

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

from 8 to 24 February 1998

The Ukrainian Government has agreed to the publication of the CPT's report on its visit to Ukraine in February 1998 (see CPT/Inf (2002) 19) and of its responses. The responses, translated into English by the Ukrainian authorities, are set out in this document.

The Ukrainian text of the responses will soon be available on the CPT's website (www.cpt.coe.int)

Strasbourg, 9 October 2002

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Interim report of the Ukrainian Government

Answers

of the Governmental bodies of Ukraine to recommendations contained in the Report to the Government of Ukraine drawn up by the European Committee for Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) after its visit to Ukraine from 8 to 24 February 1998

State Department of Ukraine on Executions of Sentences.

The Head of the CPT's delegation, Mrs. Ellingsen, during the final meeting held in the Ministry of Interior of Ukraine on February 24, 1998, made several remarks follow-up the visit to Ukraine as regards two objects of the criminal/disciplinary system of Ukraine visited by the members of the delegation - Pre-trial prison (SIZO) in Kharkiv and Dnipropetrovsk Treatment and Labour Center. The mentioned remarks concerned unidentified status of the sentenced to the capital punishment, communal conditions of detention, sanitary and hygienic conditions of the detention of the imprisoned persons, sentenced to capital punishment, as well as ill-treatment of them in some SIZO and colonies.

A Number of organizational and practical steps have been made with the aim of resolution of the mentioned problems and for the purpose of creating appropriate conditions for detention of the persons in custody and sentenced. In particular, the instruction on the procedures of detention of the persons sentenced to the capital punishment determining their status has been adopted. These persons are now given the opportunity to receive letters, newspapers, magazines without limitations, to buy food and consumer goods which cost exceed 70% of the minimal salary. In order to improve the conditions of detention of the persons sentenced to the capital punishment they have every-day walks in the open air during which they may do physical exercises. For this purpose 196 walking inner-yards of the pre-trial prisons have been built or re-equipped.

The metal peakes over the cell's windows have been removed to increase the amount of natural light and air to the cells.

The communal conditions of detention regarding location of detains, providing with the bed-clothes, medical treatment, personal hygiene and using of the radiobroadcasting system have been improved. For timely disclosure and treatment of tubercular patients the phthisiatricians and other medical specialists of local health protection bodies are drawn in. The measures have been taken on strengthening control for sanitary state of premises from the part of medical personnel.

For improving conditions of accommodation of prisoners the interregional hospital for prisoners was transferred to another place from the territory of

Kharkiv's pre-trial prison, building of which was reconstructed for cells for 270 persons, quantity of showers was rised which assures completely normative need, new premises for accepting parcels and giving appointment were built.

The deficiencies in equipment of disciplinary pre-trial prison of Dnipropetrovsk Treatment and Labour Detention Center for the compulsory treatment of alcoholics were removed.

Facts on ill-treatment with detains and sentenced persons in some pre-trial prisons and colonies, about which were recalled in statement of Mrs. Ellingsen, were not confirmed. According to the data of State Department of Ukraine on Executions of Sentences, General Prosecutor's Office of Ukraine, Ministry of Internal Affairs of Ukraine appeals from sentenced persons and citizens about such cases were not sent.

In spite of taken measures, the problem of overcrowding of bodies of penitentiary system is not completely solved, which creates additional difficulties in solving the questions of improving conditions of detention of sentenced persons and detains, quantity of which is not decreasing and on the contrary is growing up (from the beginning of this year accretion is 17700 persons). This problem will be solved in the process of realization of judicial - legal reform in Ukraine.

Regularly other measures are taken on improving communal facilities, medical service of detains and sentenced person, but economic situation in country, limited financement of the system, state of judicial practice don't allow to solve completely and fast all observations of the CPT's delegation.

Work on putting of conditions of detention of prisoners in accordance with demands of European prison rules, European Convention on Human Rights and further reforming of penitentiary system is to be continued and is under special control of leadership of State Department of Ukraine on Executions of Sentences.

Ministry of Internal Affairs of Ukraine

1. On procedure of detention of suspicious in committing crimes.

As it testifies analysis of report, the members of delegation were not informed correctly about procedure of detention suspicious in committing crimes and fulfillment of other investigatory actions. May be this is a lack of translation, but we think that it is necessary to inform CPT about existing process order of fulfilling such actions in Ukraine.

Current criminal procedure legislation of Ukraine determines clearly the order and grounds of realization of such investigatory actions, as opening of criminal case, detention of persons as suspicious in committing crime, arrest, interrogation, presenting imputation, search etc.

To choose preventive measure in view of detention (arrest) investigator has the right only with sanction of prosecutor. But the Constitution of Ukraine foresees that from 2001 (probably earlier after adoption of new Criminal Procedure Code) sanction to arrest will be given only by the court.

Investigator (body of inquiry) has the right to detain a person suspected to commit a crime. Detention is proceedingly realized by protocol which is drawn up right away after detention. But in report it mentioned that protocol is drawn up during 24 hours after detention (Part II.A.1).

Detention can not exceed 72 hours. Right away after detention investigator is obliged to inform urgently (no later than 24 hours since detention) about that supervising prosecutor which examines grounds for it and during 48 hours solves the question on giving agreement (sanction) to arrest this person or by his resolution discharges a prisoner.

The law foresees that person can be detained only for presence of such grounds:

1) when this person was caught at the scene of crime or directly after committing crime;

2) when eye-witness including victims directly indicate given person that he/she committed a crime;

3) when on suspicious or on his clothe, with him or in his habitation evident traces of crime were revealed;

4) for presence of other data which gives grounds to suspect person in committing crime but only in the case when this person is trying to run away or when he has not permanent residence, or when the name of suspicious is not ascertained.

If the place of residence of family of detenee is known, investigator is obliged to inform it about it.

From the moment of detention person has the right to use services of advocate and even in such case when he /she is not able to pay the services of advocate, right for protection is guaranteed by the state.

Statistic data: in 1998 investigation bodies of internal affairs detained for suspicion in committing crime 86942 persons. From this number relative to 24463 persons was chosen preventive measure which is not linked with imprisonment. It means that only 71,9 % from number of detains are arrested. At the same time during a year more than 200000 of accused were made answer, cases relative to which were sent to trial. From this number only 62500 of persons were arrested, others were staying at large till the decision of the court. At the same time in the report (para 17) it stresses that decision on discharge from arrest of accused "is an exclusion". In its practical activity the Ministry of Internal Affairs of Ukraine is trying to comply comprehensively with Recommendation R (80) 11 Committee of Ministers of the Council of Europe on pre-trial arrest.

The procedural review is carried out to monitor the law-abidingness by inquiry and inquest (militia) agencies during the preparatory inquiry, which comprises the departmental, attorney and judicial review.

The departmental review is carried out by the heads of inquiry units and the ranking inquiry agencies. They oversee the timeliness of actions taken by interrogating officers on disclosure of crimes, take measures toward the most comprehensive, all-embracing and objective implementation of the preparatory inquiry in criminal cases.

The Chief of the Inquiry Department has the right to review criminal cases, instruct the interrogating officers on how to conduct the preparatory inquiry, on arraignment of persons as defendants, on qualifications of crimes and the scope of accusation, on case referrals, on introduction of certain inquisitorial procedures, on transferring the case from one interrogating officer to another, on assigning the inquiry to several interrogating officers, as well as on participating in conducting the preparatory inquiry and to personally conduct the preparatory inquiry, using hereby the interrogating officer's authority.

The interrogating officer's actions can be appealed against to the attorney both directly and through the interrogating officer.

The complaints can be lodged both orally and in written form. Oral complaints are registered in the report by the attorney or the interrogating officer.

The interrogating officer shall, within a day's period, forward the complaint he had received to the public prosecutor, together with the necessary clarifications.

Lodging of a complaint shall not halt the execution of the action complained against, unless it is considered necessary by the public prosecutor or the interrogating officer.

The persons concerned have the right to appeal before the court against the orders by interrogating officers, statements by interrogation agencies on dismissal of criminal cases, statements on closing the proceedings. These complaints are considered by the judge personally within no more than 10 days since they had been submitted to the court.

The prisoners, their counsels and legal representatives have the right to appeal against the attorney's assent of arrest before the local (city) court at the locality of the public prosecutor who had given the assent of arrest.

This claim shall be considered within 3 days since the date of receiving the materials which constituted the ground for giving the assent of arrest. In case of need, explanations by the apprehended person, his counsel, and his legal representative.

Having considered the claim, the judge, depending on whether the issue of the arrest assent was lawful, takes one of the following decisions:

- 1) rejects the claim;

2) cancels the arrest assent. In case of canceling the arrest assent by the judge, the prisoner is subject to immediate discharge, and the person in charge of this case shall, within one day's period since the moment of receiving the judge's order, resolve the issue of taking up a different preventive measure.

The judge's decision is forwarded to the person in charge of this case, to the public prosecutor who had given the arrest assent, and to the person who had lodged a claim.

The judge's decision is not subject to appeal in the reversal order.

2. The conditions of imprisonment.

To fully insure the inavoidable redemption of the requirements of the Common Declaration of Human Rights, the European Convention on Prevention of Tortures and Inhumane Treatment or Punishment, the Constitution of Ukraine, Ukraine's Law On Militia, Ukraine's Law On Preliminary Detention, other normative documents on the said issues, a number of organizational and practical activities have been conducted by the MIA of Ukraine for providing better detention conditions of apprehended persons and prisoners in special militia establishments.

