cover for prisoners close to death to be increased, with a view to providing them with the necessary physical care and psychological end-of-life care (paragraph 136);
- material conditions to be created to ensure that prisoners close to death are adequately cared for in an environment respectful of human dignity (paragraph 136);
- the Ukrainian authorities to ensure that relatives can visit prisoners close to death (regardless of where they are accommodated); if necessary, the rules should be revised accordingly (paragraph 136);

- the necessary steps to be taken without delay to cease the practice of placing psychiatric patients in the DIZO section for prolonged periods on medical grounds and to guarantee adequate care for these patients, where necessary by resorting to specialised facilities (paragraph 138).

#### comments

- the Ukrainian authorities are invited to broaden the range of activities available to prisoners at Colony No. 61 (paragraph 131);
- the practice of employing prisoners as orderlies must be seen as a very last resort and prisoners should never be involved in the distribution of medicines or health care to patients. They should not have access to any medical records and they should not be able to see or hear prisoners during the latter's medical examinations (paragraph 132);
- the CPT trusts that the work to improve the operating theatre at Colony No. 61 will be completed as soon as possible (paragraph 133).

#### requests for information

- comments of the Ukrainian authorities on the issue raised in paragraph 137 in respect of early release applications submitted by patients with a short-term fatal prognosis (paragraph 137).

## **6. Other issues**

#### recommendations

- all prisoners to be informed of their right to legal assistance and of the means available to them to challenge a decision to place them in a disciplinary cell or strict cellular regime (paragraph 139);
- the DIZO/kartzer/PKT cells in Colonies Nos. 61, 65 and 100 to be fitted out so as to have adequate access to natural light and adequate ventilation and heating; the equipment in these cells to be re-arranged to ensure that prisoners can sit down and sleep properly, and that they have a proper table. The run-down DIZO/PKT cells in Colony No. 61 to be repaired and the bedding replaced (paragraph 140);
- reading material to be made available to all prisoners placed in disciplinary cells (paragraph 141);
- the exercise areas of Colonies No 61, 65 and 100 for prisoners placed in disciplinary cells or in a PKT section to be enlarged (paragraph 142);

- the strict cellular regime to be reviewed as a matter of urgency in order to ensure that all the prisoners concerned, throughout the penitentiary system, are entitled to visits, and the ban on parcels during a prisoner's placement in a PKT section to be lifted (paragraph 143);
- the necessary steps to be taken, including amendments to the relevant regulations where required, to ensure that prison doctors are no longer tasked with approving prisoners' placement in a disciplinary cell or in a PKT section; the regulations and practices to take fully into account the principles set forth in Rules 43.2 and 43.3 of the revised European Prison Rules (paragraph 144);
- "short visits" to be exempted from any financial contribution on the part of the prisoners or their relatives (paragraph 147);
- the practice of entrusting duty prisoners with tasks related to the maintenance of good order and control to be stopped forthwith (paragraph 148);
- the conditions under which searches of prisoners leaving the workshops at Colony No. 100 are carried out to be verified and, if necessary, measures to be taken to ensure that searches are performed under humane and decent conditions (paragraph 149);
- the Ukrainian authorities to ensure that the provisions of the Code on the Execution of Sentences regarding the confidentiality of correspondence with the Parliamentary Commissioner for Human Rights and the Prosecutor are strictly applied (paragraph 151).

#### comments

- the CPT trusts that the Ukrainian authorities will ensure that the legislation related to access to the telephone is applied in all colonies (paragraph 146);
- the Ukrainian authorities are invited to abolish as soon as possible the practice of demanding financial contributions from prisoners receiving long visits (paragraph 147);
- the CPT trusts that the bodies entitled to inspect Ukraine's penitentiary establishments will make full use of their right for visit (paragraph 152).

