



CPT/Inf (2012) 8

**Preliminary observations made by the delegation
of the European Committee for the Prevention
of Torture and Inhuman or Degrading Treatment
or Punishment (CPT) which visited Ukraine**

from 29 November to 6 December 2011

**and response of the Government of Ukraine
to three issues raised by the delegation**

The Government of Ukraine has requested the publication of these preliminary observations and of its response.

Strasbourg, 12 March 2012

CONTENTS

Preliminary observations made by the CPT's delegation..... 5

Letter from the Ministry of Justice dated 16 January 2012 in response
to three issues raised by the delegation (*original version in Ukrainian*)..... 11

English translation of the letter from the Ministry of Justice dated 16 January 2012 13

**STATEMENT MADE ON 6 DECEMBER 2011 BY MR LƏTIF HÜSEYNOV,
HEAD OF DELEGATION, AT THE END OF THE AD HOC VISIT BY THE
EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN
OR DEGRADING TREATMENT OR PUNISHMENT (CPT) TO UKRAINE
(29 NOVEMBER TO 6 DECEMBER 2011)**

Dear Minister, dear Deputy Minister, Ladies and Gentlemen,

We have now come to the end of the CPT's visit to Ukraine, and the delegation very much appreciates the opportunity to meet you today and present its preliminary observations.

As already indicated at the outset of the visit, it has been of a targeted nature, focusing mainly on the treatment and conditions of detention of persons deprived of their liberty by the police. For this purpose, the delegation visited three temporary holding facilities (ITTs) and various other police establishments in the Kyiv and Kharkiv regions and also interviewed many remand prisoners in the pre-trial establishments (SIZOs) in Kyiv and Kharkiv (see attached list of establishments visited).

Before setting out the delegation's findings, I would like to highlight that the co-operation received by the delegation throughout the visit was on the whole very good at all levels. The delegation generally enjoyed rapid access to all the establishments visited. Further, it was promptly provided with all the information necessary for carrying out its task and was able to talk in private to all persons it wished to interview. I would also like to thank the CPT's liaison officer Ms Valeria Lutkovska from the Ministry of Justice for her excellent support before and during the visit.

However, there are some exceptions to this generally favourable state of affairs. In particular, at the ITT and Solomianskyi District Police Division in Kyiv, as well as at Kyivskyi District Police Division in Kharkiv, access to the establishment was granted with a delay of some 30 minutes and only after the delegation had intervened with the delegation's contact person at the Ministry of Internal Affairs.

The most serious failure of co-operation was encountered during the visit to the Secure Ward of the Kyiv Municipality Emergency Hospital. The delegation's access to the ward was delayed for some ten minutes. Police officers present in the ward told the delegation that patients were never handcuffed to their bed; however, when the delegation subsequently checked the CCTV recordings of the Ward, it became apparent that, during the ten minutes it had had to wait outside, police officers had hastily removed the handcuffs of all the patients held in the Ward. From the fact that patients themselves categorically denied the use of handcuffs, the delegation cannot but conclude that police officers had exerted pressure on them in order not to reveal the truth to delegation members.

The delegation is very concerned by the fact that the practice of handcuffing patients to hospital beds has continued after the 2009 visit, despite the assurances given to the contrary by the Ukrainian authorities in their response to the report on that visit. **Pursuant to Article 8, paragraph 5, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the delegation calls upon the Ukrainian authorities to put an immediate end to the practice of handcuffing patients to hospital beds in the Secure Ward of the Kyiv Municipality Emergency Hospital. It wishes to receive – within one month¹ – confirmation that this has been done.**

¹ All deadlines are to be counted as from 16 December 2011, i.e. the date of transmission to the Ukrainian authorities of the text of the preliminary observations made by the CPT's delegation.

I will turn now to the issue of ill-treatment which lies at the heart of the CPT's mandate. I regret to say that, in the course of the visit, the delegation received numerous allegations from detained persons (including women and juveniles) that they had been subjected to physical ill-treatment and/or excessive use of force by police officers. The alleged ill-treatment consisted in the main of punches, kicks or blows with batons, at the time of apprehension or during subsequent questioning by police officers.

In a number cases, the ill-treatment alleged was of such a severity that it can easily be considered to amount to torture (e.g. infliction of electric shocks; asphyxiation with a plastic bag or gas mask; suspension in a hyperextended position; death threats with a gun put to the head).

In some cases, the allegations made were supported by medical evidence gathered by medical members of the delegation (i.e. through physical examination of the person concerned and/or from medical records).