In particular, the Programme of Developing the Activity of CTI's of Ukraine's Interior Organs for 1999, which envisages the conduct of activities aimed at ensuring rights and vested interests of the detains in the CTI's, including the activities for paying the debts for meals provided to detains and prisoners, equipping the CTI with the necessary number of beds and patios, establishment of permanent control by medical services over the state of health and imprisonment conditions of the special contingent, making it possible for the detains to watch TV programs and to use the CTI libraries. In this year it has been planned to develop a programme for re-training all the categories of the interior agencies staff which are involved in guarding and escorting the detains and prisoners and establish control over the activity of special militia establishments. The program will include a section covering the provision of rights and vested interests of the prisoners in the above establishments.

As for every occurrence of detains' ill-treatment in special militia establishments, the administration of city and regional militia departments, regional administration officials and the MIA of Ukraine carry out thorough inspections followed up by taking the corresponding measures, including those related to calling to account the officials of the internal affairs organs.

The allowable periods of imprisonment in special militia establishments are clearly stated in the effective legislation. According to Article 11 of Ukraine's Law On Militia and Article 263 of Ukraine's On Administrative Violations, which was approved by the Decree of December 7, 1974 of the Verkhovna Rada of Ukraine

(with changes and amendments as of August 1, 1997), administrative detention of a person who has committed an administrative offense may last for no more than 3 hours. In the cases when it is necessary to identify the person and/or to clarify the circumstances of the violation committed, the detention may last up to 3 days, followed by a written notice forwarded to the public prosecutor within 24 hours from the moment of detention, or, on the attorney's assent, up to 10 days, if the persons in question have no identification documents. The persons who have committed minor crimes, malign noncompliance with the orders of militiamen, public volunteer guards and military men or offended them, as well as their appeals to the public to ignore the orders of militiamen, can be detained till their case will have been considered by the judge or the head (deputy head) of an internal affairs agency. The persons who have violated the order of organization and holding rallies, meetings, street marches and demonstrations, or expressed contempt of court or were personally selling goods in inappropriate public places can be apprehended until their case has been considered by the judge.

Article 32 of Ukraine's Code on Administrative Violations specifies that administrative arrest is established and resorted to exclusively in extreme cases for certain types of administrative violations for up to 15 days. Administrative arrest is ordered by the local (city) court (judge).

Ukraine's Law On Militia (Article 11) enables the militia to apprehend and hold in custody in specially determined places the people who are suspected of vagrancy, for up to 30 days, by the public prosecutor's order.

There are no other apprehension periods in special militia establishments for detaining the persons arrested for committing an administrative offense and vagrancy. The persons who, according to the Criminal and Procedural Code of Ukraine, are suspected of committing a crime and subject to be detained in the CTI, shall not be detained in the centers for the reception and allocation of minors.

Taking into account the economic and social problems existing in this country, in some CTI there have been facts of noncompliance with the established terms of imprisonment of detainees and prisoners and overlimit of places (Ukraine's Law On Preliminary Detention [Article II] establishes that the standard cell area per one detainee shall be at least 2.5 sq.m., and for a pregnant woman or a woman with a child - 4.5 sq.m.). This is also connected with the fact that the pre-trial prison of the Department for Execution of Sentences because of their overflow are unable to accept from the CTI all the special contingent which is subject to be placed in the pre-trial prison. Together with that, the MIA of Ukraine conduct all the necessary activities to ensure the observance of the established detention periods and detention conditions in the CTI.

In order to prevent tortures and other forms of violence, the departmental normative acts of the MIA of Ukraine concerning the special militia institutions envisage that the militiamen have the right to use means of physical and special influence on delinquents only in exceptional cases (the list of such circumstances

is limited). Binding the arms and legs together (in the so called "swallow" pose) is flatly prohibited. During the service time (near the CTI cells) the guards do not get special means, including balloons filled with tear-gas. In particular, such a product was absent completely in the isolation ward of temporary detention, pertaining to the Dnipropetrovsk town administration of the MIA in the oblast. Workers of the CTI of this town administration have been informed about inadmissibility of groundless using the special means against the detained persons.

On 13 February 1998 the delegation of the European Committee against torture revealed in the Zaliznichnyi district administration of the MIA MD of Ukraine in Kyiv that the citizen (x), arrested for committing an administrative violation of law (and being drunk), in order to stop disorderly conduct was secured, by means of handcuffs, to the metal ring (normally used for hanging a lock on the door in the corridor of the unit on duty). The said fact was mentioned in the delegation account, and it was proposed (in the report addressed to the government of Ukraine by the European Committee against tortures) to remove these rings. The mentioned rings were removed from the Door in the Zaliznychnyi DA of the MIA MD of Ukraine in Kyiv, and using them for detention of arrested persons was prohibited.

Today the measures are being taken as for improving the conditions in the cell of temporary isolation (CTI) of the MIA Main Department. Planned repairs of the cells are done, the toilets have been equipped in a proper way, permanent access to potable water has been guaranteed, conditions were created washing the special contingent with warm water; the necessary quantity of blankets was supplied; regular walks of arrested people take place.

Corresponding measures are effected also in other special militia organizations, but in connection with lack of necessary financing it seems not to be possible to bring them to a proper condition to the full extent.

At the same time, taking into account the complicated economic condition of the country and conditions of keeping the detained and arrested persons in special militia institutions which have been recognized, by the European Committee against tortures, as being such ones that do not meet the Council of Europe requirements, and in some cases - being not humanitarian, we take it to be expedient to propose the Council of Europe to create any inter-state fund for promoting special militia institutions in guaranteeing the proper conditions of keeping the special contingent allotting a necessary sum of money for the mentioned needs.

3. Concerning hard treatment of detained persons by militiamen.

The Ministry permanently take measures as for law enforcement, prevention of extraordinary events among the bodies of internal affairs. Theses issues were many times considered at the collegium and operative meetings, concrete decisions were taken in order to improve the work done in this direction. Abrupt and secret control was carried out, corresponding normative documents

(x) In accordance with Article 11, paragraph 3, of the Convention, the name of the detained person has been deleted.

were issued; resolutions of collegiums, orders, and instructions concerning improvement of work with the staff were sent to the local bodies. Measures were taken as for revealing and removing, from the bodies of internal affairs, the militiamen who violate the law, abuse their power or official position; who by their unworthy conduct and actions, compromise the name of the militiaman. There exist special departments intended to reveal such officials, i.e. staff inspectorates and inner security sub-units, in the MIA of Ukraine structure and local bodies, subjected to it. Only during 1998 5,273 persons, or 13.1 per cent of the total quantity of dismissed persons (i.e. 40,169), were dismissed from the internal bodies on negative reasons.

Due to the work done and hard disciplinary policy one managed to stop the negative tendency of such negative manifestations to grow in number. The number of condemned officials diminished by 21.4 per cent (from 453 to 356). 102 former militiamen were condemned for exceeding their authority. Generalization of judicial practice acquired in proceedings relative to crimes committed by officials of the bodies of internal affairs has shown that most persons, condemned for malfeasance in office, committed them during performance of their duty. The place of committing these crimes and illegal applying the force, special means, and arms by the officials, as well as of other actions, delivering physical sufferings and injuring personal dignity of citizens, is an official room in 65 per cent of cases (according to proceedings already studied). As it is seen in the criminal proceeding already studied by the Supreme Court of Ukraine, low moral qualities of such persons still remain the "traditional" reasons and conditions which promoted committing the crimes by the militiamen.

For violations of law , being non-criminal in nature, 1,921 officials were brought to disciplinary responsibility in 1998, 85 of them - for illegal bringing to administrative responsibility, 70 - for violation of terms of arrest, 491 - for illegal refusal to institute criminal proceedings.

Aiming at eradication of such facts, the Ministry on 29 January 1999 issued Order No.61 which approved the Complex Programme of improving the staff management and making higher militia's authority.

It provides for measures concerning improvement of organizational/legal support of internal bodies' activity, amelioration of contacts with the population, measures on selection, professional training and appointment of staff, enhancement of activity of departmental educational institutions, socially-psychological and educational work with staff, and measures on strengthening the discipline and lawfulness.

The requirements of the Programme have been communicated to all staff of the internal affairs bodies, and its implementation is severely controlled.

4. Concerning transferring the Department of Migration and Registration to the Ministry of Justice.

In order to implement obligations, laid upon Ukraine by the Conclusion No.190 (1995) of the Council of Europe Parliamentary Assembly as for Ukraine's accession to the Council of Europe, in the part of transfer to the Ministry of Justice (in 1998) of responsibility for registration of persons who arrive at the country or go out of it. The Decree of the President of Ukraine on 31 October 1998 1201/98 stipulates creation, in the structure of the Ministry of Justice bodies, of the service of citizenship and of registration of natural persons with giving it some functions of the passport service of internal affairs bodies and step-by-step transferring (in the established order) the same number of staff and logistics of this service to the bodies of justice, with keeping, in so doing, labour rights and guarantees of social protection to its employees.

For implementing the Decree of the President of Ukraine, the Cabinet of the Ministers of Ukraine on 21 December 1998 adopted Resolution No.2027 "On establishment, in the structure of the Ministry of Justice bodies, of the service of citizenship and of registration of natural persons", in which obliged the Ministry of Internal Affairs, in accord with Ministry of Justice and Ministry of Finance, to present by 1 February 1999 proposals as for the order and terms of transferring the number of staff and logistics of the MIA passport service on the base of the total number of employees in this service as to 5 June 1994.

The Ministry of Internal Affairs sent, on 1 January 1999, the Letter No.7/KB to the President of Ukraine as for the MIA attitude towards establishing the service of citizenship and registration of natural persons in the structure of the Ministry of Justice. There are also arguments presented in the letter concerning stopping the urgent to transfer to the Ministry of Justice the functions, number of staff and logistics of the MIA passport service, stipulated by the Decree.

