

EXECUTIVE SUMMARY

Law enforcement agencies

Since the CPT's 2013 periodic visit, major reforms in the field of law enforcement have taken place. With the adoption in July 2015 of the Law on the National Police (LNP), all Militia and other Internal Affairs structures were transformed into a unified police service – the National Police – under the authority of the Minister of Internal Affairs. The LNP places particular emphasis on the principles of rule of law and respect for human rights and freedoms. One of the cornerstones of the reform is the creation within the National Police of a new Patrol Police, which is being progressively introduced throughout the country. Further, many sub-standard police detention facilities have been (temporarily) withdrawn from service, pending refurbishment, health-care procedures for detainees revised and initial steps taken to introduce a comprehensive computerised detention custody system (ARMOR). The CPT welcomes these developments.

The majority of persons who were, or recently had been, in police custody indicated that the police had treated them correctly. Further, no allegations of physical ill-treatment were received in respect of officers of the State Security Service of Ukraine (SSU), or of police officers performing custodial tasks in temporary holding facilities (ITTs). However, the delegation received a considerable number of credible allegations from detained persons (including juveniles) of recent physical ill-treatment by police officers, consisting mainly of slaps, punches, kicks or blows with a truncheon or a plastic bottle filled with water. In a few cases, the ill-treatment alleged was of such severity that it could be considered as amounting to torture. Most of the allegations concerned ill-treatment during initial questioning by operational police officers in an attempt to obtain confessions or other information. In a number of cases, the delegation gathered medical evidence (including injuries directly observed by the delegation's doctors) consistent with the allegations made. Overall, the delegation gained the impression that, compared to the findings of the 2013 visit, the severity of ill-treatment alleged had diminished. However, the frequency of allegations remains at a worrying level. The CPT calls upon the Ukrainian authorities to pursue a policy of “zero tolerance” of police ill-treatment, taking into account various precepts set out in the report.

Unrecorded detentions seem to persist, despite specific recommendations repeatedly made by the Committee after previous visits. In different regions, the delegation once again received a number of allegations from detained persons that they had been held in local police stations handcuffed to fixed objects in the offices of operational police officers, without being offered anything to eat or drink, for periods ranging from a few hours to two days. In addition, the persons concerned were allegedly subjected to informal questioning without benefiting from the safeguards provided for by law.

In previous reports, the CPT has stressed the importance of the effective investigation of any information indicative of police ill-treatment and, where appropriate, the imposition of a suitable penalty. However, several detained persons met by the delegation claimed that they had lodged a formal complaint with prosecutors weeks or even months before the visit, but had received no information on any investigative action taken by prosecutors and had not benefitted from a forensic medical examination.

Regarding the fundamental safeguards against ill-treatment (namely, the right of notification of custody and the rights of access to a lawyer and a doctor), persons deprived of their liberty by SSU officers appeared usually to benefit from all the above-mentioned fundamental rights. However, this was far from being always the case as concerns the police. The CPT calls upon the Ukrainian authorities to ensure that all persons detained by the police effectively benefit from all of these rights as from the very outset of their deprivation of liberty (that is, from the moment when they are obliged to remain with the police). Steps should also be taken to ensure the confidentiality of all medical examinations of persons detained by law enforcement officials.

In all the ITTs visited, as well as in the SSU Detention Facility in Kyiv, material conditions of detention were generally satisfactory for up to 72 hours (the statutory maximum police custody period).

That said, the CPT expresses misgivings about the continued practices of holding persons remanded in custody in police detention facilities beyond the statutory limit of 72 hours (pending their transfer to a pre-trial establishment – SIZO) and of returning remand prisoners from a SIZO to a law enforcement establishment for the purpose of investigative work. In the CPT's view, persons remanded in custody should as a matter of principle not be held in law enforcement establishments. Such facilities are not designed for lengthy stays. Moreover, prolonged detention on the premises of law enforcement agencies increases the risk of intimidation and ill-treatment.

Prison reform

The delegation was informed by senior officials of the Ministry of Justice about the ongoing re-organisation of the prison system and of measures taken to reduce the prison population, especially as regards sentenced prisoners in correctional colonies. The CPT welcomes these developments and urges the Ukrainian authorities to pursue their efforts to further reduce the remand prisoner population, in particular by making more use of the available alternatives to remand detention.