The information gathered during the visit suggests that the phenomenon of police ill-treatment remains widespread and that persons run a significant risk of being subjected to ill-treatment while in the hands of the police (in particular, when they do not rapidly confess to the criminal offence(s) of which they are suspected).

In addition, the delegation observed a number of practices which are likely to hinder efforts to combat ill-treatment and foster a climate of impunity. In the visit report, the CPT will make more detailed remarks in this regard. At this stage, I would like to draw your attention to the following points:

- in virtually all the police establishments visited, medical examinations performed by a doctor or feldsher are still carried out in the presence of police officers;
- at the Kharkiv SIZO, the delegation was informed that escorting police officers were frequently present during the initial medical examination by the prison doctor of persons remanded in custody;
- at both SIZOs visited, a number of remand prisoners had been temporarily taken back to a police establishment for investigative purposes. According to senior members of staff, it was in such cases not uncommon that the prisoners concerned later returned to the SIZO with visible injuries, after having been warned by police officers not to lodge any complaint against the police;
- a number of remand prisoners claimed that they had been held in ITTs beyond the 72-hour time limit in order to allow visible injuries to disappear before their admission to a SIZO;
- at the Kyiv SIZO, cases of persons who had arrived with injuries from a police establishment and who alleged ill-treatment by police officers were reported back by the management to the same police establishment for further investigation.

I would also like to recall the importance of the following fundamental safeguards for persons deprived of their liberty by the police: the right to inform a close relative or another person of one's custody; the right of access to a lawyer; and the right of access to a doctor. These three rights should apply from the very outset of custody. They should apply not only to persons detained by the police on suspicion of having committed a criminal offence, but also to administrative detainees as well as to persons who are obliged to remain with the police for other reasons.

From discussions with operational officers and police investigators it has become evident that, in practice, the existing legal safeguards are often not granted at the outset of the de facto deprivation of liberty, but only once the persons concerned have been formally detained. It remains the case that, following their deprivation of liberty, persons are often subjected to informal questioning, during which confessions are obtained, without benefiting from the above-mentioned safeguards. Such a state of affairs is not acceptable.

On a positive note, I would like to stress that the delegation gained a generally favourable impression of the material conditions of detention in all the police establishments visited. It also welcomes the fact that, in several smaller establishments, sub-standard custody cells were withdrawn from service by order of the relevant supervising prosecutors earlier in 2011, pending their refurbishment.

That said, at the ITT in Kyiv, the delegation found a metal cage within the detention area, in which detained persons are placed during medical examinations performed by a feldsher. There can be no justification for such a practice. **The delegation calls upon the Ukrainian authorities to remove this cage; it wishes to receive – within one month – confirmation that this has been done.**

Due to the very specific nature of the visit, I am not in a position to provide you with comprehensive feedback concerning the SIZOs in Kyiv and Kharkiv. However, there are some issues that give rise to particular concern and which I would like to bring to your attention today.

In previous visit reports, the CPT has repeatedly stressed the importance of the *medical screening* of newly-arrived prisoners by prison doctors for the prevention of ill-treatment, in particular, when the persons concerned are admitted to a SIZO from a police establishment. In this regard, the delegation is very concerned that the confidentiality of medical examinations is often not respected. As already indicated, at the Kharkiv SIZO, the delegation was informed that an escorting police officer was frequently present during initial medical examinations. Such a practice is unacceptable and should be stopped immediately. Moreover, the recording of injuries left much to be desired in both SIZOs visited (in many cases, only the type of injury such as “bruises” or “haematoma” was recorded, without any further description). In the visit report, the CPT will also make more detailed remarks regarding the reporting of injuries observed on newly-arrived prisoners to outside authorities.

I would like to say a few words about the *conditions of detention in the SIZOs in Kyiv and Kharkiv*. The delegation gained a positive impression of the material conditions in the units for juveniles in both establishments.

In contrast, conditions of detention are quite simply appalling in many of the other detention units of the two SIZOs. Numerous cells are in a poor state of repair and have only very limited or no access to natural light at all. In addition, the delegation is concerned by the severe overcrowding observed in both establishments.

The delegation acknowledges the efforts made by the Ukrainian authorities to provide additional living space by constructing new pre-trial establishments. However, despite the fact that some 1,500 prisoners have recently been transferred to new establishments from the Kharkiv SIZO, the situation remains very problematic in both SIZOs. In order to illustrate the scope of the problem, I would like to give you just one example. At the Kharkiv SIZO, the delegation found a cell measuring some 45 m² which is currently accommodating 44 prisoners (and on occasion accommodates even more). There are only 28 beds available which means that prisoners are obliged to sleep in turns. They also have to store their personal belongings and wash and dry their laundry inside the cell.