They are as follows:

- necessary development of a legal base in connection with reforming the MIA system and transferring the functions relative to the questions of issuing passports, registration and migration to the bodies of the Ministry of Justice;
- urgent transferring the functions of issuing passports to the citizens to another department can threaten implementing this state programme and lend to considerable financial losses;
- guaranteeing the labour rights and social protection to chiefs of the passport service, being subject to discharge, requires additional financing amounting to 7.4 billion hryvnias from the state budget. today the MIA does not have such money;
- it is required to create an infrastructure of the registration service in the system of justice, because 75 percent of the premises being used by the subdivisions concerning passport registration and migration work which are located in the buildings, pertaining to district, town and regional administrations (departments) of the Ministry of Internal Affairs.

Taking into account these comments the MIA submitted the proposal to determine terms of transferring functions, a size of the staff and logistical base of the passport service till June, 1, 2002. The President of Ukraine agreed with these proposals and gave relevant instructions to the Cabinet of Ministers of Ukraine.

On the instructions of the Cabinet of Ministers of Ukraine of 16 February 1999 No.2821/2 the Ministry of Interior introduced relevant proposals to the Ministry of Justice of Ukraine on March, 1999 No.1476/Ah, to the Ministry of Finance of Ukraine on March, 1999 No.1475 Ah concerning determination of the order and terms for transferring functions, a size of the staff and logistical base of the passport service which are in the following:

To the end of 2000:

- to prepare and introduce in the established order relevant drafts normative acts aimed at legal settlement of activities of the citizenship service and registration of natural persons, namely: the drafts of Law of Ukraine on State register of natural persons, on Registration order of natural persons in Ukraine, on justice bodies, on Introducing changes and amendments to some legislative acts in connection with creation of a citizenship service and registration of natural persons in the system of the bodies of the Ministry of Justice, on Provisions concerning the citizenship service and registration of natural persons;

- to work out issues concerning an additional allocation of 7,4 million hryvnias for financial support of social security of authoritative staff of the passport service that is subject to dismissal from the bodies of internal affairs in connection with a creation of a citizenship service and registration of natural persons of the Ministry of Justice.

Up to the end of 2001:

- the Ministry of Interior jointly with the Ministry of Justice should submit to the Cabinet of Ministers of Ukraine agreed proposals on introducing changes to a size of a staff that concerning introducing changes to the size of staff that is supported at the expense of the state budget and which will be hand over to the citizenship service and registration of natural persons of the Ministry of Justice;

- while solving an issue on accommodation the newly-formed citizenship service and registration of natural persons it is necessary to take into account that only 25 per cent of premises are communal property and can be handed over to the bodies of justice on co-ordination with local self-governmental bodies;

The Ministry of Interior should hand over a logistical base, which belong to the subdivisions of the passport service, to the bodies of justice;

- to foresee allocations in the state budget for supporting in 2002 of determined size of a staff, that is supported at the expense of the state budget, and which will be handed over to the Ministry of Justice;

- the Ministry of Interior should complete a replacement of the posts of authoritative staff of the subdivisions of the passport service by posts of public officers;

the Ministry of Interior jointly with the Ministry of Justice should determine the order of transferring the employees of the subdivisions of the passport service to the newly-formed service of the Ministry of Justice;

- to solve the problem with local self-governmental bodies concerning financing of a size of staff which is supported at the expense of funds of local budgets.

From January, 2002 the Ministry of Interior should realize transferring the determined employees of subdivisions of the passport service of the interior bodies to the justice bodies.

Security service of Ukraine

In paragraph 178 the Committee recommends to improve access to natural light in the cells, and find a possibility of separation of toilets in the sells. The project of the building the pre-trial prison of the SS of Ukraine has been formed in 1978-1979. The windows of cells face the inner court of subdivision and visors in the windows are established on such condition that detained persons could not watch movement of other detained persons, their transportation to other places of detention or arrival at the pre-trial prison. Thus, removal of visors will allow for detained persons to get information about other detained persons that can cause a lot of harm for investigation of criminal cases.

The administration of the Pre-trial prison of the Security Service of Ukraine considers the issue of reconstruction of toilets in cells which is planned to be solved in the neatest future while planned reconstruction of the building that will allow to adhere to all moral and ethical standards for detained persons.

The Council of Europe Committee recommends to extend the courts for walk. 8 courts for walks located on the fourth floor. The accommodation of each is 13 square meters that corresponds to the standards, established by the legislation of Ukraine. Any reconstruction of courts for a walk can violate the construction of the building.

Medical examination of detained persons is carried out at once when they arrived and if any complains the specialists of medical institutions of the town are involved. In extreme situations detained persons are sent, immediately at any time of day and night to the in-patient medical institutions of the Ministry of Health of Ukraine.

When applications, from detained persons and their lawyers on necessity of medical examination, have been received, urgent measures are taken on fulfillment of their requirements and according to the results of examination the relevant documents are composed and sent to the investigating bodies to the prosecutor's office, lawyers. The detained persons are also informed about results.

Availability of punishment cell and "soft" cell in pre-trial prison of the Security Service of Ukraine is mentioned in the paragraph 184. These premises are stipulated by Law of Ukraine on Preliminary imprisonment (further - Law), their

area and equipment meet the established standards. In case of accommodating detained persons for violation of regime into a punishment cell, the Law stipulates giving them a mattress, a blanket and other bedding provision of food in compliance with the established norms which are common for detained persons and for convicts, obligatory walk is given. It should be mentioned that during existence of the pre-trial prison of the Security Service of Ukraine nobody of detained and convicted persons allocated into punishment cell and "soft cell" and that is why there is no relevant registration.

Intercourse of detained persons with "the outside world" is regulated by the Law and convicted persons by the Corrective - labour Law of Ukraine. Persons, who are kept under arrest in the pre-trial prisons of the Security Service of Ukraine, are given visit of relatives or other persons, as a rule once a month. Duration of a visit is established from one till two hours (Article 12 of Law), moreover, they have the right for correspondence with relatives and other citizens and also enterprises, institutions, organization according to the written permission of a person of a body in which administering the case is. When sentence is in force a correspondence is carried out without restriction (Article 13 of the Law).

Availability of cells with space 0,68 - 1 square meters in the pre-trial prison of the Security Service of Ukraine is mentioned in the paragraph 188 of the report. They are not the cells for keeping detained persons but intended for accommodation of detained persons for very short term (about a half of a minute) under approaching convoy of other detained persons.

The Council of Europe delegation inspected the special cargo car for transporting the arrested persons, pertaining to the convoy regiment of the Ministry of Internal Affairs of Ukraine. Pre-trial prisons of the Security Service of Ukraine use the new cars, for transporting the prisoners on the chassis of the "Gazel" car which meet all the necessary requirements.

The Council of Europe Committee recommends also to revise the issue of prisoner's dates. These issues are now regulated by the Law and by the Corrective-labour Code of Ukraine. At their possible revision, the administrations of pre-trial prisons of the Security Service of Ukraine will guarantee their irrevocable observance.

Follow-up report of the Ukrainian Government

**THE REPORT
TO THE CPT's RECOMMENDATIONS
AND REMARKS, ON THE VISIT TO UKRAINE
FROM 8 TO 24 FEBRUARY 1998**

The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment was signed by Ukraine on 2 May 1996, and ratified by the Law of Ukraine of 24 January 1997 and came into force for Ukraine on 1 September 1997. According to the Article 15 of the Convention the Cabinet of Ministers of Ukraine by its order № 1527 of 20 November 1999 determined the State Department of Execution of Punishments as the body authorised for direct contacts with CPT, and the First Deputy Director of the Department Mr. Olexander Ptashynskiy as the authorised person for contacts with the Committee (the text of the order was sent to CPT on December 10, 1999).

A. Establishments subordinated to the Ministry of Internal Affairs of Ukraine (Militia)

With the purpose of meeting requirements of the General Declaration of Human Rights, European Convention on Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the Constitution of Ukraine, the Law of Ukraine "On Militia", the Law of Ukraine "On the Pre-trial Imprisonment" and other legal instruments, MIA of Ukraine took organisational and practical measures on improvement of conditions of treatment of the arrested persons in militia specialised establishments.

In particular, the Program of Development of the Temporary Confinement Isolation Wards (ITT) of the Bodies of Internal Affairs of Ukraine for 1999 was elaborated. This document stipulated measures on ensuring the rights and lawful interests of the persons held in ITT including repayment of financial indebtedness for nourishment of the arrested persons, providing facilities with necessary quantity of beds and exercise yards, carrying out constant medical monitoring of prisoners' health and maintenance conditions, giving the arrested possibility to watch TV and to use libraries. This year, MIA began retraining of all categories of the law-enforcement bodies staff involved in controlling the activities of militia specialised facilities, guarding and escorting of the inmates, including introduction of the courses on studying main international legal instruments concerning rights and lawful interests of the prisoners.

MIA of Ukraine, regional administrations of MIA, District Commands of IA investigate all cases of the inadequate treatment of arrested in militia specialised facilities and take appropriate measures based on the results of such investigations, including instituting proceedings against guilty officials.

The current legislation strictly defines the terms of keeping in militia specialised facilities. According to the Article 11 of the Law of Ukraine "On Militia" and Article 263 of the Code of Ukraine "On Administrative Offences" adopted by the decision of the Parliament of Ukrainian SSR of 7 December 1974 (amended on 1 August 1997), the administrative arrest of the person, who committed administrative offence may last not longer than three hours.

If it's necessary to identify the person of the arrested and to clarify circumstances of the offence the detainment may be prolonged up to three days, relevant written notice being submitted to procurator during 24-th hours from the moment of beginning of the arrest, or for the time of 10 days, the procurator's sanction having been issued (provided the detainee have no documents identifying person). A person, who have committed minor hooliganism, malicious disobedience to the lawful order or request of the militia officer, member of a public order squad or a military officer, insulting mentioned officials, public invoking to disobey orders and requests of the militia officers, can be held in custody until consideration of his case by a judge or head (deputy head) of the relevant institution of internal affairs. Persons, who violated order of organisation and holding assemblies, meetings, manifestations and demonstrations or committed acts of disrespect to court, violated the order of trade.

