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**Response of the Ukrainian Government
to the report of the European Committee
for the Prevention of Torture and Inhuman
or Degrading Treatment or Punishment (CPT)
on its visit to Ukraine**

from 5 to 10 December 2007

The Ukrainian Government has requested the publication of this response. The report of the CPT on its 2007 visit to Ukraine is set out in document CPT/Inf (2009) 15.

Strasbourg, 19 May 2009

**REPORT
ON THE ACTIONS TAKEN IN RESPONSE TO
THE RECOMMENDATIONS AND COMMENTS
SET OUT IN THE REPORT TO THE UKRAINIAN GOVERNMENT
BY THE EUROPEAN COMMISSION FOR PREVENTION OF TORTURE
UPON ITS VISIT TO UKRAINE
DURING DECEMBER 5-10, 2007**

The report to the Ukrainian Government drawn up by the European Committee for the prevention of torture after its visit to Ukraine, which took place on December 5-10, 2007, has been carefully studied by the State Department of Ukraine on Enforcement of Sentences and other State bodies. The recommendations and comments stated in the above-mentioned CPT Report have been thoroughly analyzed; a complex of organizational and practical actions has been elaborated and carried out in order to eliminate the shortcomings revealed.

A. Institutions under the authority of the Ministry of Internal Affairs of Ukraine

The Ministry of Internal Affairs of Ukraine has been taking organizational and practical steps to coordinate the countermeasures to illegal migration. These steps were taken in accordance with:

- the Decree by the President of Ukraine as of 20.07.2007 № 657/2007 on the implementation of the resolution of the National Security Council of Ukraine as of June 15, 2007 – “On vectors of the state migration policy of Ukraine and urgent measures for increasing its efficiency”
- the Regulations by the Government of Ukraine as of 26.01.08 № 3897/1/1-08 on implementation of the Readmission Agreement between Ukraine and the European Community.

The official opening and setting into operation of the temporary holding facilities for foreigners and stateless persons illegally staying in Ukraine (hereinafter referred as the “THF”), located in Chernigiv and Volyn regions, took place in July-September, 2008.

In 2007, UAH 21.02mn was allocated in the state budget, and UAH 10.496mn of international financial assistance was raised for reconstruction of the said facilities. These funds were used to perform main construction works at the mentioned facilities.

The International Organization on Migration funded the procurement of furniture, kitchen equipment, 6 buses for transportation of illegal migrants, etc.

However, due to insufficient financing some reconstruction works were left unperformed, consequently the THF were not set into operation.

UAH 20mn was stipulated by the state budget of 2008 for reconstruction of the facilities. The financing has been started in April of 2008.

For proper functioning of the facilities a list of necessary staff positions was validated, including maintenance personnel, translators, medical workers, etc.

The guards employed at the facilities were trained and got respective qualifications at specialized schools for initial training of internal affairs officers.

Moreover, in April-May of the current year the experts of the European Commission's Council held a number of trainings for the staff of the facilities regarding the methods of treatment of detained migrants and ensuring their rights and freedoms.

According to the recommendations by the Ukrainian Office of the International Organization on Migration, as well as the most advanced practices applied at such facilities, their internal regulations make provision for appropriate consultation hours by a lawyer to ensure legal assistance for persons held at the THFs.

In compliance with the internal regulations the representatives of international and non-governmental human rights organizations also have a right to visit persons held at these facilities.

The Ministry of Internal Affairs is taking measures to build five more such facilities.

In order to build them it has been agreed with the Ministry of Defense of Ukraine that three unused military stations, located in Dnipropetrovsk, Donetsk and Lviv regions, will be transferred to the Ministry of Internal Affairs. The draft agreement regarding the transfer has been sent for approval to the Cabinet of Ministers of Ukraine.

However, the problem about the transfer is that the local authorities consider it inexpedient to build the facilities in the said cities.

The positive solution of the said issues will duly provide for appropriate holding of foreigners illegally staying on the territory of Ukraine, promote positive image of Ukraine within the European Community, as well as implementation of the Readmission Agreement and the Government instructions on involving and using of international technical assistance.

The Ministry of Internal Affairs will continue to implement, within its competence, measures for enhancement of co-operation between Ukraine and the European Community while closely supervising the process of their fulfillment.

Regarding the remarks and recommendations upon the inspection of specialized reception center for holding persons under the administrative arrest and reception centers for persons arrested for vagrancy, located in Kyiv and Uzhgorod, the following should be noted.

In February 7, 2008, after the completion of capital repairs, the Kyiv specialized reception center was put into operation, the incarceration conditions in it conforming to the international standards. At the same time, the number of wards in the reception center was increased, consequently the intake capacity of the centre has risen to 170 persons, at the rate of 4 sq. m per person.