#### requests for information

- whether the means of appeal available to prisoners against whom a decision has been taken to place them in a DIZO/*kartzer* cell or under PKT regime include the right to appeal to an authority outside the establishment, including a judge (paragraph 139);
- comments of the Ukrainian authorities on the conditions under which roll calls are carried out at Colonies Nos. 65 and 100 (paragraph 150);
- whether the rule that letters sent to the Parliamentary Commissioner for Human Rights and the Prosecutor are not to be read also applies to international bodies empowered to receive complaints (paragraph 151).

**APPENDIX II**

**GOVERNMENTAL AND OTHER AUTHORITIES  
AND INTERNATIONAL AND NON-GOVERNMENTAL ORGANISATIONS  
WITH WHICH THE CPT'S DELEGATION HELD CONSULTATIONS**

**Governmental authorities:**

State Department for the Execution of Sentences

V. V. KOSHCHYNETS	Head
A. S. LAGODA	First Deputy Head
A. F. VISOCHANSKIY	Deputy Head
N. G. KALASHNIK	Deputy Head
A. E. OLENTZEVICH	Deputy Head
P. V. KOLYADA	Head of Administration
M. V. MENDEL	Acting Head of the Planning and Analytical Department
K. O. BABAK	Head of the Division for European Integration, International Co-operation and Press and Public Relations

Ministry of Internal Affairs

V. M. RUDIK	Deputy Minister of Internal Affairs
V. I. MAEVSKIY	Head of the Public Security Department
Y. M. MAZUR	Head of Militia Special Facilities and Convoy Division, Public Security Department

Ministry of Health

S. P. BEREZHNOV	Deputy Minister of Health
M. V. BANCHUK	Head of the Department of Staff Policy, Education and Science
S. S. STAKHIVSKIY	Head of the Corruption and Crime Prevention Division, Department of Staff Policy, Education and Science

State Security Service

A. M. MUDROV	Deputy Head
V. Y. KHOPTYANIY	Deputy Head of the Logistics Department
M. I. KOCHUBEY	Deputy Head of Division

Ministry of Defence

F. F. MAKAVCHUK	First Deputy Head, Central Division of the Law Enforcement Service of the Armed Forces
O. M. EVZHELONOK	Head of Guard and Patrol Department, Central Division of the Law Enforcement Service of the Armed Forces
R. O. PELTZ	Acting Head of Planning and Methods Division, Central Division of the Law Enforcement Service of the Armed Forces

State Border Guard Service

B. M. MARCHENKO	Acting Head of the Border Protection Department
A.D. FEDOSEEV	Head of Department
O.A. SKIGIN	Head of the Detention Ward, Foreigners Division

Ministry of Justice

G. O. GONCHARUK	Head of Division, Department of Legislation on Administration of Justice, Law Enforcement and Fight against Crime
V. K. MANKO	Leading Specialist, Department of Legislation on Administration of Justice, Law Enforcement and Fight against Crime

Ministry of Foreign Affairs

V. V. VOYTOVICH	Head of the Council of Europe Division, United Nations and International Organisations Department
O. V. BOKHONSKA	Attaché, Council of Europe Division, United Nations and International Organisations Department
O. V. KORCHAK	Attaché, Council of Europe Division, United Nations and International Organisations Department

**Other authorities:**

Ukrainian Parliamentary Commissioner for Human Rights

N. KARPACHOVA Parliamentary Commissioner for Human Rights

Prosecutor General's Office

V. G. NEDILKO Head of Department of Supervision of Enforcement of Sentences and other Measures of Restriction of Personal Freedom

**International Organisations:**

Delegation of the Commission of the European Union to Ukraine

Mission of the International Organisation for Migration in Ukraine

Office of the OSCE Project Co-ordinator in Ukraine

Regional Delegation of the International Committee of the Red Cross, Kyiv

Representation of the United Nations High Commissioner for Refugees in Ukraine

**Non-Governmental Organisations:**

Donetsk Memorial

Kharkiv Human Rights Protection Group

Ukrainian Union of Advocates