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Meeting: 1383rd meeting (29 September - 1 October 2020) (DH)

Item reference: Addendum to Action Plan (25/08/2020)

Communication from Ukraine concerning the case of Nevmerzhitsky v. Ukraine (Application No. 54825/00) and Sukachov v. Ukraine (Application No. 14057/17)

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Réunion : 1383^e réunion (29 septembre - 1 octobre 2020) (DH)

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Communication de l'Ukraine concernant l'affaire Nevmerzhitsky c. Ukraine (requête n° 54825/00) et Sukachov c. Ukraine (requête n° 14057/17) (**anglais uniquement**)

Execution of Judgments of the European Court of Human Rights

DGI

25 AOUT 2020

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

**Addendum to the Updated Action Plan
on measures to be taken for implementation of the
Court's judgments in
Nevmerzhitsky group of cases (no. 54825/00)
Yakovenko group (no. 15825/06), Logvinenko group (no. 13448/07)
Isayev group (no. 28827/02), Melnik group (no. 72286/01)
and Sukachov v. Ukraine (no. 14057/17)**

The Government of Ukraine would like to submit an additional information to the Updated Action Plan of 06/06/2020¹ submitted in *Nevmerzhitsky and Others* groups of cases.

The additional information below should be read jointly, with the information already presented by the Government of Ukraine to the Committee of Ministers.

INDIVIDUAL MEASURES

I. As to the payment of the just satisfaction in the cases recently included in the *Nevmerzhitsky, Yakovenko, Logvinenko, Isayev and Melnik* groups of cases:

1) As regards the execution of the Court's judgments in the cases of "*Goncharuk and Others v. Ukraine*" (application no. 25837/18, judgment final on 04/06/2020), "*Raspryakhin v. Ukraine*" (application no. 70878/12, judgment final on 28/05/2020) and "*Povoroznyy v. Ukraine*" (application no. 5276/13, judgment final on 04/06/2020): the enforcement proceedings in the cases of Mr Goncharuk, Mr Konash, Mr Kot, Mr Raspryakhin, Mr Tarakhkalo and Mr Povoroznyy are currently pending before the State Bailiff Service. It should be noted that the three-month period during which the State should pay the awarded just satisfaction sums to the relevant applicants has not expired yet.

The Government of Ukraine will keep the Committee of Ministers informed about all further developments and measures taken in this regard.

2) As to the case of "*Dykusarenko v. Ukraine*" (application no.7218/19, judgment final on 09/04/2020), the Government would like to inform that on 13/07/2020 – Mr Dykusarenko received on his banking account EUR 9800 (UAH 294667, 38) awarded by the Court.

3) As to the case of "*Ilchenko v. Ukraine*" (application no. 65400/16, judgment final on 09/04/2020), the Government would like to note, that on 18/06/2020 – the just satisfaction sum in amount of EUR 7750 (UAH 233027, 78) were transferred to the bank account of Mr Ilchenko.

II. As to the clarifications on payments of default interests in the cases of "*Sergey Antonov v. Ukraine*" (application no. 40512/13, judgment final on 22/01/2016), "*Kleutin v. Ukraine*" (application no. 5911/05, judgment final on 23/09/2016) and "*Konovalchuk v. Ukraine*" (application no. 31928/15, judgment final on 13/01/2017), the Government of Ukraine would like to note as follows.

¹ Link: [https://hudoc.exec.coe.int/eng#%7B%22tabview%22%3A%22document%22%2C%22EXECIdentifier%22%3A%22DH-DD\(2020\)625E%22%7D](https://hudoc.exec.coe.int/eng#%7B%22tabview%22%3A%22document%22%2C%22EXECIdentifier%22%3A%22DH-DD(2020)625E%22%7D)

1) The cases of “*Sergey Antonov v. Ukraine*” and “*Konovalchuk v. Ukraine*”. Within the enforcement proceedings on payment the awarded sums of just satisfaction to the applicants, the authorities meet with such obstacles as the applicants’/applicant heirs’ failure to provide information about their full banking details on time. Thus, the State Bailiff Service transferred the relevant sums to the special deposit account of the Ministry of Justice of Ukraine before the expiration of the three-month period for such payments, in particular:

- on 19/04/2016 (payment deadline – 22/04/2016) – EUR 7000 (UAH 201222, 26) were transferred to the special deposit account of the Ministry of Justice of Ukraine and only after that – to the bank account of Mr Antonov;
- on 10/04/2017 (payment deadline – 13/04/2017) – EUR 14700 (UAH 424906, 56) were transferred to the special deposit account of the Ministry of Justice of Ukraine and on 12/11/2018 – to the bank account of Ms Konovalchuk’s heir (Mr V. Konovalchuk).

2) The case of “*Kleutin v. Ukraine*”. According to the updated information provided by the State Bailiff Service, on 20/02/2017 – EUR 15 000 (UAH 431 742, 56) were transferred to Mr Kleutin bank account. As to the delayed payment, on 22/05/2017 Mr Kleutin was also paid a simple interest in the amount of UAH 2 307. In addition, on 20/02/2017 – EUR 2 500 were transferred directly to the bank account of the applicant’s lawyer, Mr Markov. As to the delayed payment, on 29/05/2017 Mr Markov was also paid a simple interest in the amount of EUR 14,03.

III. As to the time frame, during which, the sums awarded by the European Court will remain at the disposal of the applicants (or their heirs, as appropriate) in a special deposit account of the Ministry of Justice of Ukraine in the cases of: “*Kobernik v. Ukraine*” (application no. 45947/06)”, “*Grabovskiy v. Ukraine*” (application no. 4442/07), “*Yeremenko and Kochetov v. Ukraine*” (application no. 68183/10), “*Urzhanov v. Ukraine*” (application no. 24392/06), “*Yarovenko v. Ukraine*” (application no. 15825/06), “*Medyanikov v. Ukraine*” (application no. 31694/06), “*Vagapov v. Ukraine*” (application no. 35888/11), “*Bilozor and Others v. Ukraine*” (application no. 9207/09), “*Rodzevillo v. Ukraine*” (application no.6128/12), “*Korol and Others v. Ukraine*” (application no. 54503/08).