The CPT acknowledges the Ukrainian authorities' ongoing efforts to revise the legislative framework for imprisonment with a view to reinforcing the rights of prisoners. In this regard, the Committee stresses that all prisoners (both sentenced and those on remand) should be entitled to the equivalent of at least one hour of visiting time per week and that both categories of inmate should be able to make telephone calls.

The delegation was provided with details of the Ukrainian authorities' plans regarding the prison estate. The CPT calls upon the Ukrainian authorities to attach the highest priority to these plans and to add the SIZOs in Khmelnytskyi and Odesa to the list of establishments to be closed and replaced by new remand prisons. In the meantime, urgent steps should be taken to address the deficiencies in material conditions observed at the SIZOs visited.

Unfortunately, the above-mentioned reforms have not yet impacted upon the situation of remand prisoners. In particular, the old inadequate norm of living space per inmate in SIZOs (2.5 m²) was still in force, complex rules on separation of different categories of remand prisoners continued to result in localised overcrowding, there had been no change to the regime for remand prisoners based on the concept of "isolation" and, last but not least, restrictive provisions on remand prisoners' contact with the outside world continued to be applied. The CPT calls upon the Ukrainian authorities to take decisive steps to revise the legislation and regime for remand prisoners.

Prison health care is another area of long-standing concern to the CPT. Representatives of the Ministry of Justice affirmed to the delegation that intense multi-stakeholder work to address all existing shortcomings was underway, as were efforts to improve the co-ordination and co-operation with the Ministry of Health. The CPT calls upon the Ukrainian authorities to pursue these initiatives energetically; it also wishes to stress again that it supports, in principle, the clear policy trend in Europe to place prison health-care services under the responsibility of the Ministry of Health.

The situation of prison staff continues to be very problematic in the entire prison system. Inadequate staffing levels, meagre wages (exposing prison staff to the risk and temptation of corruption), additional stress due to ongoing reforms and the perceived lack of information about the reform's impact on their professional future – all these factors contributed to staff demotivation and large-scale departures from the prison service. The Committee calls upon the Ukrainian authorities to take urgent steps to increase both custodial staffing levels and presence in order to ensure that there is an adequate presence of staff at all times.

Situation observed at Correctional Colonies Nos. 25 and 100

The CPT is pleased to note that, contrary to the situation observed during previous visits, the delegation received no recent, direct allegations of ill-treatment by custodial staff and inter-prisoner violence at Colony No. 25. There was no longer a general climate of fear and intimidation as described in the report on the September 2014 visit.¹ The entire management of Colony No. 25 (the Director and all his deputies) had been replaced after the CPT's September 2014 visit. This might in part explain the change of atmosphere (for the better) at the establishment, which was also confirmed by many of the inmates interviewed.

Nonetheless, it remained the case that Colony No. 25 was ruled by iron discipline. The CPT considers this approach to be grossly excessive. Most prisons sometimes have to cope with disruptive, challenging prisoners who systematically refuse to obey lawful rules and orders. The proper approach to them – rather than subjecting them to repeated disciplinary sanctions with an increasing severity (let alone an additional term of imprisonment) – is to place them in administrative segregation. The Committee recommends that the Ukrainian authorities review the practice of disciplinary isolation and segregation at Colony No. 25 (and, as appropriate, in all other penitentiary establishments). Section 391 of the Criminal Code should be abolished. Further, the current practice should be changed so that a prisoner is not subjected to successive disciplinary sanctions, without an appropriate interruption (of several days) in the solitary confinement regime.

Similarly to Colony No. 25, the Director of Colony No. 100 had been replaced after the CPT's September 2014 ad hoc visit, and the delegation heard no recent, direct allegations of ill-treatment and inter-prisoner violence from inmates interviewed in the general accommodation blocks. Nor did the delegation gain the impression that formal disciplinary sanctions were applied excessively. However, the delegation received a number of recent and credible allegations of physical ill-treatment (consisting mainly of punches and kicks) of life-sentenced prisoners by some of the custodial staff. Apparently this was an informal punishment for the slightest violations of the internal rules and for failing to obey staff orders immediately. Furthermore, there was a palpable climate of fear in the lifers' unit, with prisoners being visibly frightened to speak with the delegation. The unit was almost like an "institution within an institution", governed by its own set of informal rules.