The Article 32 of the Code of Ukraine on Administrative Offences defines that the administrative arrest is applied only in exceptional cases of particular kind of administrative offences for the term up to fifteen days. Regional (city) court or judge makes the decision on administrative arrest.

In accordance with Article 11 of the Law of Ukraine "On Militia" militia have the right to detain persons suspected in vagrancy for up to 30 days and, the procurator's sanction having been issued.

There are no other terms of holding in special facilities for administrative offences or for vagrancy provided by Ukrainian legislation.

The persons suspected in committing a crime can not be held in militia facilities (ITT), for, in accordance with Ukrainian Code of Criminal Procedure, these persons are to be held in pre-trial isolation wards (SIZO).

Taking into consideration Ukrainian economic and social situation, the terms of holding sometimes are not met in some SIZOs and there are some facts of overcrowding; (Law of Ukraine "On Pre-trial Imprisonment" (Article 2) establishes, that the standard area for one person can not be less than 2,5 square meters, and for the pregnant women or women with children - 4,5 square meters). As a consequence of the SIZOs of the State Department for Execution of Punishments being overcrowded they have no possibilities to accept all arrested from ITT to be held in SIZOs. At the same time, MIA of Ukraine takes all necessary measures to establish terms and standards on holding in ITT in order to improve conditions of holding (taking into account overcrowding of ITTs).

In order to prevent tortures and other forms of abuse, the internal regulations of MIA provide for that staff of the militia special facilities have the rights to apply physical and special measures to the offenders only in exceptional cases, the list of which is limited. It is strictly forbidden to bind hands and legs together (so called "swallow"). The officers on cell-duty are not given specialised means, such as teargas-cylinders, or others. In particular, Dnepropetrovsk ITT is not supplied with such means of self-defence. The officers of Dnepropetrovsk ITT are aware of exceptional cases of using the special means to the arrested persons.

The delegation of CPT on 13 February 1998 while visiting of Zaliznichniy Internal Affairs District Command of the city of Kyiv found that Mr.....(*), who had been arrested for committing an administrative offence, being in the state of alcoholic intoxication, in order to prevent his violent behaviour was attached to the metal hinge-lock rings by handcuffs in the corridor of the emergency unit. The fact was described in the Report of the CPT, which recommended removing mentioned rings. The rings in the premises of Zaliznichniy Internal Affairs District Command of the city of Kyiv have been removed, the practice of attaching the detained persons to them being forbidden.

(*) In accordance with Article 11, paragraph 3, of the Convention, the name of the detained person has been deleted.

Presently everything possible is being done to improve detention conditions in the temporary confinement isolation ward of the Ministry of Internal Affairs Main Department for the City of Kyiv. The scheduled repairing of chambers and cells has been carried out, the toilets being duly equipped, constant access to drinking water being provided, conditions for hot water supplying being created. Regular disinfecting of prisoners' clothes and places of holding, supplying with necessary number of blankets and other bedding, regular exercises of the arrested persons in fresh air, distributing of books and newspapers from ITTs' libraries, equipping chambers and cells with electrical sockets and places for TV sets are carried out.

The relevant measures are carried out in others militia specialised facilities, but through the lack of financing it does not appear possible to complete all these measures.

The delegation of CPT drew attention to insufficient providing of food to the persons held in militia specialised facilities, in particular, those held in the temporary confinement isolation ward of the Ministry of Internal Affairs Main Department for the City of Kyiv. The nourishment of the mentioned category of persons is provided in accordance with standards established by the Resolution of the Cabinet of Ministers of Ukraine № 336 of 16 June 1992.

According to the Resolution of the Cabinet of Ministers of Ukraine "On Complex Measures for Fighting Tuberculosis " № 667 of 23 April 1999 MIA of Ukraine elaborated the Program of Complex Measures for Fighting Tuberculosis stipulating concrete measures concerning prevention, revealing and healing of the illness in the militia specialised facilities.

The extremely difficult economic situation of Ukraine does not allow providing conditions corresponding international norms and standards for treatment of the detained and arrested persons in the militia specialised facilities. Despite this fact, MIA of Ukraine will provide all necessary measures in order to improve the conditions of the detention.

B. Establishments subordinated the State Department for Execution of Punishments of Ukraine

Concerning the issue "of contacts with the outside world" (visits to prisoners, their correspondence, and meeting without booths, short-term visits, including prisoners sentenced to death)

According to the amendments made to the legislation of Ukraine the restrictions of correspondence have been revoked in penitentiary establishments of all kinds of regime, besides prisoners are vested with right to long-term meetings with relatives and friends irrespective of imprisonment term.

The prisoners sentenced to death, according to the new regulations on detention conditions of such category of the prisoners, have the right to unlimited correspondence and monthly visits by relatives and friends of duration for two hours.

The practice of short-term meetings with relatives and members of the family, when the communication devices and booths are used, is brought into conformity with requirements of the Code of Criminal Procedure of Ukraine. The purpose of this action is to secure the secrecy of investigation and to prevent transferring of prohibited objects to prisoners (weapons, drugs, money etc.), as well as to prevent exchanging of information that may negatively influence the process of investigation (information misleading investigation).

Besides, in accordance with Ukrainian legislation the activities of the SIZOs' personnel should be aimed at securing secrecy of investigation. The communicating and visiting accused and suspects are allowed only upon permission of the official or state body investigating the criminal case.

As for the issue of participation of the prisoners in economic activities of the prisons, the special social and psychological service was created for social rehabilitation and adaptation of the inmates.

Total amount of social and psychological service personnel exceeds 2000 persons, all prisons and confinement establishments have special psychological treatment and emotional relaxation centres.

Concerning penitentiary establishments staff training

Having been withdrawn from subordination of MIA the Department created the Chernigiv Law School for training of personnel involved in activities of penitentiary establishments system with the purpose of qualitative recruitment and training of staff. Besides, there is Dneprodzerzinsk junior staff training school, where the persons accepted to service in penitentiary system of Ukraine are trained. The Department is going to open a new specialised school in Bila Tserkva.

The Resolution of the Cabinet of Ministers of Ukraine defined the total number of the Department headquarters staff as well as the order of transferring functions of security and guarding penitentiary establishments from authority of internal troops to the Department, which is already completed.

The Council of Europe in co-operation with Department implements the project "Recruitment and training of staff" aimed at assistance in elaboration of general, purposeful personnel recruitment policy, co-operation in the field of professional training of qualitatively new core staff, taking into consideration the experience of the European countries.

Concerning disciplinary penalties on prisoners

According to the law of Ukraine "On Pre-trial Imprisonment" and Criminal Procedure Code of Ukraine disciplinary penalties are imposed on prisoners individually (taking into consideration gravity of the offence, guiltiness of the person), there are a number of encouragement's for this category persons. The penalties have been imposed, the relevant person has the right to authorities higher than prison administration decision, to the Prosecutor which control the activities of penitentiary system establishments of Ukraine.

Concerning Kharkov SIZO inspection and recommendations on this issue

Follow up the recommendations of the CPT experts, the Department has been carrying out constant control of activities of administration of Kharkov SIZO in order to bring conditions of detention, involving of prisoners into economic activities, conditions of providing prisoners with communal services in line with CPT's recommendations. The proper measures have been taken in order to ensure appropriate lighting of cells, to improve sanitary conditions, the special attention being attached to work of laundry and supplying prisoners with detergents. Each inmate is provided with individual bedding.

The Head of SIZO is personally responsible for work on implementation of the CPT's recommendations, the deficiencies in work being pointed at defined, all possible measures on improving the situation were taken by the SIZO's administration. In order to eliminate the drawbacks disclosed, a new building providing 270 additional places has been built, the capital reconstruction of cells has been accomplished, which was noted by CPT members during their visit in July, 1999. This work is in process.

Concerning health care services and nourishment of the prisoners

Taking into account limited financing capabilities of the penitentiary system, Department, with the support of Government takes measures on providing all prisoners with food and health-care services.

With the purpose of economy of the budgetary funds and taking into account differences between prices for meal and medicine in the regions of Ukraine, the Department organises centralised acquisition and supply of food products and medicine.

The practice of daily inspections of the places of imprisonment by the medical personnel has been introduced in order to ensure timely disease monitoring and providing the sentenced with necessary medical services.

Should medical examination of new arrivals show that such persons have insufficient weight, SIZO's administrations are to provide them with additional meals.

The work on timely transfer of the documents of seriously ill inmates to the courts and exempting them from further implementation of sentence, supporting and providing medical treatment of AIDS infected prisoners is activated.

During last 9 months 1999, 36 thousand diseased inmates received medical assistance at the prison hospitals.

The Department has worked out and submitted to the Government of Ukraine the draft Resolution, agreed with the interested ministries and departments of Ukraine, which will allow to improve conditions of confinement, level of compliance with the requirements of legislation as well as to preserve legal order within the system of penitentiary establishments.

The reorganisation of the medical service of the Ukrainian penitentiary system is underway. The situation with medical treatment and assistance in the penitentiary establishments is under constant control by the Department.

Leisure and occupation of SIZO's inmates

All the persons held in cells participate in general conversations on law, moral and ethic aspects of social life, natural sciences, religion and other subjects. The arrested and sentenced persons are given table games (chess, checkers, dominoes etc.), newspapers and fiction from the SIZO's library, it is now allowed to receive TV from relatives. Radio broadcasting is carried out through the radio units located in cells, the personnel of SIZOs organises broadcastings which touch upon legal, political and other issues.