The Government would like to emphasise that according to Article 47.7 (“Procedure for payment of recovered amounts”) of the Law of Ukraine “On Enforcement Proceedings” in case when amounts collected from the debtor are not claimed by the applicant (and the applicant was duly notified about such sum recovered in his/her favour) *within a one-year period* from the day of their depositing into the respective account of the State Bailiff Service, such amount shall be returned to the State Budget of Ukraine in the manner established by law.

However, in practice such a period can last much longer than one year, taking into account the individual situation of a particular applicant (long stay abroad, illness or other obstacles to providing the necessary banking details) or the applicant’s heirs (complicated inheritance procedure, etc.).

IV. As to the possibility for Mr Ustyantsev’s (the case of “*Ustyantsev v. Ukraine*”, application no. 3299/05) and Mr Savinov’s (the case of “*Savinov v. Ukraine*” application no. 5212/13) potential heirs to receive payment in the future, given that the sums have been transferred back to the State Budget because of the absence of banking details please be advised as follows.

The Government would like to emphasise that for today the applicant’s potential heirs still may request for such payment through renewing the enforcement proceeding. In accordance with Article 287 of the Code of Ukraine on Administrative Procedure, they have a right to appeal against that decision on

termination of the enforcement proceedings and others acts or omissions of the State Bailiff's Service to the court.

Therefore, the awarded just satisfaction remains available to the applicants upon their requests. However, as of today, any heir of Mr Ustyantsev and Mr Savinov or their representatives have not applied to the domestic court in this regard.

V. As to the question, whether the criminal proceedings against the applicants in the cases of "*Maystrenko v. Ukraine*" (application no. 45811/16, judgment final on 28/06/2018), "*Malchenko and Others v. Ukraine*" (application no. 3001/06, judgment final on 06/04/2017) and "*Garmash v. Ukraine*" (application no. 74163/13, judgment final on 08/11/2018) have already terminated, the Government of Ukraine would like to inform the following.

1) The case of "*Maystrenko v. Ukraine*". By a decision of the Court of Appeal of Dnipropetrovsk Region dated 26/05/2017, Mr Maystrenko was found guilty of committing a crime under Article 119.1 of the Criminal Code of Ukraine ("Negligent homicide") and imposed a sentence of 7 years and 6 months of imprisonment, as well as to pay UAH 400,000 of compensation for non-pecuniary damage to the relatives of his victim.

However, according to Article 72.5 of the Criminal Code of Ukraine ("Rules of adding up punishments and merging previous terms") and given the term of the applicant's detention in the pre-trial detention centre, the applicant was released from serving his sentence in the courtroom as have served his sentence in full.

On 15/05/2018, the Supreme Court upheld the above decision. The final decision came into force from the moment of its proclamation and was not subject to appeal.

2) The case of "*Malchenko and Others v. Ukraine*" (the applicant – Mr Stepanov). According to the case-file, the criminal proceedings in the applicant's case were terminated on 06/03/2012, when the Higher Specialised Court of Ukraine for Civil and Criminal Cases dismissed the cassation appeal of the applicant and his representative of 21/07/2009 and upheld the Court of Appeal of Poltava Region decision of 30/04/2010.

3) The case of "*Garmash v. Ukraine*". As of today, the criminal proceedings in the applicant's case are pending before the Mariyinskyi District Court of Donetsk Region.

The delays in criminal proceedings were caused by the complexity of the case and a regular failure of the participants to take the stand (some of material witnesses reside at the territory outside the governmental control). In addition, a significant reason is that the key evidence remained in non-controlled territory.

VI. As to the issue, whether the criminal proceedings against the applicants in the cases of "*Titarenko v. Ukraine*" (application no. 31720/02, judgment final on 20/12/2012), "*Zakshevskiy v. Ukraine*" (application no. 7193/04, final judgment on 17/06/2016), "*Kulik v. Ukraine*" (application no. 34515/04, final judgment on 02/02/2017), "*Grabovskiy v. Ukraine*" (application no. 4442/07, final judgment on 29/11/2018) and "*Aleksandr Vladimirovich Smirnov v. Ukraine*" (application no. 69250/11, final judgment on 13/06/2014) were reopened following findings by the European Court of violations of Article 6 § 1 and 3 of the Convention, the Government of Ukraine would like to inform the following.

1) The case of "*Zakshevskiy v. Ukraine*". In its decision of 17/04/2019, the Supreme Court satisfied Mr Zakshevskiy's application for review of the impugned proceedings on the exceptional

circumstances, in particular, due to establishment by the European Court's judgment of Ukraine's violation of its international obligations in criminal proceedings against the applicant.

Thus, the Supreme Court dismissed the decisions of the Court of Appeal of the Donetsk Region dated 06/10/2005 and the Supreme Court dated 19/10/2006 in part of the applicant's conviction for robbery and murder on 09/08/2001, and remitted the case for a new consideration to the first instance court. In the part of other applicant's crime (banditism, robberies, illegal possession of a vehicle), the Supreme Court upheld the appellate court's decision and sentenced the applicant to 10 years' imprisonment with confiscation of all property belonging to him. According to Article 72.5 of the Criminal Code of Ukraine ("Rules of adding up punishments and merging previous terms") and given the term of applicant's detention, he was released in the courtroom on the same day.

As of today, the criminal proceedings in the applicant's case are pending before the Kramatorsk City Court of Donetsk Region.