The held persons are fully provided with individual sleeping accommodations, bed clothes, three hot meals daily, daily perambulations, and are permitted to receive parcels. The mentioned persons are also employed in utility works at

various city factories and communal city services, subject to relevant agreements between the centres and local administration.

As for the Uzhgorod reception center, it should be noted that this facility is temporarily out of service due to reconstruction works to be done there. The above is in accordance with the Order by the Administration of the Ministry of Internal Affairs in Zakarpattya as of October 28, 2008, № 631.

However, there is still an unresolved issue of land-allotting for building a new facility. Thus, on May 7, 2008, the Administration of the Ministry of Internal Affairs of Ukraine in Zakarpattya received a letter by Uzhgorod City Council with their official refusal to parcel out the selected land on Uzhanska Street. At the same time, the municipal department for architecture and city-building was charged with the task to draft new proposals regarding the allotment of the required land.

The Ministry of Internal Affairs reaffirms its categorical ban on holding foreigners and stateless persons illegally staying on the territory of Ukraine in reception centers for persons arrested for vagrancy. Strict adherence to the said ban is under close scrutiny of the Ministry.

B. Institutions under the authority of the Administration of State Border Guard Service of Ukraine

1. Complaints of detained foreign nationals regarding physical ill-treatment inflicted by border guards at the time of apprehension, and cases of injuries observed on the bodies of detainees.

During the apprehension of illegal migrants (groups are composed of 10-20 offenders attempting to cross illegally the state border) border guards have to apply physical force. Upon arrival to Temporary Holding Points (THP) all offenders are examined by paramedics, and their state of health is recorded in a register. In the cases of injuries being observed, service investigations are conducted and decisions are reached on lawfulness of physical force application. Facts of improper use of physical force by border guard officers towards foreign offenders have not been evidenced.

2. Regarding "...case of ill-treatment and application of physical force to a citizen of Somali, occurred at the TH place "Pavshino" of the Mukachevo State Border Guard Detachment, 01.12.2007). No record was made in a register of events recording ..."

A cell phone is defined as an item keeping and using of which is banned on the premises of Temporary Holding Points. The above is in accordance with the Order by the Administration of State Border Guard Service of Ukraine as of June 30, 2004, № 494 – "On ratification of the Procedure on detention of persons administratively apprehended by bodies of State Border Guard Service of Ukraine for violation of Ukrainian state border legislation and on suspicion of offence commitment", and the Order as of December 30, 2004, № 1023 – "On regulating

of Temporary Holding Points (THPs) functioning at the Mukachevo State Border Guard Detachment”.

On December 1, 2007, a cell phone being charged was noticed by an officer of TH place “Pavshyno”. The officer attempted to confiscate the illegal phone from its owner, a citizen of Somali. In response the later pushed the officer, ran out of the building and threw it over the boundaries of the THP area. There was no beating of this citizen as a result of the incident. The incident itself was duly recorded in the THP governor’s book, which was revised by the CPT delegation members. On December 4, 2007, the said citizen was released from the TH place “Pavshyno” on the grounds of the certificate on filing a refugee application in Ukraine, issued by the Migration Service in Zakarpattya.

2. Regarding overcrowded lodgings at Temporary Holding Points:

On their own requests and for the purpose of evading conflicts, foreign nationals in the TH place “Pavshyno”, THPs, special premises in Mukacheve and Chop Border Detachments are accommodated according to nationality.

For each detained person 4 square meters of living space are provided. Thus, according to the regulatory requirements, the occupancy capacity of TH place “Pavshyno” is 320 persons.

3. In reference to complaints about insufficient heating, erratic water supply, difficulty in using, particularly at night-time, the outdoor lavatory in the TH place “Pavshyno”.

The indoor temperature at the premises for illegal migrants is maintained at +18 C in the day-time, and +18-20 C at night. For the purpose of heating conservation a high-quality metal entrance door and 6 metal-plastic windows in lodging premises have been installed.

3 boilers (150 liters each) have been installed to improve the detention conditions. The detainees wash once a week, each nationality separately. In summer-time the shower operates outside. The canteen is permanently supplied with hot water for washing of communal and individual kitchenware. In order to improve the conditions of the outdoor lavatory use the sewerage system repairs are scheduled to be carried out during the 3rd quarter of this year. Each of the 4 entrances to the premises, as well as to the utility building, was fitted with a thermoinsulated metal door to maintain the temperature and to prevent conflicts; 4 wooden windows on the 2nd floor of the building were replaced with the metal-plastic ones.

At night-time foreign nationals are to be found in dormitory rooms, and the entrance doors are locked. In order to use the lavatory foreign nationals are separately escorted to it by the personnel. There are also utility facilities, including water closets, inside each entrance.

4. On the lack of progress in the operation of the THP “Pavshyno” and inadmissibility of its functioning on external humanitarian financing only.