It would appear that excessive resort to remand detention and lengthy court proceedings have aggravated the problem of overcrowding.

There are two more specific issues regarding the Kharkiv SIZO which I would like to raise with you today:

Firstly, in Block 1 of the establishment, the delegation found four *holding cubicles* which measure a mere 0.80 m² and are completely dark inside, without any artificial lighting. According to staff, prisoners who are violent or have otherwise violated the internal rules are on occasion placed in such cubicles until they are questioned by a member of the internal security department. The delegation must stress that by virtue of their size alone, these cubicles are not suitable for holding a person for any length of time. Secondly, the delegation observed that a number of cell windows are covered with *metal shutters*. The delegation raised these two issues with the Director of the SIZO. He affirmed to the delegation that the holding cubicles would be immediately withdrawn from service and that the metal shutters would be removed as soon as possible. **The delegation would like to receive – within one month – information on the measures taken in this regard.**

On the occasion of this visit and in the light of reports recently received by the CPT, the delegation also examined the *health care being provided to certain persons currently held at the Kyiv SIZO* and, in particular, Mr Valeriy IVASHENKO, Mr Yuriy LUTSENKO and Ms Yulia TYMOSHENKO. All three cases were examined in detail by one of the delegation's medical members, a former head of a prison health-care service. First of all, I would like to stress that the role of a medical member of a CPT delegation is not that of a treating doctor; his/her task is to assess the quality of health care and, more specifically, the access to medical treatment of detained persons. The delegation also wishes to recall that the prison authorities are responsible for the health care of all prisoners; all efforts possible must be made to ensure that a precise diagnosis is established and that adequate treatment required by the state of health of the person concerned is provided to all prisoners.

In this regard, the delegation must express its concern that in respect of each of the three aforementioned persons, considerable delays occurred in arranging specialised medical examinations outside the SIZO.

As regards Mr Ivashenko and Ms Tymoshenko, the delegation noted that symptomatic treatment is being provided to them. However, if their situation does not improve in the very near future, it would be desirable for additional interventions (such as infiltration therapy, provision of a corset and physiotherapy) to be explored, if necessary, in a specialised hospital setting.

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This concludes the preliminary observations of the delegation which are made as always in a constructive spirit. Given the fact that press releases have unfortunately been issued recently by various authorities regarding the perceived findings of the delegation, I would like to stress that if parts of these observations are placed in the public domain, the CPT may decide to invoke Rule 39 of its Rules of Procedure and publish the preliminary observations in their entirety. Of course, the Ukrainian authorities may decide at any time themselves to request publication of these preliminary observations in their entirety. The written version of the preliminary observations will be communicated to the Ukrainian authorities shortly. The visit report, which will be transmitted in spring 2012, will be more developed and will also cover issues not dealt with today.

In closing this statement, I would like to emphasise that the CPT looks forward to enhancing its co-operation with the Ukrainian authorities, with a view to improving the treatment of persons deprived of their liberty in Ukraine.

Thank you for your attention.

Establishments visited by the CPT's delegation during the 2011 visit to Ukraine

Penitentiary establishments

Kharkiv Pre-Trial Establishment (SIZO)

Kyiv SIZO

Police establishments

Kyiv region

Irpin Temporary Holding Facility (ITT)

Kyiv ITT

Shevchenkivskyi District Police Division, Kyiv

Solomianskyi District Police Division, Kyiv

Vyshgorod Police Division

Kharkiv region

Chuguyiv ITT

Joint Special Detention Facility, Kharkiv

Dzerzhinskyi District Police Division, Kharkiv

Kyivskyi District Police Division, Kharkiv

Leninskyi District Police Division, Kharkiv

City Police Sub-Division of Leninskyi District Police Division, Kharkiv

Other establishments

Secure Ward of Kyiv Municipal Emergency Hospital

**LETTER FROM THE MINISTRY OF JUSTICE DATED 16 JANUARY 2012
IN RESPONSE TO THREE ISSUES RAISED BY THE DELEGATION**

**МІНІСТЕРСТВО ЮСТИЦІЇ
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16.01.2012 № 423-0-35-11/12 1

На № _____

□ □

У зв'язку з листом виконавчого секретаря Європейського комітету проти тортур Тревога Стівенса від 16 грудня 2011 року щодо попередніх зауважень Комітету за результатами його офіційного візиту до України з 29 листопада по 6 грудня 2011 року повідомляємо таке.