2) The case of "*Kulik v. Ukraine*". In its decision of 09/10/2017, the Supreme Court satisfied Mr Kulik's application for review of the impugned proceedings on the exceptional circumstances and quashed the decisions of the Kyiv Court of Appeal dated 18/03/2005, and the Supreme Court of Ukraine dated 26/07/2005, and remitted the case for a new consideration to the first instance court.

On 19/04/2018, the Desnianskyi District Court of Kyiv terminated the criminal proceeding against the applicant under Articles 115 ("Murder"), 185 ("Theft") and 190 ("Fraud") of the Criminal Code of Ukraine and discharge the applicant from criminal liability due to expiration of a limitation period.

However, by a decision of 12/09/2019, the Supreme Court granted the application of an injured party against the decision on discharging the applicant from criminal liability and remitted the case for a new consideration. As of today, the criminal proceedings in the applicant's case are pending before the Desnyanskyi District Court of Kyiv.

3) As of today, the applicant's in the cases of "*Titarenko v. Ukraine*", "*Grabovskiy v. Ukraine*" and "*Aleksandr Vladimirovich Smirnov v. Ukraine*" have not applied for a review of the impugned proceedings following the finding of a violation by the European Court.

GENERAL MEASURES

1. As to the strategic documents aimed at reforming the penitentiary system and improving the conditions of detention. Provision of medical care to detainees/convicts in 2020-2023.

It is worth noting, that the terms of powers of the previous Ukrainian Government has expired on 04/03/2020². In this regards, formation of a new Cabinet of Ministers of Ukraine³ resulted in expiration of the Rules of Procedure of the Cabinet of Ministers of Ukraine⁴ and the Cabinet of Ministers

² See the Resolution of the Parliament of Ukraine No. 515-IX of 04/03/2020 at the link: <https://zakon.rada.gov.ua/laws/show/515-20#Text>.

³ See the Resolution of the Parliament of Ukraine No. 516-IX of 30/03/2020 at the link: <https://zakon.rada.gov.ua/laws/show/516-20#Text>.

⁴ See part 1 of para 121 of the Rules of Procedure of the Cabinet of Ministers of Ukraine, approved by the Resolution of the Cabinet of Ministers No. 950 of 18/07/2007 at the link: <https://zakon.rada.gov.ua/laws/show/950-2007-%D0%BF#Text>

of Ukraine Action Program⁵. As a result, the Cabinet of Ministers of Ukraine, in force, did not approve the draft concept and the plan for its implementation.

On 06/07/2020, the Ministry of Justice of Ukraine submitted to the Cabinet of Ministers of Ukraine the proposals for the draft Priority Action Plan of the Government for 2020. These proposals envisage a number of steps (12 in total) to implement priority task 19.3 “Creation of a humanistic system of criminal punishments” of the Cabinet of Ministers of Ukraine Action Program for 2020.

In addition, the proposals for the Government’s Medium-Term Action Plan for 2021-2023 are currently being prepared. This document is designed to comprehensively disclose the structure of each priority task of the Cabinet of Ministers of Ukraine Action Program, including the mentioned priority task 19.3.

It is to be noted, that the Concept of Reforming (Development) of the Penitentiary System of Ukraine, approved by the Cabinet of Ministers of Ukraine Order No. 654⁶ dated 13/09/2017, is currently in force. This Concept, in particular, provides for bringing the conditions of detention in line with the requirements of the European Prison Rules, creating conditions of detention that do not violate human dignity, as well as preventing violations of the Convention in future. Today, the implementation of this Concept continues.

This Concept provided for the establishment of the State Institution “Health Centre of the State Penitentiary Service of Ukraine”. This reform opens up new work opportunities for medical professionals to be independent from the leadership of the penitentiary institution, which in turn make it possible to establish an unbiased diagnosis and provide a quality and proper medical assistance.

Moreover, the Decree of the President of Ukraine No. 203/2020 dated 26/05/2020 approved the Annual National Program under the auspices of the Ukraine-NATO Commission for 2020.

Thus, paragraph 1.4.3.2. “Conditions of Treatment and Detention of Convicts and Detainees are in Accordance with International Standards” of the Objective 1.4.3. “An effective and transparent penitentiary system is in place, to ensure that convicts are corrected and re-socialised, deterred from recurring criminal offences” provides for the following priority tasks:

a) conditions of detention of prisoners and persons in custody in accordance with the requirements of the European Prison Rules adopted by the Committee of Ministers of the Council of Europe on 11/01/2006 (Recommendation No. R (2006)2), and the European Convention (deadline –2025);

b) treatment of persons in the penitentiary institutions is based on respect for human dignity and justice, taking into account gender and age characteristics (on a permanent basis);

c) rehabilitation and correctional programs for prisoners are implemented (deadline – 2021);

d) level of professional competence of the prison staff in respect of human rights has been increased (on a permanent basis);

e) increased staffing and logistical support of the State Institution “Health Care Centre of the State Penitentiary Service of Ukraine” (deadline – 2021);

⁵ See the Resolution of the Parliament of Ukraine No. 188-IX of 04/10/2019 at the link: <https://zakon.rada.gov.ua/laws/show/188-20#Text>.

⁶ See the Cabinet of Ministers of Ukraine Order No. 654 of 13/09/2017 at the link: <https://zakon.rada.gov.ua/laws/show/654-2017-%D1%80#Tex>.

f) reform of the system of life imprisonment review in Ukraine (deadline – 2021);

g) increased personnel and logistics support of the State Penitentiary Service of Ukraine (deadline – 2021).