On account of Temporary Holding Facilities (THF) in Chernigiv and Volyn regions having been set into operation, the State Border Guard Service of Ukraine is planning to close down the TH place “Pavshyno”. The transfer of illegal

migrants from “Pavshyno” to THFs in Chernigiv and Volyn is organized in accordance to the provisions about a temporary holding point (THP) for foreign nationals and stateless persons in Ukraine.

However, at the same time the State Border Guard Service of Ukraine makes efforts to improve the infrastructure of the TH place “Pavshyno” because occupancy capacity of THFs in Chernigiv and Volyn is insufficient for accommodation of all the illegal migrants detained in the THPs, the TH place “Pavshyno” and special premises in Mukacheve and Chop Border Detachments.

During the period of 2007 and the first half of 2008 the following works have been completed:

- 10 modular-type houses are installed and equipped, enabling an increase of permissible occupancy capacity of detainees up to 320 persons;
- a canteen for 100 persons, a shower room for 14 persons and a new toilet are built and equipped;
- a medical treatment facility was set up;
- a room for interviews was fitted out;
- repairs of the premises for accommodating illegal migrants;
- windows in all the living quarters were glazed;
- refurbishment of the border crossing point;
- the accessways to the living quarters and the canteen have been paved with asphalt;
- an additional boiler was installed in the boiler house.

In order to avoid the danger of electrocution the interior lighting system with 36V of voltage, as well as the 24-hour surveillance system, have been installed.

In view of setting into operation two new temporary holding facilities in Chernigiv and Volyn regions, the THP “Pavshyno” is to be closed down by December 31, 2008.

5. In reference to the border units Astei and Uzhgorod, which have no special premises for temporary (up to 3 hours) detention of trespassers, though the latter are sometimes detained for 2 to 4 days.

Such incidents occur in case of apprehending offenders at night-time, due to bad weather conditions and necessity to conduct certain investigative procedures for recording of trespass circumstances, particularly in the cases of group violation of state borders with the facilitators having been identified.

6. In reference to the airport “Boryspil” special premises not meeting the European standards

On June 10, 2008 a new modern special holding facility for 8 persons was set into operation at the airport “Boryspil”. It meets the international and the EU standards in full.

7. In reference to the conditions of foreign nationals detention in THPs (available free-time activities) and confirmation of the fact that at the Chop Border

Detachment detainees are kept in special premises and provided with at least an hour-long walk in the open air daily.

At the THPs and at the special premises of the Chop Border Detachment TV sets have been installed. Foreign nationals have at their service the satellite TV in order to be able to watch programmes translated from of their countries of origin.

Under the auspices of foreign diplomatic missions and the International Fund NEEKA the detainees are supplied with books and periodicals in their native languages. Besides, with assistance by a number of foreign embassies in Ukraine the Administration of the SBGU has organized a delivery of periodicals from the most detainees' countries of origin.

Detained offenders who are kept at the special premises of the Chop Border Detachment have a daily outdoor walk within the THP walking area. The records of walks are kept in a special register of the Detachment.

According to the agreements reached with the representatives of "Karitas-Austria" Charity organization, upholstered furniture for a multifunctional room and fitness equipment were delivered to the Chop Border Detachment THP. Also, the Chop Border Detachment's command received a proposal from "Karitas-Austria" regarding reconstruction of the Detachment's special premises to be brought up to the European standards.

8. In reference to non-fulfillment of the CPT recommendations on detained persons' right of urgent informing relatives or a third person about their detention and place of presence.

Corresponding embassies and consulates are informed of foreign nationals detention cases no later than 12 hours from the moment of detention, except those cases when such persons apply for a refugee status. Relatives of detained illegal migrants are not informed of detention facts unless detained persons give necessary information.

9. In reference to confiscation of detainees' cell phones

Phone calls are permitted depending on the institution's technical capability and are paid for by a detained person. A call is registered in a phone calls register in accordance with point 14.10. of the Procedure on detention of persons administratively apprehended by bodies of State Border Guard Service of Ukraine for violation of Ukrainian state border legislation and on suspicion of offence commitment.

With assistance of charity organizations detained foreign nationals are entitled to use land-line telephones with long-distance service installed at detention points.

Cell phones are taken away and kept a detained person's other personal things according to point 3.7.3. of the above-mentioned Procedure. The Procedure does not allow for use of own cell phones. After release from detention places a cell phone is handed back by a detained person along with the other personal things.

10. In reference to lawyers access to detained offenders kept in THPs of the state border guard bodies.

The access of lawyers to offenders is effected according to the Criminal Procedural Code of Ukraine, the Code of Ukraine about administrative offences, the Law of Ukraine "On Advocatura" and the Order by the Administration of the State Border Guard Service of Ukraine as of June 30, 2004, № 494 – "On ratification of the Procedure on detention of persons administratively apprehended by bodies of State Border Guard Service of Ukraine for violation of Ukrainian state border legislation and on suspicion of offence commitment" registered at the Ministry of Justice of Ukraine on July 15, 2004 № 886/9485.

