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Preliminary observations on police issues

made by the delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

during the meeting held on 21 October 2013 at the Ministry of Internal Affairs in Kyiv at the end of the CPT's visit to Ukraine from 9 to 21 October 2013

These preliminary observations have been published by the CPT in application of Rule 39, paragraph 5, of the Committee's Rules of Procedure.

Strasbourg, 15 November 2013

**Statement made by Mr Lətif HÜSEYNOV, Head of delegation,
during the meeting held on 21 October 2013 at the Ministry of Internal Affairs in Kyiv,
at the end of the 2013 periodic visit to Ukraine by the European Committee
for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)**

1. It should be recalled that the ill-treatment of persons held by Internal Affairs officials has been an issue of grave concern for the CPT since the Committee's first visit to Ukraine in 1998. This specific matter was the subject of an *ad hoc* visit in 2011, during which the CPT was inundated with allegations of ill-treatment by Internal Affairs staff. The main objective of the 2013 visit was therefore to re-examine the situation of persons held by law enforcement agencies, in particular in the light of the provisions of the new Code of Criminal Procedure (CCP), which entered into force in November 2012. For this purpose, the delegation paid visits to a number of Internal Affairs divisions and temporary detention facilities (ITTs). The delegation also interviewed a large number of remand prisoners held in penitentiary establishments in order to discuss their treatment while in the custody of Internal Affairs agencies.

A. Co-operation

2. The CPT's delegation generally received very good co-operation from the Ministry of Internal Affairs, both at central and local levels. It enjoyed rapid access to Internal Affairs establishments and could have private interviews with the persons detained and consult the relevant documentation. That said, the delegation regrets that the Ministry of Internal Affairs was not represented at an appropriate level during its end-of-visit meeting.

B. Treatment of persons held by law enforcement officials

3. The delegation gained the overall impression during the 2013 visit that there had been a reduction in the scale of the phenomenon of ill-treatment of persons in the custody of Internal Affairs officials, both in terms of severity and of frequency, after the entry into force of the new CCP in November 2012. The situation appears to have particularly improved in Kyiv when compared to other regions visited.

However, the delegation did receive numerous allegations of physical ill-treatment (generally consisting of punches, kicks and truncheon blows) from persons who were, or had recently been, detained by Internal Affairs officials. These allegations were not only made by adult men but also by adult women and both male and female juveniles. In some cases, the alleged ill-treatment was of such a severity that it could be considered as amounting to torture (e.g. suspension by handcuffs and infliction of repeated and severe truncheon blows while in a suspended position; infliction of electric shocks using an electric discharge weapon or an army field telephone; asphyxiation with a gas mask or a plastic bag). In a number of cases, the delegation gathered medical evidence (either directly observed or found in medical documentation) consistent with the allegations made.

4. The overwhelming majority of the allegations received referred to the period immediately following apprehension, when the persons concerned were subjected to initial questioning by operational officers. This initial questioning most often preceded the moment when detention was officially recorded. The purpose of the alleged ill-treatment was reportedly to force detained persons to provide self-incriminating statements or information incriminating other persons and/or to extort money from them. In a few cases, allegations of physical ill-treatment by investigators were also received.

C. Legal safeguards against ill-treatment

5. The observations made by the delegation during the 2013 visit suggest that much remains to be done in order to ensure the full and adequate implementation of the new CCP. First and foremost, the practice of unrecorded detentions of persons by Internal Affairs agencies (usually for periods of several hours to two days, but on occasion for up to a week) continues; during those periods, detained persons who are not considered to be co-operative are exposed to the risk of ill-treatment without any of the legal safeguards being applied to them. The delegation observed for itself (notably after comparing the available documentation and CCTV records) that the provisions of the new CCP concerning the recording of the actual time of apprehension are frequently not applied, and that inaccurate and/or conflicting times of apprehension are often stated in various protocols and registers.

6. As a result, detained persons were often unable to have their next-of-kin informed of their custody until several hours (and even days) after actual apprehension. The same concerns access to a lawyer, which was often provided only after initial questioning by operational officers, at the moment when the protocol of detention was drawn up, or even later. As for the written information on rights, this was generally given to detained persons when the protocol of detention was already drawn up, rather than at the very outset of custody. Further, the written information was drafted in a manner that was difficult to understand for anyone without legal training, and in most cases detained persons were not provided with a copy of the document.

7. In addition to the new CCP, the delegation was able to examine the practical operation of the new system of free legal aid for persons detained by law enforcement agencies. The delegation welcomes the setting-up of this system which – once fully operational – may effectively contribute to preventing the ill-treatment of detained persons by Internal Affairs officials. That said, further efforts are required to ensure that the new provisions are duly implemented in practice. At present, it remains the case that the free legal aid centres are not informed in a timely manner of each instance of apprehension; in some cases, this happens even after the protocol of detention has been drawn up. The delegation also heard allegations according to which detained persons had been forced by Internal Affairs officials to waive their right of access to a lawyer or prevented from having access to their own lawyer (thereby being obliged to accept the services of an *ex officio* lawyer). More generally, additional human and financial resources are needed to make the new system operate as an effective safeguard against ill-treatment.

D. Material conditions of detention

8. Material conditions in most of the *Internal Affairs Divisions* visited were not suitable for periods of detention exceeding a few hours, and certainly not for overnight stays. Cells in many of the Internal Affairs Divisions had been officially taken out of service and sealed, but persons continue to be held in these establishments overnight, in offices (sleeping on chairs or on the floor), corridors and in other premises (e.g. basements or storage rooms, traffic police facilities), sometimes handcuffed to radiators, pipes or pieces of furniture. No arrangements were made to provide such persons with bedding for the night and with food. In short, urgent steps are required to ensure that (save in exceptional cases, related with the urgency of the investigation) detained persons are never held overnight in Internal Affairs Divisions.

9. As concerns the *Temporary Detention Isolators* (ITTs) visited, the delegation observed as a positive fact that persons accommodated in these facilities are provided with bedding, offered food at normal meal times, given ready access to a toilet, and offered the possibility to take a shower (albeit once a week only) and to take one hour of outdoor exercise every day. That said, many of the ITTs visited were located in old and often dilapidated buildings. A number of the cells seen by the delegation had poor access to natural light and fresh air, and the in-cell toilets were invariably only partially partitioned. The exercise yards were generally small and oppressive (and the so-called “winter exercise yards” at the Krivyi Rih ITT were basically not yards at all, but cells without window panes). The level of cleanliness often left much to be desired, given the lack of provision for cleaning of the cells; in this context, specific mention should be made of the very filthy cells at Dnipropetrovsk ITT.

While most detained persons stayed at the ITTs visited for periods of three to ten days, the delegation spoke with some persons remanded in custody who had spent longer periods (from several months to two and a half years) in an ITT, based on a decision by an investigator or prosecutor. Whatever the reason, the delegation wishes to stress that ITTs are not suitable for periods of detention exceeding several days and, as a rule, remand prisoners should not be held in such establishments.

More generally, the delegation is concerned by the continuing practice of frequently returning remand prisoners from SIZOs to Internal Affairs establishments, for investigative purposes. Such returns (which are often poorly documented) should be limited to the strictest minimum and be of the shortest duration possible.