In addition, the Decree of the President of Ukraine No. 501/2015 of 25/08/2015 approved the National Strategy in the Field of Human Rights, the main directions of which are, *inter alia*, “Combating torture, cruel, inhuman or degrading treatment or punishment” and “Ensuring the right to liberty and security of person”. Detailed measures aimed at achieving the expected results of the above strategic directions are defined in the “Action Plan for the implementation of the National Strategy in the Field of Human Rights for the Period up to 2020”, approved by the Resolution of the Cabinet of Ministers of Ukraine No. 1393-r dated 23/11/2015.

For the realisation of paras. 3,4 of the Resolution No. 1391-r and based on the results of monitoring the implementation of the mentioned Action Plan, the Ministry of Justice of Ukraine summarised information on its implementation, in particular in the part of the above strategic directions, and prepared a report as of the second quarter of 2020. The relevant report is available on the official website of the Ministry of Justice of Ukraine⁷.

At the same time, under the Prime Minister’s of Ukraine Order No. 37773/1/1-19 dated 18/11/2019 a special working group was established at the Ministry of Justice of Ukraine for developing the amendments to the mentioned President’s Decree “On approval of the National Strategy in the Field of Human Rights”. Such Draft Decree should provide for updating the provisions of the National Strategy, taking into account the progress of its implementation, new challenges in the field of human rights, as well as bringing the National Strategy in line with current legislation, international and European human rights standards. After the completion of the necessary conciliation procedures, the Draft Decree will be submitted to the Cabinet of Ministers of Ukraine for approval in accordance with the procedure established by law.

2. As to the current Draft Laws developed for resolving the problems of improper conditions of detention in the penitentiary institutions, overcrowding in cells, granting of compensation for ill-treatment due to inadequate conditions of detention and other issues.

1) As of today, the Ministry of Justice of Ukraine has resumed work on the Draft Law of Ukraine “On the Penitentiary System”. Previously, it was withdrawn due to expiration of the terms of powers of the relevant Parliament’s convocation. Draft Law will be revised to update some of its provisions, in particular, to improve the conditions of detention of detainees/convicts, providing them with appropriate medical assistance.

After conducting conciliation procedures with all authorities concerned, the Draft Law “On the Penitentiary System” will be submitted to the Parliament in accordance with the procedure envisaged by the law.

2) The competent state authorities are currently working on the Draft Law of Ukraine “On Amendments to Certain Legislative Acts Concerning the Development of the Probation System, Increasing Alternatives to Imprisonment and Creating Conditions for Reducing Recidivism”, which may be an element of resolving the problem of overcrowding at the penitentiary institutions.

This Draft Law is designed in order to address a goal 12.3. of the Government Action Programs (approved by the Cabinet of Ministers of Ukraine Resolution No. 849 of 29/09/2019) and

⁷ See the link: <https://cutt.ly/daJTPO3>

Recommendation CM/Rec (2014)4 (adopted by the Committee of Ministers of the Council of Europe on 19/02/2014). Implementation of this goal requires differentiation and individualisation of the criminal punishment system by changing the list of types of punishments, to provide the State Penitentiary Service of Ukraine with effective tools for changing pro-criminal thinking.

The amendments to the legislation envisaged by this Draft Law will allow releasing almost 1,500 convicts from correctional centres and pre-trial detention centres, who will continue to serve their sentences without imprisonment.

3) It should also be noted, that the European Union Advisory Mission Ukraine has prepared a Draft Law of Ukraine “On Preventive and Compensatory Measures due to Inadequate Conditions of Detention of Convicts and Detainees”, which provides for relevant amendments to the Code of Criminal Procedure of Ukraine and the Law of Ukraine “On Pre-Trial Detention”.

Thus, according to this Draft Law, convicts and detainees have the right to terminate detention in inappropriate conditions, by filing an application to the court, which should be considered within 15 days. The court may order the administration of the penitentiary institution, take immediate measures to eliminate improper detention conditions, in particular by: transferring a person to other cells/institutions with appropriate conditions of detention, removal factors that make detention conditions inappropriate, taking other measures necessary in a particular case.

In addition, persons who were taken into custody, as well as persons who have been released from a penitentiary institution, are entitled to compensation for detention in improper conditions by: enlistment of the period of detention in such conditions in the term of punishment or by providing monetary compensation for each the day of the period of such detention.

The mentioned Draft Law also provides for an increase in the norm of the area in the cell for one detainee.

As of today, the possibilities of implementation of this Draft Law is being discussed between the authorities at stake.

4) Moreover, the Parliament of Ukraine is currently processing the Draft Law “On Amendments to the Law of Ukraine “On Pre-Trial Detention” (concerning the implementation of certain standards of the Council of Europe)”. The mentioned Draft Law has been prepared in order to take into account the human rights standards of the Council of Europe, the European Court’s case-law, as well as the recommendations of the European Committee for the Prevention of Torture, Inhuman or Degrading Treatment or Punishment. It prescribes, in particular: increase in the size of the norm of the area in the cell for a one detainee, which may not be less than 4 square meters, and for a pregnant woman or a woman who has a child – 4.5 square meters. At the same time, the Draft Law envisages that when calculating the area of the cell, the area of a sanitary unit should not be taken into account. The distance between the opposite walls of the chamber cannot be less than 2 meters. The cells smaller than 6 square meters should not be used.

This Draft Law is currently being finalised by the competent authorities and is awaiting consideration by the Parliament of Ukraine in the second reading.

5) The Ministry of Justice of Ukraine continues work on the development of a Draft Law that will further unload the pre-trial detention centre. This draft will provide for the introduction of restrictions on the maximum period of detention at the stage of trial; gradual reduction of a certain bail during the period of detention; creating the possibility of bail of property.

In addition, the possibility of amending the rules of internal classification of various categories of prisoners and using risk assessment to accommodate prisoners is being considered.

The issue of implementation of a number of investment projects aimed at relocating pre-trial detention centres located in the central parts of cities outside their borders is also considered. The projects are planned to be implemented at the expense of the State budget or international technical assistance.