The legal assistance is provided on the basis of the Agreement between Ukraine and UN High Commissioner for Refugees, ratified by the Law of Ukraine as of October 21, 1999, № 1185-XIV, and the lawyers of executive partners of UN High Commissioner for Refugees in Ukraine, Moldova and Byelorussia.

11. In reference to foreign nationals' lack of awareness as for their rights, obligations and internal regulations at TH places.

With assistance of the International Organization on Migration in Ukraine information booklets about rights and obligations of a detained person, as well as daily routine at temporary holding places, were printed in main foreign languages and distributed to the TH place "Pavshyno", THPs, the Chop special premises and other border detachments.

The State Border Guard Service has received from the Office of UN High Commissioner for Refugees in Ukraine and passed onto the places of detention 4.000 information brochures (translated into 7 languages) about the rights of foreigners on acquiring a refugee status in Ukraine.

12. In reference to medical provisioning of detention places

In 2007 UAH 12.000 of budget funds were spent on procurement of necessary medicine for THPs and the Chop Border Detachment SP. Additionally, the charity organization "Karitas-Austria" procured medicine to the sum of UAH 18.000.

13. In reference to development of a training course for the personnel working in detention places of the state border bodies.

For the purpose of development of such a training course the relevant experience of neighboring border agencies is being summarized. Representatives of the International Organization on Migration held 5 seminars with the personnel of newly set up THPs and special holding premises. The seminars' purpose was to get acquainted with the best European practices on treatment of detained persons. Within the framework of CPT project, in August of this year, a two-day seminar was held by the representatives of Hungarian and Polish border agencies with the detention places personnel of Eastern regional directorate at the training center for state border guards.

Activities of the State Border Guard Service of Ukraine aimed at setting-up of the internal detention system for holding administratively apprehended persons.

During 2004 – 2008 years in the State Border Guard Service of Ukraine developed the **internal agency system for temporary detention** which includes **12 (twelve)** Temporary Holding Points (THPs).

12 THPs (with capacity for **622** persons):

Lviv Border Detachment – for **32** persons;

Mukachevo Border Detachment – for **367** persons:

THP «Pavshyno» – for 320 persons;

Premises for detained women and children – for 35 persons;

Special premises within the border detachment command – 12 persons;

Chop Border Detachment – for **104** persons:

THP – for 44 persons;

SP – for 60 persons;

Sumy Border Detachment – for **30** persons;

Donetsk Border Detachment – for **10** persons;

Lutsk Border Detachment – for **35** persons;

Chernigiv Border Detachment – for **21** persons;

Bilgorod-Dnistrovs'kyi Border Detachment – for **10** persons;

Kotovsk Border Detachment – for **13** persons;

69 Special Premises (capacity – for **252** persons).

The overall capacity of temporary holding facilities including the THP «Pavshyno» is $271 + 281 + 350 = 902$ persons.

There were no registered complaints regarding breach of human rights and freedoms of persons detained at the facilities under the authority of the State Border Guard Service of Ukraine.

The representatives of international and national law enforcement agencies had free access to the places of offenders' detention. For example, during 2008 the said places were visited by 26 representatives of the UN Office in Ukraine, 19 representatives of the International Organization on Migration, 2 representatives of the European Commission, 16 representatives of various Embassies, 23 mass-media representatives, 14 members of non-governmental charity organization «Karitas-Austria».

In pursuance of the Law of Ukraine «On refugees», during January – September 2008, the border guards bodies released 930 persons on the grounds of certificates about filing a refugee application in Ukraine, issued by the Migration Service official bodies.

The Ukrainian Office of the International Organization for Migration have procured and handed over to the State Border Guard Service 6 buses and 15 mini-buses for transportation of detained persons.

Besides, within the implementation of EU funded project «Capacity building migration management» the following measures have been or are being implemented:

- 3 new special premises –at the Chernivtsi, Mostys'k and Izmail Border Detachments – were opened in October, 2008;
- one more THP – at the Simferopol Border Detachment – is to be open by the end of 2008;

- 20 rooms for interviewing foreign nationals are being currently fitted out on eastern and western borders.

Annex:

1. Photos of the newly equipped special premises at the airport “Boryspil”
2. Photos of the TH place «Pavshyno».
3. Photos of the official opening of special premises «Malniv» at the Mostys’k Border Detachment.
4. Photos of the official opening of special premises «Shats’k» at the Luts’k Border Detachment.

First Deputy Minister of Justice of Ukraine



Yevgen Korniychuk