¹ See paragraph 35 of CPT/Int (2015) 21, <https://rm.coe.int/16806985fd>.

The CPT calls upon the Ukrainian authorities to take urgent and decisive steps to prevent ill-treatment and intimidation of life-sentenced prisoners at Colony No. 100. The Colony's management must assert full control over the unit for prisoners sentenced to life imprisonment and take appropriate measures vis-à-vis custodial staff engaging in any such misconduct. Further, the CPT recommends that a thorough and independent inquiry be carried out into the situation at the above-mentioned unit.

Material conditions at Colony No. 25 remained very good, and overcrowding was no longer an issue. Further, the CPT has no major concerns as regards the material conditions in the general accommodation blocks of Colony No. 100. That said, in both establishments, the delegation observed a decrease in the number of prisoners involved in organised activities (especially paid work).

As regards the special unit for life-sentenced prisoners at Colony No. 100, the number of prisoners has been reduced since the 2014 visit, reportedly due to the transfer of several inmates to establishments closer to their homes. As a result, the remaining prisoners benefited from more living space. These are welcome developments. However, it is a matter of serious concern that hardly any of the specific recommendations made in the report on the 2014 visit have been implemented. This concerns in particular the continued practice of routine handcuffing of life-sentenced prisoners, other excessive and degrading security measures, the lack of organised purposeful activities, prohibition of any contact and association between the cells, segregation from the rest of the prisoner population, and constant CCTV surveillance inside the cells. Consequently, the CPT calls upon the Ukrainian authorities to implement without further delay the long-standing recommendations made after the visit to Colony No. 100 in September 2014.

The Committee also urges the Ukrainian authorities once again to amend the relevant legislation in order to integrate life-sentenced prisoners into the general prison population as soon as possible following their conviction. Further, the Committee recalls the basic principle that, in order to reduce the harmful effects of imprisonment and to promote the safe resettlement of prisoners, the law should offer a realistic prospect of conditional release to all sentenced prisoners, including life-sentenced prisoners.

Situation observed at the SIZOs visited

The delegation received no direct allegations of ill-treatment by staff at any of the SIZOs visited. That said, inter-prisoner violence appeared to be a problem; this was hardly surprising given that the accommodation was based on large-capacity cells and staff's relied on the informal prisoner hierarchy to help them control the situation. The Committee reiterates its recommendation that the management of Kharkiv and Odesa SIZOs, as well as of all other SIZOs in Ukraine, make use of all the means at their disposal to counter the negative impact of the informal prison hierarchy and prevent inter-prisoner intimidation and violence.

The most striking feature of the SIZOs visited were the appalling material conditions, in particular at Odesa, Khmelnytskyi and Kyiv SIZOs (with the notable positive exception of the juvenile units at Khmelnytskyi and Kyiv SIZOs). Those in Kyiv and Odesa had further deteriorated since the CPT's last visits in, respectively, September 2014 and October 2013 and could now easily be considered inhuman and degrading. The above-mentioned situation was made even worse by the fact that the heating was either completely switched off or barely working.

Conditions were somewhat better at Kharkiv SIZO although they remained quite poor due to the age and infrastructure of the buildings. The Committee recommends that the ongoing renovation of Kharkiv SIZO be continued and that, to the extent possible with the existing infrastructure, it comprise the transformation of large-capacity cells into smaller living units. Such transformation should also be the objective for all the other SIZOs (and, as applicable, all the other penitentiary establishments) in Ukraine.

Further, it is a matter of serious concern that, in all the SIZOs visited, remand prisoners were usually not offered any out-of-cell activities other than outdoor exercise for one hour per day.

There was systematic medical screening on arrival at the SIZOs visited (at the latest the day after arrival) which included screening for injuries. However, the confidentiality of the screening was still not respected (except in Odesa), injuries were not always well described and, sometimes, doctors or feldshers failed to record inmates' explanations as to the origins of their injuries in a correct and accurate manner.