The Government of Ukraine will keep the Committee of Ministers informed about further developments and measures taken regarding the above-mentioned Draft Laws.

3. *As to the measures taken by the Ministry of Justice of Ukraine to implement the pilot judgment in the case of “Sukachov v. Ukraine”.*

In order to comply with the European Court’s judgment in the *Sukachov case*, as well as to resolve the ongoing structural problem regarding the conditions of detention and the lack of an effective remedy in national law in this regard, on 20/08/2020 – Minister of Justice of Ukraine entrusted the relevant Departments dealing with the penitentiary system, with specific tasks and deadlines for its implementation. Thus, it provides as follow:

- until 01/09/2020 – a schedule of inspections of all State Penitentiary Service’s of Ukraine institutions should be drafted;
- until 31/10/2020 – all planned inspections of these penitentiary institutions and pre-trial detention centres should be carried out. The relevant reports on the number of functioning institutions, the number of persons detained, information on compliance of the conditions of detention in these institutions with the European standards, the amount of funds needed to improve conditions in each institution;
- until 25/08/2020 – a special working group of representatives of all concerned departments of the Ministry of Justice of Ukraine should be developed. It will consider and discuss possible ways of practical implementation of the Draft Law of Ukraine “On Preventive and Compensatory Measures due to Inadequate Conditions of Detention of Convicts and Detainees” (which was prepared by the European Union Advisory Mission Ukraine).

4. *As to the repair works at the prisons and pre-trial detention centres (SIZO)*

According to the recent information provided by the pre-trial detention centres, in order to provide proper material and living conditions for detainees and convicts in accordance with European standards:

- in 2019 minor repairs were carried out in 836 cells (which is about 20% of their total number);
- during the first half of 2020 minor repairs were carried out in 333 cells (which is about 8% of their total number).

It is to be noted that in all pre-trial detention centres, the work on improvement of the conditions of detention of detainees/convicts is continuing for limited budget appropriations.

At the same time, the major repairs of disciplinary cells were conducted in Sumy, Chernivtsi and Mykolayiv pre-trial detention centres during 2019. During 2019 in other pre-trial detention centres cosmetic repairs of disciplinary cells were carried out.

Moreover, during this year the multi-bed premises for persons sentenced to life imprisonment in the Vilniansk Prison (No. 11), the Vinnytsia Prison (No. 1) and the Kryvyi Rih Prison (No. 3) were arranged and taken into use.

In order to provide a proper cooperation with local governments and the charity organisation “Red Cross”, a number of pre-trial detention centres in 2019 and the first half of 2020 received subventions from local budgets, which were aimed at improving the activities of these institutions.

In addition, during 2019-2018 and 6 months of 2020, the following repair and construction works for the total amount of UAH 112.7 million were conducted:

- 2018: construction of treatment facilities in the State Institution “Selidiv Correctional Colony (No. 82)”; hospital building in the State Institution “Holoprystanska Correctional Colony (No. 7)”; water supply systems in the State Institution “Kolomyia Correctional Colony (No. 41)”; as well as adjusted design and estimate documentation for construction of the regime building in the State Institution “Vilniansk Prison (No. 11)”;
- 2019: reconstruction of treatment facilities in the State Institution “Raikiv Correctional Colony (No. 73)”; Rozhnovskyi water tower in the State Institution “Zbarazh Correctional Colony (No. 63)”; adjusted design and estimate documentation for reconstruction of treatment facilities in the State Institution “Hohla Prystan Correctional Colony (No. 7)”; reconstruction of the regime building in the State Institution “Poltava Prison (No. 23)”; design and estimate documentation for the reconstruction of the regime building in the State Institution “Kyiv SIZO”;
- *the major repairs* at 86 facilities, including 40 dormitories and regime buildings, 7 bath and laundry complexes, 2 medical units, 1 warehouse, 12 canteens, 6 boiler houses, 10 facilities of external engineering networks, 8 facilities of other social - household purposes;
- *minor repairs* at 1058 facilities, including 441 dormitories and regime buildings, 70 bath and laundry complexes, 23 medical units, 60 warehouses and vegetable stores, 123 canteens and food units, 39 boiler houses, 43 facilities of external engineering networks and 259 facilities of other social and household purposes.

As to the current situation of the implementation of the pilot project on introducing of paid services for improved living conditions and food for detainees in the pre-trial detention facilities of the State Penitentiary Service of Ukraine, it should be noted that the number of such cells has increased. Thus, as of 01/08/2020, the following cells of this type operate on the territory of Ukraine:

- “Kyiv Pre-trial Detention Centre (SIZO)” – 4 cells;
- “Chernihiv Pre-trial Detention Centre (SIZO)” - 1 cell;
- “Lviv Prison (No. 19)” - 1 cell;
- “Vilnyansk Penitentiary Facility (No. 11)” - 1 cell;
- “Dnipro Prison (No. 4)” - 1 cell;
- “Zaporizhzhia Pre-trial Detention Centre (SIZO)” – 1 cell;
- “Poltava Prison (No. 23)” - 2 cells;
- “Kharkiv Pre-trial Detention Centre (SIZO)” – 1 cell;
- “Sumy Pre-trial Detention Centre (SIZO)” – 1 cell;
- “Starobilsk Pre-trial Detention Centre (SIZO)” – 1 cell;

- “Vinnytsia Prison (No.1)” – 1 cell;
- “Khmelnysk Pre-Trial Detention Centre (SIZO)” – 1 cell;
- “Zhytomyr Prison (No. 8)” – 1 cell;
- “Chernivtsi Pre-Trial Detention Centre (SIZO)” – 1 cell;
- “Rivne Pre-Trial Detention Centre (SIZO)” – 1 cell;
- “Ivano-Frankivsk Prison (No. 12)” – 1 cell;
- “Lutsk Pre-Trial Detention Centre (SIZO)” – 1 cell;
- “Chortkivska Prison (No. 26)” – 1 cell;
- “Zakarpatska Prison (No. 9) – 1 cell;
- “Odesa Pre-Trial Detention Centre (SIZO)” – 2 cell;
- “Mykolayiv Pre-Trial Detention Centre (SIZO)” – 1 cell.