Juvenile delinquents have opportunity, at least once a week, to watch educational and other movies in the rooms, specially equipped for that purpose, and visit lessons. All arrested and sentenced persons have daily walk, possibility to play sports games and to do exercises in the open air being ensured. Convicted, sentences of which have not come into force, may be involved in the work at the industrial workshops, with their personal consent and permission of the state bodies concerned. Besides, juveniles are involved into the work on manufacturing cardboard and paper products, radio details etc.

Convicted persons involved in economic services and provision of amenities of SIZOs, are constantly involved into the educational programs (delivering of lectures, discussions, watching TV programmes and films, reading newspapers, fiction, general education programmes, sports games and competitions, amateur art performances). With educational purposes SIZO's administrations organise meetings of prisoners with priests, representatives of public organisations.

Overcrowding of prisons

The fast growing of number of prisoners extremely complicated problems of their allocation, financing, improvement of material conditions, food supplying, delivering of medical services and involvement in economic life.

Since 1991 the number of prisoners has increased almost twice and on October 1, 1999 181 establishments kept 218,4 thousands persons despite of amnesty.

The present material conditions of the penitentiary establishments does not meet modern requirements, and their improvement fails to correspond increasing of the number of prisoners. In order to settle the issue of overcrowding, the Government of Ukraine adopted the Resolution № 31 of 1994 stipulating to build nine new SIZOs, to increase the number of allocating places by reconstructing existing establishments, but for lack of financing these measures have not been carried out completely.

12 minimum-security colonies (for 9 thousands prisoners), 2260 places for tuberculosis infected prisoners and 5,6 thousand places at SIZOs were opened during last five years. It was made due to the reconstruction of existing and building new prison buildings, reconstruction of treatment and labour detention centres, foundation of new colonies on the basis of former agricultural farms.

Besides, according to the Resolution of Verkhovna Rada of Ukraine of April 5, 1993, 66 temporary SIZOs were opened in territories of minimum-security colonies with capacity of 4,8 thousand places totally for prisoners sentences of which have not come into force with the purpose of increasing of SIZOs' detention capacity.

Taking into account that the construction requires expenses of large sums, the Department chose a more perspective way of active using of the opportunities provided by the legislation, namely, releasing prisoners prior to the date of expiry of the imprisonment terms as well as shortening the terms of imprisonment. During the last year and 11 months 1999, 27.5 thousands persons were released.

The Department also annually initiates adoption of the laws about on. That practice allowed to release 55.2 thousands persons within last two years.

According to the Concept of legal and judicial systems reform of Ukraine and recommendations of the Council of Europe, Ukraine carries out step-by-step purposeful work concerning adoption of new legislation. The adoption of new Constitution of Ukraine on 28 June 1996 was the first step in this direction. The draft new Criminal, Criminal Procedure, and other codes were elaborated. The principles provided by the Council of Europe Committee of Ministers Recommendation R (80) II of Committee of the Ministers of Council of Europe were taken into account.

The Article 13 Chapter XV of the Constitution of Ukraine stipulates, that during five years from the moment of the adoption of the Constitution (therefore, until June 26, 2001) the existing procedures of arrest, taking into custody and detainment of the persons suspected in committing a crime, house and personal search of suspected will remain valid.

As regards the issue of complaints concerning mistreatment conducted by personnel of the penitentiary establishments, during 1997-1998 the Department received 184 complaints and only 5 of them were confirmed as true. One guilty person retired, 4 guilty persons were brought to disciplinary responsibility.

In particular concerning paragraphs of the Report

To paragraph 111, 129

In order to resolve the problem of SIZOs overcrowding, the Department took a number of measures. In particular, the attention of the procurators of all levels was drawn to the necessity of applying more moderate preventive measures than arrest, compliance of activities of the pre-trial investigation bodies and courts in the sphere of conducting investigation and hearing of the cases to the criminal procedural legislation of Ukraine is taken under strict control by the Department.

To paragraph 112

The minimum standard of living space per person established by the legislation constitutes 2 m. sq. per person for prisons and 2,5 m. sq. per person for SIZOs.

The draft new Criminal Procedure Code of Ukraine stipulates new standards of living space. Unfortunately, due to overcrowding of the penitentiary establishments, the standards of living space at the present moment can not be reconsidered.

Presently the Department has no possibilities to provide living space 4 m. sq. per person and to take out of service cells measuring less than 6 m. sq., as CPT recommends, due to absence of vacant places and lack of budgetary financing.

To paragraph 113

According to the Law of Ukraine "On Pre-trial Imprisonment" persons taken into custody may be involved in the work only in the territory of the establishment of detention upon their consent and permission of investigator or official conducting pre-trial investigation or sanction of the court considering the case. The SIZO administrations take measures aimed at broadening involvement of the inmates in production activities and increasing of the assortment of the manufactured products.

To paragraph 116

The practice binding the inmates to face the wall when the prison personnel or visitors pass them has been revoked.

To paragraph 114

The results of the internal investigation of the incident, mentioned in the CPT's report, with Mr..... (*) sentenced to death, who, during visiting his cell by the representatives of the prison administration, was extremely violent, refused to leave the cell, threatened to commit a suicide, show that such preventive measure was applied legally. Mr. (*) also confirmed the legality of application of the handcuffs on March 4, 1999 in the written form.

3. SIZO N 313/203 in Kharkiv**To paragraph 130**

There is the problem of providing the prisoners with detergents necessary for maintain due hygienic conditions in cells because of the lack of financing. Currently as well as at the moment of visiting the establishment by CPT's delegation (March 1999) supplying inmates with detergents equals 50% of the required volume.

The inmates have the right to receive products of personal hygiene from relatives or friends and to buy them in SIZO shops. This issue is under constant control of the Department, missing financial resources being procured.

Taking into account the CPT's recommendations the following measures were taken in Kharkiv SIZO:

- The capital reconstruction was made in 15 cells of buildings №№ 1, 2, 5, power supply system having been replaced there, the ceilings in 2 cells of the building N 1 were repaired;

(*) In accordance with Article 11, paragraph 3, of the Convention, the name of the prisoner has been deleted.

- The blinds covering cell windows were removed in 95 cells of the buildings №№ 1, 2, 5 (buildings № 3, 4, 6 are not equipped with blinds) in order to improve the access of natural light to cells and corridors;
- The blinds covering the cell windows in cells for sentenced to death penalty were removed;
- Washbasins and toilets of cells in building №№ 1, 2, 5 are covered with tile, the replacement of water supply and sewer system was also made;
- The supplementary sewer system by length of 80 m. was installed in the building № 1;
- in order to improve the sanitary situation in cells and corridors of buildings №№ 1, 2, 4, 5, 6 the area of 1119 sq. m. was covered with tile;
- the capital repairing of ventilation system in cells of the building № 1 has been completed, two ventilators and, partially, one ventilation hood being replaced;
- buildings №№ 2 and 6 was additionally equipped with 6 cells providing 65 sleeping places, thus every prisoner has own sleeping place.
- in-cell toilets were partitioned.

The reconstruction of 12 exercise yards for prisoners sentenced to death as well as 51 exercise yards in buildings №№ 1, 2, 5, 6 were repaired equipped with roofs. The order of walks of inmates was changed in order to avoid overcrowding in the yards.

With the purpose of providing the inmates with sleeping the places former regional hospital for detention of female inmates was reconstructed (providing 330 additional sleeping places).

As for the juvenile delinquents, exercise yards in every SIZO is equipped with sports stock for physical their physical development. At the same time, for the purpose of harmonic development of the juveniles the specialised rooms for relaxation, physical exercises were created in the building № 5, the SIZO administration bought a personal computer for the juveniles.

To paragraph 132

To improve natural lighting of all cells the blinds covering the cell windows were removed. Besides the electric illumination was improved by removing of bulb protecting metal plates, the bulbs being replaced by more powerful bulbs.

As mentioned above, there is the problem of providing the prisoners with detergents necessary to maintain, according to the established standards, due hygienic conditions in cells because of the lack of financing of the system. According to the Temporary Regulations on the Order of Detention of the Inmates Sentenced to the Capital Punishment in the SIZOs Subordinated to the State Department of Ukraine for Execution of Punishments this category of inmates is guaranteed the right to acquire detergents at the SIZO shops without cash transfer or to receive them in parcels or packages. This problem is under constant control and the Department seeks for the ways of solving such situation.

The temperature mode in cells corresponds requirements of the legislation.

The measures on ensuring all inmates of the mentioned category with bedding have been carried out.

To paragraph 136

The Temporary Regulations on the Order of Detention of the Inmates Sentenced to the Capital Punishment in the SIZOs Subordinated to the State Department of Ukraine for Execution of Punishments has been amended in order to ensure that inmates of this category have connections with outer world. E.g. they are guaranteed the following rights:

- to be visited once a month by relatives upon permission of the head of regional division of the Department (term of the visit is 2 hours). The representative of the administration should be present during the visit;
- to be visited by a lawyer in order to get legal assistance;
- to be visited by a priest;
- to receive and to send correspondence without limitation;
- to apply to state bodies, regional administrations, associations of the citizens, establishments, organisations, enterprises, mass media, to the officials on the issues within their authority according to the legislation on application of the citizens.

To paragraph 135, 137

Taking into account the principles of humanisation and recognising human life as the highest value, with the purpose of defining the legal status of persons sentenced to death, regarding which the sentences came into force, pending adoption of the relevant legislation, the Department worked out and on May 25, 1999 adopted the Temporary Regulations on the Order of Detention of the Inmates Sentenced to the Capital Punishment in the SIZOs Subordinated to the State Department of Ukraine for Execution of Punishments, which defines the detention conditions and legal status of death-sentenced persons. The copy of this document was sent to the Council of Europe.