Щодо практики приковування наручниками пацієнтів до лікарняних ліжок у відділенні для затриманих Київської міської клінічної лікарні швидкої медичної допомоги

За наслідками перевірок, проведених Службою Міністра внутрішніх справ спільно з фахівцями Департаменту охорони громадського порядку МВС, начальникові Головного управління МВС (далі - ГУМВС) України в місті Києві направлено листа щодо необхідності вжиття додаткових заходів щодо виключення випадків безпідставного застосування спеціальних засобів до затриманих і взятих під варту осіб у спеціальних палатах Київської міської клінічної лікарні швидкої медичної допомоги. Працівників міліції, які залучаються до охорони затриманих і взятих під варту осіб у спеціальних палатах Київської клінічної лікарні швидкої медичної допомоги, зобов'язано використовувати наручники винятково відповідно до вимог Закону України "Про міліцію" та Інструкції з організації конвоювання затриманих і взятих під варту осіб в органах внутрішніх справ України та виключити випадки безпідставного застосування спеціальних засобів, зокрема, приковування до лікарняних ліжок.

Щодо використання металевої клітки, в яку поміщуються затримані особи під час медичного огляду фельдшером, в ІТТ міста Києва

Станом на 4 січня 2012 року відповідно до вказівки керівництва Міністерства внутрішніх справ металеву клітку в кімнаті проведення обшуку ізолятора тимчасового тримання ГУМВС України в місті Києві демонтовано.

Щодо недоліків, виявлених у Харківському слідчому ізоляторі

З метою усунення недоліків, викладених у попередніх зауваженнях ЄКПТ, у Харківському слідчому ізоляторі демонтовані та виведені з експлуатації бокси для тримання ув'язнених, а також організовано демонтаж металевих жалюзів з вікон режимного корпусу установи. Зазначену роботу буде завершено до 7 березня 2012 року.

Крім того, під час розробки Державною пенітенціарною службою нової Інструкції з організації нагляду у слідчих ізоляторах буде переглянуто доцільність використання тимчасових боксів для тримання ув'язнених у режимних корпусах слідчих ізоляторів. Зазначену роботу планується провести до кінця I кварталу 2012 року.

**Урядовий уповноважений
у справах Європейського суду
з прав людини**



В.В. Лутковська

**LETTER FROM THE MINISTRY OF JUSTICE DATED 16 JANUARY 2012
IN RESPONSE TO THREE ISSUES RAISED BY THE DELEGATION**

(translation provided by the Ukrainian authorities)

Referring to the letter dated December, 16, 2011 from the Executive Secretary of the European Committee for the Prevention of Torture, on the preliminary observations of the Committee with regards to the official visit to Ukraine from 29 November to 6 December 2011 we would like to inform you of the following.

Concerning the practice of handcuffing patients to hospital beds in the Secure Ward of the Kyiv Municipality Emergency Hospital

As a result of inspections conducted by the Service of Minister of Interior in cooperation with specialists of the Public Security Department of the Ministry of Internal Affairs (MIA) a letter was sent to Head of the Main Department of the MIA of Ukraine (MD MIA) in the City of Kyiv regarding the need to take additional measures to prevent cases of arbitrary usage of special measures to detainees in the Secure Ward of the Kyiv Municipality Emergency Hospital. Police officers responsible for guarding detainees in the Secure Ward of the Kyiv Municipality Emergency Hospital were obliged to use handcuffs only in accordance to the Law of Ukraine "On Militia", Instructions for escorting detainees in the institutions of internal affairs of Ukraine and exclude cases of arbitrary usage of special measures, in particular, handcuffing to hospital beds.

Concerning the use of metal cage in which detained persons are placed during medical examinations performed by a feldsher, at the ITT in Kyiv

As of January, 04, 2012 in accordance with the order of the direction of the MIA a metal cage within the detention area at the ITT in Kyiv was removed.

Concerning shortcomings in Kharkiv pre-trial institution

In order to correct the shortcomings stated in the CPT's preliminary observations temporal boxes (holding cubicles) for holding detainees have been withdrawn from service and the work on removing metal shutters from windows have been started in regime buildings in the Kharkiv pre-trial institution. The above mentioned work is planned to be finished by March, 07, 2012.

In addition, during the drafting of the new Instruction "On organization of supervision in pre-trial institutions" it's planned to review the appropriateness of using the temporal boxes (holding cubicles) for holding detainees in regime buildings of pre-trial institutions. This process is to be finished within first three months of 2012.

**Governmental agent
before the European Court
of Human Rights**

V.V. Lutkovska