5. As to the overcrowding

As of 15/07/2020, about 19.577 persons were kept in pre-trial detention centres, which is 82.5% of the planned capacity.

At present, amendments to Article 11 of the Law of Ukraine “On Pre-trial Detention” regarding the increase of the norm in the cell for a one detainee to 4 square meters may cause difficulties in practice, given the outdated infrastructure of most of pre-trial detention centres and penitentiaries with SIZO’s function, as well as a significant number of detainees and convicts held in SIZOs.

Thus, if the norm of a cell area for one detainee is increased, the planned filling of the SIZOs will be significantly reduced. Today, the Government of Ukraine are considering ways to solve this problem.

It should be noted that difficulties in placing detainees and convicts in pre-trial detention centres have intensified since the introduction of quarantine measures in the country, given the deteriorating epidemic situation of acute respiratory illness caused by the COVID-19. Due to the limited number of passenger trains with special “ZAK” carriages, the transfer of convicts, whose sentences have entered into force, to the penal colonies for a further serving of sentences is carried out in a very limited number.

6. As to the cooperation of state authorities with international partners in order to improve mechanisms to protect the interests of the individual, as well as to prevent human rights violations in the State Penitentiary Service of Ukraine institutions.

In order to consolidate efforts aimed at defining a shared vision to improve the mechanism of individuals’ interests protection, as well as to prevent human rights violations in prisons, pre-trial detention centres, on 27/06/2019, Memorandum of Cooperation between the Ministry of Justice of Ukraine and the public organisation “Association of Ukrainian Human Rights Monitors on the Law Enforcement” (“Association UMDPL”) was signed.

The Penitentiary Inspection Department of the Ministry of Justice of Ukraine also established cooperation with representatives of the International Committee of the Red Cross (“ICRC”) and the Council of Europe Office in Ukraine. In particular, with the support of the ICRC, a training session was held for the staff of inspection units of interregional departments and the Ministry of Justice. In addition, with the support of the Council of Europe Office in Ukraine, on the basis of the state institution “Chernihiv Correctional Colony (No. 44)” a session on modelling penitentiary inspection was held with the participation of international expert, Thomas McGonigle.

In addition, the Penitentiary Inspections Department of the Ministry of Justice of Ukraine together with representatives of the Council of Europe Office in Ukraine conducted 5 two-days training for the management of interregional departments, penitentiary institutions, pre-trial detention centres on the practical implementation of the penitentiary inspection procedure within the framework of the Project “Further Support for the Penitentiary Reform in Ukraine”. One-day training was conducted for the heads of penitentiary institutions and SIZOs, who were trained on the basis of the Bila Tserkva Centre for Advanced Training of Personnel of the State Penitentiary Service of Ukraine. In total, more than 150 officials were involved in the event.

In order to consolidate the actions of the state authorities in the field of ensuring appropriate conditions of detention in penitentiary institutions and pre-trial detention centres, measures are being taken within the Joint Project of the European Union and the Council of Europe “The European Union and the Council of Europe working together to strengthening human rights in Ukraine” of Component 3 of “The European Union and the Council of Europe working together to support the Prison Reform in Ukraine”. In particular, online training (using SKYPE communication) on the topic, “Dynamic security in penitentiary institutions” were conducted for:

- Representatives of the Department for Execution of Criminal Sentences and the Southern Interregional Department for Execution of Criminal Sentences and Probation of the Ministry of Justice on 05/05/2020;
- Representatives of the Western, Central-Western, North-eastern and South-eastern Interregional Departments for the Execution of Criminal Sentences and Probation of the Ministry of Justice on 07/05/2020.

In addition, cooperation is also carried out within the framework of the European Union Project “Support to Justice Sector Reforms in Ukraine (Pravo-Justice)”.

7. As to the monitoring visits to penitentiary institutions carried out by the Department of Penitentiary Inspections of the Ministry of Justice of Ukraine.

The main task of the Department of Penitentiary Inspection is to carry out internal inspections of institutions of the State Penitentiary Service of Ukraine, in order to provide an objective assessment of their effectiveness in accordance with national legislation and international standards, as well as the proper elimination of European Court of Human Rights violations and their prevention in the future.

During 2018, the Department of Penitentiary Inspections conducted 32 inspections of penitentiary institutions, during 2019 – 39 inspections, and as of 12/08/2020 – 10 inspections.

Among the above-mentioned total number, some inspections of penitentiary institutions in which the European Court established violations of the rights of detainees/convicted in cases against Ukraine were also carried out, in particular:

- in 2017, the State Institutions “Sokal Correctional Colony (No. 47)” (case of “*Logvynenko v. Ukraine*”), “Vinnytsia Prison (No. 1)” (case of “*Melnyk v. Ukraine*”) were inspected. In the same year the control inspections of institutions were carried out;
- in 2018, the State Institutions “Kharkiv SIZO” (case of “*Isayev v. Ukraine*”; control inspection was carried out in 2019), “Arbuzyn Correctional Colony (No. 83)” (case of “*Melnyk v. Ukraine*”; control inspection was carried out in the same year), “Daryiv Correctional Colony (No. 10)” (case of “*Melnyk v. Ukraine*” control inspection carried out in 2019) were inspected;

- in 2019, the State Institution “Dnipro Prison (No. 4)” (case of “*Sukachov v. Ukraine*”) was inspected.