The Department also elaborated draft Law of Ukraine "On amendments to the Reformatory Code of Ukraine", which is now on consideration of the Verkhovna Rada of Ukraine, with the purpose of legislative settlement and bringing the conditions of detention of the inmates of this category in line with international standards, further development of the process of humanisation of the penalty execution regime, improvement of material conditions and providing medical services to persons sentenced to death.

To paragraph 139

With the purpose of informing of the inmates sentenced to the capital punishment concerning their rights and legal status the extracts from the mentioned Temporary Regulations were placed on the walls in each cell, where the persons sentenced to capital punishment are held.

Upon request of the persons belonging to the mentioned category of inmates the administrations give out legal literature, codes and commentaries to them, including European Convention on human rights, available in every SIZO.

For the purpose of providing the persons sentenced to capital punishment with appropriate legal assistance in accordance with the mentioned Temporary Regulations this category of prisoners is guaranteed the right to be visited by lawyer in compliance with the order stipulated by legislation.

To paragraph 140

The Department having been created, an independent medical service called the Division for Medical, Sanitary and Epidemiological Treatment of the Special Contingent (inmates) was organised within its structure.

To paragraph 141

The Ministry of Healthcare of Ukraine participates in organisation and control of sanitary and anti-epidemic measures. Diagnostics and medical treatment of inmates are carried out in strict compliance with orders and recommendations of the Ministry of Healthcare of Ukraine.

To paragraph 142

The representatives of the Ministry of Healthcare have the free access to all penitentiary establishments and give the necessary consulting and medical assistance.

The training of the medical staff and examination of their professional level is conducted on the basis of educational institutions of the Ministry of Healthcare.

To paragraph 143

The comprehensive insurance of prisoners will be introduced simultaneously with introduction of such insurance for the population of Ukraine.

To paragraph 144

The medical staff of Kharkov SIZO consists of 9 doctors, 6 medical assistants, 8 nurses, 1 operator of X-ray machine, 2 hospital attendants, 2 persons in charge with disinfecting, 1 provisor.

To paragraph 145, 147

The medical staff of penitentiary establishments provides the minimal level of qualified medical assistance.

The quantity of the medical staff of penitentiary establishments of Ukraine is under constant control of the Department.

To paragraph 146

Absence of financing does not allow to enlarge medical staff and to buy new medical equipment.

To paragraph 148

Ensuring the deliverance of medicines depends on finance of the system. Taking into account a major problem connected with tuberculosis, the Department carries out centralised deliverance of the drugs against tuberculosis.

To paragraph 149

The medical examination of newly arrived inmates is conducted steadily in accordance with the Ukrainian legislation.

To paragraph 150

The order of medical examination is regulated by internal orders and recommendations, agreed with the Ministry of Healthcare and guarantees sufficient volume of medical assistance. The measures on proposals concerning running AIDS tests are carried out not only in respect of so called “risk groups” but also applied to the other newly arrived inmates on the voluntary basis.

To paragraph 151

Provided the inmates get injured or wounded, the personnel of the establishment is to conduct internal investigation, the relevant information is put down into the medical files and appropriate medical assistance is provided. Injured persons may submit relevant application.

To paragraph 152

The personnel of the penitentiary establishments are sufficiently qualified to guarantee adequate treatment and prophylactic of tuberculosis.

To paragraph 153

The medical service of the Department is working out the Program of Fighting Tuberculosis which being based on modern methods of control and treatment of the disease. According to the WHO recommendations, the Program will stipulate introduction of application of Nelson reaction and DOTS therapy for diagnostics of tuberculosis.

To paragraph 154, 155

The main task of tuberculosis treatment in the penitentiary system is revealing and treatment of the persons with infectious forms of the disease. Researching and epidemiological monitoring in such cases are carried out by researching sputum and clinical researches, with X-ray diagnostics. Presently, the measures on introduction of the DOTS therapy application provided by the anti-tuberculosis program are being carried out.

To paragraph 156

- Modern methods of tuberculosis diagnostic will be provided after adoption of the mentioned Department Program.

- On adoption of the mentioned Program, carrying out of extraordinary prophylactic measures and treatment are planed, in accordance with WHO and ICRC instructions.

- Appropriate conditions of hygiene and ventilation are being changed in Kharkiv SIZO. Revealing of tuberculosis infected inmates depends on elimination of bacilli.

- The effective control of reception of medicines from tuberculosis has been introduced.

- There is internal medical system of control of activities on ensuring protection of the inmates' health acting within the penitentiary system.

- The medical service of the Department carries out general management and control of measures on protection of inmates' health.

- The personal of the Ministry of Healthcare have free access to the penitentiary establishments and if the necessity arises they provide consultative and practical assistance.

5. Other issues of relevance, to the CPT's mandate

- All prisons of Ukraine have special system of staff training that envisages development of the communication relations and positive attitude to the inmates. In case of necessity the relevant experts are involved in training;

- The rules of detention of the inmates in disciplinary cells are provided by the Reformatory Code of Ukraine.

- The Reformatory Code of Ukraine and the Law of Ukraine "On Pre-trial Imprisonment" provide for the procedure of visiting and meeting inmates.

- The list of bodies, to which the inmates can apply confidentially, is provided by the Reformatory Code of Ukraine.

- Inmates have the right to appeal to the higher authorities concerning application to them of the disciplinary penalties in accordance with procedure provided by legislation.

To paragraph 163

With the purpose of providing all prisoners with the mattresses, pillows and blankets, relevant amendments were made to the internal normative acts.

To paragraph 164

The relevant changes were made to the Instruction on providing the inmates put into punishment cells with every day walk (from now on the juveniles may have two hour walks and the others - an hour walk) the changes also concerned the issue of ensuring their right to receive books, newspapers and magazines.

Increasing of the area of the punishment cells in the available building does not appear possible at the moment through overcrowding of SIZO and spare unavailability of the spare areas. One additional source of artificial lightning was mounted in the punishment cells for improving of inner illumination.

While projecting and building new SIZOs the requirements on improvement of natural illumination will be taken into account.

To paragraph 168

According to Article 12 of the Law of Ukraine "On Pre-trial Imprisonment" persons taken into the custody may be allowed by the prison administration to be visited, usually once a month, by relatives and friends, the written permission being issued by the investigator, other official conducting pre-trial investigation or by the court hearing the case. The term of the visit is two hours.

The persons taken into custody may be in correspondence with other citizens, enterprises, institutions, organisations, written permission of the official or body conducting investigation of the relevant case. Should the final decision of the court on the case come into force, the correspondence is conducted without limitations.

According to Article 39 of Reformatory Code of Ukraine convicted persons have the right to have short term visits for 4 hours and long-term up to 3 days of duration.

According to Article 40 of the mentioned Code in order to get legal assistance the convicted persons, upon their or their relatives' written application or written application by representatives of public, have the right to meet their lawyer. Upon request of convicted or his lawyer their meetings in penitentiary establishments are conducted tête-à-tête. Meetings with lawyer are not referred to the meetings and visits, stipulated by the mentioned Article 39 of the Code, the quantity and duration of the meetings with the lawyer are not limited.

The correspondence between prisoners not being relatives is forbidden.

Further to the issue of privacy of correspondence of the inmates, the correspondence addressed to procurator or to the Authorised Person of the Verkhovna Rada of Ukraine on Human Rights (Ombudsman) is not checked through. The President of CPT will be included into this list in the nearest future.

To paragraph 174

In building N 2 of Kharkiv SIZO two waiting cubicles are withdrawn from service.

To paragraph 169

The new premises for reception of parcels and visiting have been brought into service, where there are 12 meeting rooms instead of 8, excluding 4 rooms for short-term meetings with inmates involved into economic activities and juveniles. The meetings with persons taken into custody are not to be held in separate rooms.

To paragraph 173

The quantity of admission units is increased to 13. The order of holding inmates there was changed.

To paragraph 163

The Article 13 of the Law of Ukraine "On Pre-trial Imprisonment" and the Article 44 of the Reformatory Code of Ukraine establishes, that persons taken into custody and convicted persons have the right to complain and submit applications to the state bodies, public organisations and officials, on the issues, among other things, concerning disciplinary punishments.

To paragraph 165

The Article 15 of the Law of Ukraine "On Pre-trial Imprisonment" establishes that the persons taken into custody constantly violating rules of regime, in accordance with the motivated decision of the head of the pre-trial penitentiary establishment, can be placed into the disciplinary punishment cell for the term up to ten days (juveniles - for the term up to 5 days). The punished inmates are informed of the orders and decisions on imposing of the disciplinary punishment by the head of the establishment or the official on duty, the relevant written notice being signed by the inmate.

When imposing punishment all circumstances thereof as well as inmate's behaviour prior to violation taking place are taken into account. The explanations of the person found guilty in the violation are to be presented in writing, if necessary, the relevant internal investigation is to be carried out.

Penalties imposed on the inmates should correspond with gravity and character of their guilt. Application of the measures deliberately causing physical or moral sufferings to such persons or degrading treatment are outlawed.

According to the Article 8 of the Law, in exclusive cases, with the purpose to secure the secrecy of investigation, to protect arrested persons from attempts on their life, to prevent committing a new crime or if there is any medical basis thereto, upon motivated decision of the official or institution conducting investigation, or the decision of the head of the establishment, being approved by the procurator, the inmates may be put into solitary cells.

In all cases of translation on the solitary contents, the inmates can state the sights and to complain in a higher body or procurator.

To paragraph 172

(The request falls within the competence of the prosecutor's office, the materials are attached hereto).