It is to be noted that the results of each inspection are reported to the higher officials of the Ministry of Justice of Ukraine and issued by the relevant reports. These reports are sent to the Interregional Departments for the Execution of Criminal Sentences (hereinafter – “Interregional Departments”), the Department for the Execution of Criminal Sentences and the Public Institution “Centre of Medical Care of the State Penitentiary Service of Ukraine” in order to take the relevant response measures, control over the elimination of identified violations and prevent them in further activities, as well as to conduct official investigations into the facts of identified violations of the law. On the basis of these reports, Interregional Departments and penitentiary institutions develop detailed action plans to eliminate the identified violations in order to bring the conditions of detention or working conditions of penitentiary staff in accordance with the Convention, the European Court’s case-law, the recommendations of the CPT and other international standards in the penitentiary area.

Moreover, the Department of Penitentiary Inspections carries out the analysis and provides control over the state of elimination of the revealed violations and shortcomings in the inspected penitentiary establishments. In particular, the mentioned Department conducted *34 control inspections of institutions*, during which their activities were evaluated to eliminate violations identified during previous inspections and *6 operational meetings* to review the inspections’ results.

Therefore, during inspections, special attention is drawn to the state of elimination of violations established by the European Court’s judgments by penitentiary institutions and taking measures to prevent them in the future.

It should also be noted that during 2019-2020, the Department of Penitentiary Inspections organised and conducted *5 official investigations* against officials of some penitentiary institutions and Interregional Departments. In addition, the management of Interregional Departments was instructed to conduct *41 official investigations* into the facts of violations of the law. According to the results of inspections and official investigations conducted by the employees of the mentioned Department, *85 officials of prisons and pre-trial detention centres* were brought to disciplinary responsibility.

For additional control and coverage of the real state of human rights observations in penitentiary institutions, during 2018-2020 the Department of Penitentiary Inspections organised joint inspections with the involvement of parliament’s deputies of Ukraine (4 penitentiary institutions), representatives of public organisations (3 penitentiary institutions) and the media (7 penitentiary institutions).

Moreover, together with the experts of the Council of Europe, a Draft Order of the Ministry of Justice “On Approval of Guidelines for Inspection and Implementation of Standards for Inspection of the Effectiveness of Penitentiaries and Pre-trial Detention Centres of the State Penitentiary Service of Ukraine” was developed.

The mentioned Draft is based on the main provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms, the Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules), and the European Prison Rules.

This Draft aims to determine the recommended mechanism for penitentiary inspections to provide an objective assessment of the effectiveness of penitentiary institutions in accordance with national legislation and international standards, as well as to determine the role of interregional territorial bodies in organising their activities. The Draft takes into account gender indicators when assessing the performance of penitentiary institutions.

8. As to the measures taken in the context of the COVID-19 pandemic.

In each penitentiary institution and pre-trial detention centre at the territory of Ukraine, an infection control commission has been set up. The Plan of measures for infection control in penitentiary institutions and pre-trial detention centres for 2020 has been approved. Regime quarantine measures are carried out in health care facilities and penitentiary institutions of the State Penitentiary Service of Ukraine.

The State Institution “Health Centre of the State Penitentiary Service of Ukraine” conducts round-the-clock monitoring and control over the epidemiological situation in penitentiary institutions and pre-trial detention centres.

As of 07/08/2020, in total about 62 laboratory-confirmed cases of COVID-19 were registered, including:

- 47 cases among staff;
- 6 cases among detainees and convicts;
- 9 cases of medical staff.

As of today, 44 persons recovered (including 2 detainees, 2 convicts, 32 penitentiary officers and 8 medical workers).

Anti-epidemic measures are being taken to localise and eliminate the outbreak of COVID-19 at the penitentiary establishments.

As of today, all health care facilities of the State Penitentiary Service of Ukraine are provided with necessary medicines (antipyretics, antivirals), medical devices and personal protective equipment (masks, respirators, goggles, gloves, gowns) in the required amount.

9. As to the cooperation of the Criminal Cassation Court within the Supreme Court and the State Penitentiary Service of Ukraine to resolve the problem of overcrowding in the penitentiary institutions and pre-trial detention centres of Ukraine.

The Criminal Cassation Court within the Supreme Court considered the letters of the State Penitentiary Service of Ukraine on cooperation to overcome the problem of overcrowding from 29/01/2019, from 16/04/2019, from 09/08/2019 and 11/10/2019 at their meetings. During these meetings, the Criminal Cassation Court within the Supreme Court emphasised that the consideration of cassation appeals against persons serving sentences of imprisonment or for whom a measure of liberty restraint was imposed should be considered as a priority.

In addition, the Supreme Court has approached some appellate and local courts which hearing criminal proceedings against persons with the most prolonged detention period in order to obtain information on the stage and progress of the relevant criminal proceedings, indicating the number of hearings and the reasons for their postponement.

At the same time, the issues covered in the letters were sent to the working group to determine the directions for resolving the problems of the excessive length of court proceedings in accordance with the European Court’s case-law established in the Supreme Court.

10. As to the results of the implementation of the recommendations given in the Special Reports of the Parliament Commissioner of Human Rights on the state of implementation of the National Preventive Mechanism in 2018⁸ and 2019⁹.

- ✓ *Regarding the development of a Draft Law “On Amendments to Article 8 of the Law of Ukraine “On Pre-trial Detention” in order to settle the issue of clarifying the conditions of pre-trial detention of juveniles.*

Thus, the current legislation of Ukraine does not provide for the detention of juveniles who were taken into custody in solitary confinement. At the same time, the Government would like to inform that this issue is proposed to be resolved in the discussed above Draft Law of Ukraine “On the Penitentiary System” by amending Article 8 of the Law of Ukraine “On Pre-trial Detention”.