The work at the Kharkiv SIZO on recovering violations of the detention conditions revealed and follow up the recommendations of CPT delegation proposed during visit to the Kharkiv SIZO is in progress and under the control of the Department.

C. Establishments subordinated to the Security Service of Ukraine (SSU)

The paragraph 178 of the CPT's report recommends to improve access of natural light to the cells and to find possibilities of partitioning toilets in the cells. The buildings of SSU SIZO were projected in 1978-1979. The windows of the cells face SIZO's inner yard, the metal window blinds obscuring the windows were installed in order to prevent prisoners from watching other inmates while the latter are moving by, arriving and leaving SIZO. Thus, removing of external metal blinds will allow the persons under investigation to receive information about other inmates, which may negatively affect investigation of the criminal cases.

The administration of SIZO of the Security Service of Ukraine is considering reconstruction of the toilets in cells, which is planned to be done at the nearest time during repairing of the SIZO building, that will allow to comply with all moral and ethical norms and standards concerning persons under investigation.

The CPT recommends to enlarge exercise yards. 8 exercise yards are located on the fifth floor. Each of them is of 13 sq. m.; these measurements comply with legislation of Ukraine. Any reconstruction of the yards may damage the building.

The medical examination of the inmates is conducted at their arrival, and at their request, the medical examination is provided by the city medical experts. In the case of emergency, persons under investigation are immediately transferred to the medical establishments of the Ministry of Healthcare of Ukraine.

Should an inmate or his lawyer submit a request on necessity of medical examination, the urgent measures on meeting such request are taken. The results of the medical examination are put into personal files and sent by the investigating bodies to the procurator's office, lawyer, the person under investigation who running the examination is also informed of its results.

Paragraph 184 of the CPT Report concerns punishment cell and so-called "mild" cell. Existence of such cells is provided by the Law of Ukraine "On Pre-trial Imprisonment", their metric area and equipment correspond established norms and standards. The inmates placed in punishment cells are provided with mattress, blankets and other bedding, the meals are provided according to the set standards for all persons under investigation and convicted, they are guaranteed outdoor exercises. It is necessary to note, that during existence of the SSU SIZO, no inmate have been ever placed into the punishment cell or "mild" cell, that is why the relevant files are unavailable.

The contact with the outside world of the persons under investigation is provided by the Law, and that of the convicted persons is stipulated by the Reformatory Code of Ukraine. The persons kept in SIZO of the Security Service of Ukraine are guaranteed the possibility to be visited by relatives and friends usually once a month. The duration of the visit varies from one till two hours as provided by the Article 12 of the Law of Ukraine "On Pre-trial Imprisonment", besides they have the right to correspondence with the relatives and other citizens as well as with enterprises, establishments, organisations upon permission of the official or institution investigating the criminal case. After the verdict delivered by the court enters into force the correspondence is conducted without restrictions (the Article 13 of the Law of Ukraine "On Pre-trial Imprisonment").

Regarding the paragraph 188, which concerns cells of the area of 0.68-1 sq.m. in the SSU SIZO, the mentioned rooms are not used as cells but as waiting cubicles for short-term (no longer than half an hour) placing of the inmates while the other inmates are being escorted along the corridor.

The CPT examined special lorry for transportation of inmates, that belongs to division of internal forces of MIA of Ukraine. The SIZOs of the Security Service are using new automobiles for transportation of the inmates (based on automobile "GAZEL"), that comply with all relevant standards.

The CPT also recommends reviewing the rules of visiting the inmates. The issue is now regulated by the Law of Ukraine "On Pre-trial Imprisonment" and the Reformatory Code of Ukraine. Should the mentioned legislation be revised, the administration of SIZOs of SSU will strictly comply with the relevant amendments.

D. Establishments subordinated to the State Committee for Protection of the State Frontiers of Ukraine

The frontier forces of Ukraine according to Article 7 of the Law of Ukraine “On Frontier Forces of Ukraine” may carry out administrative arrest of the persons, who have violated the state frontier regime of Ukraine or regime of crossing frontiers through passing posts for the term up to 3 hours for writing protocol on violation. If it is necessary to identify the person of the offender and clarifying the circumstances of the violation the offender may be detained for 3 days, the written notice being sent to the procurator within 24 hours after the moment of detention, or, in case the detained persons have no documents identifying person, for up to 10 days, the procurator’s order having been issued. The officers of frontier forces may search the detained persons and, should the necessity arise, confiscate the subjects the mentioned persons carrying.

Besides, the frontier forces may detain citizens of Ukraine, foreigners, stateless persons having illegally crossed the state frontiers of Ukraine for the above-mentioned terms, provided there are no grounds to institute criminal proceedings against them. If the decision on transfer of such persons to the authorities of the neighbouring state has been made, these persons are detained for the time necessary for transfer, the relevant order having been issued by a procurator. The official guarding of the detained persons is carried out according to the Order of the Head of State Committee for Protection of State Frontiers of Ukraine № 176 of 12 April 1996 approving the Instruction on Treatment and Guarding of Detained Persons by the Frontier Forces of Ukraine. The Order of Head of State Committee for Protection of the State Frontiers of Ukraine was registered by the Ministry of Justice on 14 June 1996, N 300/1325.

According to the mentioned Order, internal and external posts, referred to the guard of the unit, or duty detail, instructed to guard the persons detained kept in special facilities. The number of the guard or detail depends on the number and order of placement of the detained persons. Foreigners, taken into custody may meet representatives of their embassies and consulates, subject to the consent of the Ministry of Foreign Affairs of Ukraine and written sanction of the body investigating the case.

The person taken into custody enjoys, from the moment the protocol on detention is announced, the right to meet a lawyer tête-à-tête without restrictions regarding duration and number of the meetings within the time free from investigation proceedings.

The arrested persons are provided with books, newspapers, magazines and other literature from library. The literature is given after wake up and taken back before retreat. The foreigners, whenever possible, are given editions in foreign languages, printed in Ukraine.

The nourishment of the persons taken into custody by the frontier troops is conducted at the expense of the State Committee for Protection of the State Frontiers of Ukraine. The persons taken into custody are provided with hot food three times a day in accordance with the set standards. The intervals between breakfast, dinner and supper do not exceed 6 hours.

The State Committee for Protection of the State Frontiers of Ukraine is not taking decisions on granting refuge to the foreigners. At the same time, in accordance with the Law of Ukraine “On refugees”, the State Committee for Protection of the State Frontiers of Ukraine, the frontier forces are to prevent illegal crossing of the border of Ukraine, to arrest persons having illegally crossed the border and to organise consideration of applications on granting the refugee status.

E. Establishments subordinated to the Ministry of Healthcare of Ukraine

The drafts laws, mentioned in the CPT report "On the Psychiatric Assistance" (considered by Verkhovna Rada in the first reading) and "On Ratification of the Convention on Transfer of the Mentally Ill Persons, Subjected to Forced Treatment, to Other CIS States" are being considered by Verkhovna Rada of Ukraine.

The CPT raised the questions regarding isolation, forced treatment and hospitalisation of the mentally ill persons.

The measures of the physical treatment and isolation of psychiatric patients while providing psychiatric assistance to them are conducted under supervision of the medical expert or medical worker authorised to that, and are applied only in cases, when other measures are inappropriate for preventing their actions, which threaten health of the person himself or other persons. The information about reasons, forms and time of application of psychiatric treatment and isolation measures is put down to the relevant medical documentation.

The persons involved in application of the measures of the physical treatment and isolation are obliged to use safe means and condition of physical treatment and isolation.

Obligatory (forced) hospitalisation are applied under the decision of the psychiatrist (commission of the psychiatrists) in cases, when mentally ill person:

- 1) commits or outrightly demonstrates intention to commit actions, which are dangerous for his life or may result in vital consequences for his health;
- 2) commits or demonstrates intention to commit actions, which are dangerous for life of other persons or may result in vital consequences for their health;
- 3) can not independently (by himself) relieve natural needs to the extent necessary for maintenance of life.

The psychiatric patients transferred to the mental hospital, during the first 48 hours after arrival are to be examined by the commission of the psychiatrists that defines necessity of forced hospitalisation and further treatment or groundlessness of hospitalisation and releasing of the person.

After adoption of the Law of Ukraine "On the Psychiatric Assistance" the forced hospitalisation will be carried out in accordance of a court's decision, the relevant conclusion of a psychiatrist (commission of the psychiatrists) being attached thereto.

Prior to delivering the relevant court's decision on retaining of the mentally ill person in a mental hospital and providing him/her with forced medical assistance, mentally ill is to be kept in mental hospital. The conducting of the medical treatment of the person, except cases of necessity to take immediate medical measures concerning mental disorder will be is forbidden. Only courts will be competent to decide on application or lifting of the forced hospitalisation.

The persons, who suffer from mental disease, have all rights enjoyed by the citizens of Ukraine.

Mentally ill persons can protect their rights personally or through duly authorised representative. All mentally ill persons while undergoing psychiatric treatment, irrespective of its kind and order have the following rights:

- 1) to respectful and humane treatment, free from humiliation;
- 2) to receive all information about his rights during being subjected to psychiatric assistance;
- 3) to request for and to receive the psychiatric assistance of a guaranteed level;
- 4) to agree with or to refuse from the psychiatric assistance, except access of forced treatment;

5) to agree with or to refuse from application of various methods of diagnostics and treatment;

6) at any time to agree with or to refuse from being involved in scientific researches or educational process as an object;

7) to communicate with other persons;

8) to be visited in accordance with the rules of the mental hospital;

9) to send or receive any correspondence without the perusal and censorship;

10) to buy, to receive the subjects of personal hygiene for personal needs;

11) to use mass media, and to do art;

12) to leisure;

13) to religious rites;

14) to stay alone;

15) to running alternative psychiatric examination upon personal request agreed with relevant expert review;

16) to receive social insurance compensation under the Ukrainian legislation;

17) to appeal against the decisions and actions of the experts, which give the psychiatric assistance, in case of infringement or restriction of his rights:

18) to get assistance from a lawyer or legal representative, in compliance with the legislation of Ukraine.

The psychiatrist is obliged to give mentally ill person the information in appropriate for him/her form, taking into account his/her mental condition and to propose application of methods and means of treatment, to prevent possible by-effects of treatment, to inform about conditions and duration of the psychiatric treatment and possible restrictions of his/her rights.

The mentally ill person or his legal representative have the right to get acquainted with the history of illness (personal medical file) and other medical documents and to receive any decisions made within the process of treatment in a written form.

The access to the information is restricted by a decision of the commission of psychiatrists, should the access of a patient to some kind of information result threaten life and health of other persons.

The activities of psychiatric establishments, providing psychiatric assistance, is controlled by the local authorities and bodies of self-government within their competence.

The Ministry of Healthcare of Ukraine carries out state control of activities of the psychiatric establishments, irrespective of the form of property.

The supreme control of the state of observance of the legislation within the process of providing psychiatric treatment is carried out by the General Prosecutor's Office of Ukraine (the Prosecutor General and procurators subordinated to him).

The public control of observance of the rights and lawful interests of mentally ill persons within the process of providing them with psychiatric treatment is carried out by the associations of the citizens within their competence and according to the order stipulated by legislation on associations of citizens. The decisions and actions of the experts, medical workers, violating the rights and lawful interests of the mentally ill persons receiving psychiatric assistance, can be appealed against in court.

The representatives of CPT have visited the Ukrainian mental hospital of intensive (severe) treatment, and stated the remarks and proposals, which were given thorough consideration by the administration of the hospital.

The administration of the hospital has conducted the relevant work on compliance with these remarks and has presented additional information about the establishment.

The administration of the hospital undertook necessary steps in order to prevent brutal inhumane treatment of the psychiatric patients by the medical and technical personnel of the hospital. With this purpose the relevant meetings, instructing, thematic discussions with the medical workers, representatives of guard on the issues of peculiarities of mental diseases, communication with patients, measures to prevent violations during forced treatment are held on regular basis. In cases of revealing facts of brutal treatment of the patients the guilty persons are brought to responsibility.

During 1998 and 9 months of 1999 the hospital received 15 complaints from the relatives of the patients. All complaints were devoted to the issue of immediate transferring mentally ill persons to psychiatric hospital located in the places of permanent residence of the patients on the grounds that the present situation creates difficulties for relatives to visit the patients. In this context it is necessary to note, that all patients subjected to forced psychiatric treatment, who ran forced psychiatric treatment, each six months are examined by a commission of psychiatrists that examines their mental condition, decides on corrections in treatment, a degree of danger of the patients for society and possibilities of further treatment of the patients in psychiatric hospital located in the place of his/her permanent residence. Recently, there have been no complaints from mentally ill persons.

In Ukrainian mental hospital of intensive (severe) treatment the constant work on raising of the professional level of the medical personnel is done on the regular basis. With this purpose, the doctors and average medical staff twice within every five years are trained at the post-educational and professional training courses of the Dniepropetrovsk Medical Academy and the research and scientific institutions, which corresponds to the requirements to be met by the personnel of this category in Ukraine.

Each hospital department has its plan of special professional training of average and minor medical staff, the training is carried out by qualified doctors, the process of training is controlled by the administration of the departments. All new staff members run special training for further work in psychiatric hospital. During 1997-98 the hospital has been reconstructed, system of heating, sewer system have been substituted completely, new water-supplying system has been installed, the roof of the building have been also repaired. Now the chambers are warm, cold and hot water is supplied to chambers, that allows to maintain appropriate sanitary - hygienic conditions.

Walls and floor in chambers, toilets, canteens and manipulation cabinets have been reconstructed and tiled, new ventilation system has been installed. Floor, walls and beds for patients in each chamber of the hospital have been substituted. The new radio transmission network is installed, there are loudspeakers in each chamber and cabinet of the hospital, patients can listen to last news, musical and various thematic transfers. The new electrical system has been installed. The floor in corridors is covered with new linoleum. The additional chambers have been opened in the departments of the hospital as a result of using reserved resources. This let to transfer some patients to the new chambers and, thus, to reduce the number of patients in other chambers. The comfortable isolation chambers for isolation of the patients infected with infectious diseases have been created and equipped with water supplying and sewer systems. The exercise yard has been enlarged, a new toilet was constructed there.

As a result of these measures the conditions of treatment have considerably improved which positively affects the patients' health.

The works on repairing facades of the hospital, other constructions (such as laundries, bathrooms, canteens, administrative and technical buildings). The chambers of the hospital designed for approximately 10-12 patients, there are chambers for 3-4 persons and some for 18-20 patients.

The Centre for rehabilitation and psychological assistance was created and has been acting for several years in the hospital. The basic tasks of the Centre are to give psychological, social, and legal assistance to mentally ill persons. The personnel of the Centre gives all possible social assistance, for instance, in receiving pensions, advising on residential, family and other actual issues of mentally ill persons' life, wardship proceedings and control execution of the wardship obligations by the wards.

The mentally ill persons actively involved into the work of the departments of the hospital and in other hospital facilities (special medical workshops, building brigades, laundering, canteens. The mental health of the patients and their professional habits are taken into account. The working time of the patients is limited to 4-5 hours a day, after 1,5 hours of work they are to have 15-30 minutes walk, as it is provided by the working schedule of the workshops. Besides, the internal schedule of hospital stipulates walking for all patients, except those who run somatic treatment. If necessary, patients, including those on forced treatment, are given legal assistance. There is a legal adviser in the hospital.

The active work is done on involving patients in public life of the hospital, the evenings of art amateur performance, discussion on films and TV programs, sport competitions are organised, morning hygienic gymnastics, there are various groups of interests (chess, art, musical, botanical, Christian). The patients of the hospital freely use library, receive the newspapers, magazines, the telecasts look, listen to broadcasts. There is a shop in the territory of the hospital, where patients can buy products, meal, writing adaptation, and clothes.

Mental condition of the patients, particularly at the beginning of treatment at the hospital is unstable. Sometimes patients can be aggressive to another persons, emotionally excited, and make attempts to commit suicide. If general measures have no positive results the exceptional methods like detaining and binding the person in order to give medicines which can prevent for some time an aggravation of disease are applied. The doctor on duty is to put down the relative remarks about such cases to the medical files (history of illness) of the person and special journal.

The duration of binding usually does not exceed 30-40 minutes.

It is necessary to note that the psychiatric service in recent years has been positively reformed. The issues of the psychiatric assistance to the population, psychiatric expertise upon the courts' requests were considered at the internal meetings in the Ministry of Healthcare of Ukraine during 1999. The basic impetus to positive changes in the field of providing psychiatric assistance is expected to be given by the Law of Ukraine "On the Psychiatric Assistance".

The commentary of the Ministry of Justice on the issues concerning abolition of the death penalty (situation in 1998)

Presently there is no special legislation, which, in accordance with the Article 92 of the Constitution, regulates the procedure of execution of the death penalty. Thus, the issue of execution of the death penalty as the criminal punishment measure in Ukraine, and, accordingly, the issue of the legal status of the persons sentenced to the capital punishment, are not covered by Ukrainian legislation.

The de facto moratorium on execution of the death penalty was introduced. The Decree of the President of Ukraine No. 22 “On the Procedure of Pardoning Persons Sentenced by the Courts of Ukraine” has been acting starting from 1991. During 1997-1998 no application on pardoning of the persons sentenced to death was rejected by the President of Ukraine, despite of difficult social, economic, criminal situation in the country. During 1998-1999 the President of Ukraine has pardoned 25 persons sentenced to death in the previous years. On 12 December 1998 the President of Ukraine once again submitted to the newly elected Verkhovna Rada the issue of ratification of the Protocol No.6 to European Convention on Human Rights and Fundamental Freedoms as a matter of priority.

The Ministry of Justice of Ukraine elaborated and on 14 October 1998 submitted to the Cabinet of Ministers of Ukraine for consideration the draft Law of Ukraine "On Amendments and Additions to the Criminal Code of Ukraine Concerning Application of the Death Penalty".

The mentioned draft provides for new criminal punishment - life imprisonment as alternative to the death penalty. Besides, it is proposed to add a new norm to the Criminal Code of Ukraine, which should establish, that the death penalty is not applied in peacetime.

The mentioned draft law has been submitted to the Verkhovna Rada of Ukraine for consideration.

Article 55 of the Constitution of Ukraine establishes the right of the citizens to protect their rights in court, in particular:

“The Rights and freedoms of person and citizen are protected by court.

Each is guaranteed the right to appeal to a court against decisions, actions or inactivity of the state bodies, local self-government institutions and officials. Each has the right after using all national legal remedies to appeal to relevant international judicial institutions or relevant organs of the international organisations, to which Ukraine is a member or participant, for protection of his/her rights and freedoms”.

Paragraph 1 of the Article 44 of the Criminal Procedure Code of Ukraine establishes:

The convicted persons have the right to submit to the state bodies, public organisations to officials their proposals, applications and complaints. The proposals, applications and complaints of the convicted persons are sent to the addressees, in accordance with the Rules on Internal Order within Reformatory Establishments and considered according to legislation of Ukraine.

Convicted persons are informed by prison administration about results of the consideration of their proposals, applications and complaints.

The Article 9 of Law of Ukraine "On the Pre-trial Imprisonment” establishes the rights of the persons taken into custody. These rights include: the right to legal protection according to the criminal procedure legislation, the right to submit complaints, applications and letters to the state bodies and officials.