- ✓ *Regarding the issue of receiving general secondary education by children in pre-trial detention centres and ensuring constant monitoring of the observance of children's right to education.*

The Government would like to note that the Cabinet of Ministers of Ukraine by the Resolution No. 526 of 25/06/2020 approved the Procedure for the organisation of full general secondary education by convicts sentenced to a certain term or life-imprisonment, as well as juveniles taken into custody, which also establishes the mechanism of the organisation of receiving of full general secondary education by the minors taken into custody.

- ✓ *Regarding the development and approval of food standards of convicts/detainees*

On 27/12/2018, the Cabinet of Ministers of Ukraine approved the Resolution No. 1150 “On Food Standards for persons detained at the penitentiary institutions, pre-trial detention centres, places of temporary detention of the State Border Guard Service of Ukraine, temporary detention facilities, reception centres for children and other places of detention of the National Police of Ukraine and special temporary detention facilities of the Security Service of Ukraine”, which will come into force on 01/01/2021.

- ✓ *Regarding the development of regulations on medical examinations of convicts and cooperation between the administrations of penitentiaries and the State Institution “Health Centre of the State Penitentiary Service”.*

It should be noted that today the issue of primary health care is regulated by the “Procedure for Primary Health Care”, approved by Order of the Ministry of Health from 19/03/2018 No. 504.

In addition, the procedure for referring patients (including detainees/convicts) to health care institutions and entrepreneurs who in the manner provided by law have received a license to conduct medical practice and provide medical care of the appropriate type, approved by Order of the Ministry of Health of Ukraine on 28/02/2020 No. 586.

⁸ <http://www.ombudsman.gov.ua/files/marina/SPECIAL%20REPORT%202018.pdf>

⁹ http://www.ombudsman.gov.ua/files/marina/lzvrit_eng_web.pdf

The Ministry of Justice of Ukraine together with the Ministry of Health adopted the Order “On amendments to the Order of the Ministry of Justice of Ukraine, the Ministry of Health of Ukraine dated 15/08/2014 No. 1348/5/572” No. 2256/5/1491 of 01/07/2020, according to which a new version of the “Procedure for Organising Medical Care for Convicts”, which determines, in particular, the mechanism of interaction of health care facilities of the State Penitentiary Service of Ukraine with other independent health care institutions that do not belong to the Ministry of Justice of Ukraine, Interregional Departments, penitentiary institutions, pre-trial detention centres on medical care for convicts.

✓ *Regarding the development of regulations on forced alimentation of convicts who refused to eat*

In order to prevent a violation of Article 3 of the Convention due to the forced alimentation of applicants and to implement the judgments of the European Court in the “*Nevmerzhitsky v. Ukraine*” group of cases, the Ministry of Justice of Ukraine drafted and submitted to the Cabinet of Ministers of Ukraine the Draft Law “On Amendments to Certain Legislative Acts of Ukraine Concerning the Application of Forced Alimentation Measures to Convicts and Detainees” and the Draft Law of Ukraine “On Amendments to the Criminal Procedure Code of Ukraine Concerning Application to Convicts and Detainees in custody Forced Alimentation measures”, which were sent to the authorised bodies for approval on 22/06/2020. After receiving approvals from the concerned bodies, these Draft Laws will be submitted to the Parliament in accordance with the established procedure.

✓ *Regarding the legislative amendments to simplifying the procedure for transferring medicaments and medical supplies to convicts/detainees from relatives*

According to the provisions of the “Procedure for Organising Medical Care for Convicts”, approved by Order of the Ministry of Justice and the Ministry of Health of Ukraine No. 1348/5/572 dated 15/08/2014 (with amendments of 01/07/2020), medicines or their analogues, medical devices, technical and other means of rehabilitation may be obtained by convicts from their close relatives or other persons after its appointment by a doctor and in agreement with the head of the relevant health care institution of the State Penitentiary Service of Ukraine.

Medicines and medical devices received from relatives of convicts or other persons are stored in health care facilities of the State Penitentiary Service of Ukraine in separate cabinets and are on special records.

Similar provisions for detainees are provided for in the Draft Procedure for the “Provision of Medical Care to Convicts”, which is planned to be approved by a Resolution of the Cabinet of Ministers of Ukraine.

✓ *Due to the introduction of the second stage of medical reform, state financial guarantees for medical care are not provided for convicts and detainees (i.e. such persons are not provided with free medical care).*

The Government of Ukraine approved the Resolution “Some Issues of the Program of State Guarantees of Medical Care in 2020” No. 65 of 05/02/2020, which envisages the provision of medical care in health care facilities of the Ministry of Health of Ukraine without restrictions to all segments of the population, including convicts and detainees. Thus, according to the implementation of the

program of state guarantees of medical care in 2020, health care facilities of the Ministry of Health of Ukraine will receive a corresponding fee for medical services provided to convicts and prisoners.

The Ministry of Justice of Ukraine has also developed a Draft Resolution of the Cabinet of Ministers of Ukraine “On Approval of the Procedure for Providing Medical Care to Convicts”.

According to the provisions of the mentioned Draft Procedure, persons detained in an emergency, secondary (specialised), tertiary (highly specialised) and palliative care will be provided mainly in health care facilities that do not belong to the Ministry of Justice of Ukraine, with the involvement of their medical staff.

In addition, in May 2020, the Ministry of Health of Ukraine initiated the establishment of an interdepartmental working group aimed at improving the system of medical care for convicts and detainees in the context of reforming the health care system of Ukraine. The format of this interdepartmental working group provides, in particular, operational coordination and joint development of draft regulations directly by specialists of ministries of Ukraine, the State Institution “Health Centre of the State Penitentiary Service of Ukraine”, the State Institution “Public Health Centre”, National Health Service of Ukraine with the involvement of representatives of the public sector.

The Government of Ukraine will inform the Committee about further developments and measures taken.