



CPT/Inf (2004) 34  
*Translation*

**Report to the Ukrainian Government  
on the visit to Ukraine  
carried out by the European Committee  
for the Prevention of Torture and Inhuman  
or Degrading Treatment or Punishment (CPT)**

**from 24 November to 6 December 2002**

The Ukrainian Government has agreed to the publication of this report and of its response. The Government's response is set out in document CPT/Inf (2004) 35.

Strasbourg, 1 December 2004

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**Copy of the letter transmitting the CPT's report**

Strasbourg, 31 July 2003

Dear Mr Ptashynskiy,

In pursuance of Article 10, paragraph 1, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, I have the honour to enclose herewith the report to the Government of Ukraine drawn up by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) following its visit to Ukraine from 24 November to 6 December 2002. The report was adopted by the CPT at its 51st meeting, held from 1 to 4 July 2003.

I would like to draw your attention in particular to paragraphs 61 and 207 of the report, in which the CPT requests the Ukrainian authorities to provide:

- **within one month** of receipt of this report, detailed information on the concrete measures taken (i) to allocate sufficient financial resources to the agencies responsible for foreign nationals detained under aliens legislation to meet the detained persons' basic needs, and (ii) to monitor closely the use made of these resources;
- **within one month**, confirmation that persons are no longer being held for prolonged periods in cells at the Headquarters of Military Unit 2142 in Mukachevo;
- **within six months**, a response setting out the action taken upon its visit report (the recommendations, comments and requests for information are listed in Appendix I to this report).

The CPT would ask, in the event of the responses being forwarded in Ukrainian, that it be accompanied by an English or French translation. It would be most helpful if the Ukrainian authorities could provide a copy of the response in electronic form.

I am at your entire disposal if you have any questions concerning either the CPT's report or the future procedure.

Finally, I would be grateful if you could acknowledge receipt of this letter.

Yours sincerely,

Silvia CASALE  
President of the European Committee for the Prevention of Torture and  
Inhuman or Degrading Treatment or Punishment

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## I. INTRODUCTION

### A. Dates of the visit and composition of the delegation

1. In pursuance of Article 7 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the Convention”), a delegation of the CPT carried out a visit to Ukraine from 24 November to 6 December 2002. The visit formed part of the Committee’s programme of periodic visits for 2002. It was the CPT’s fourth visit to Ukraine<sup>1</sup>.

2. The visit was carried out by the following members of the CPT:

- John OLDEN (Head of the Delegation)
- Adam ŁAPTAŚ
- Veronica PIMENOFF
- Ole Vedel RASMUSSEN
- Pierre SCHMIT
- Erik SVANIDZE.

and supported by the following members of the CPT’s Secretariat:

- Geneviève MAYER, Deputy Executive Secretary of the CPT
- Cyrille ORIZET.

They were assisted by:

- Friedemann PFÄFFLIN, Psychiatrist, University of Ulm, Germany (expert)
- Vadim KASTELLI (interpreter)
- Boris KOVALTCHOUK (interpreter)
- Vikentiy Sergeevish SHIMANSKIY (interpreter)

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<sup>1</sup> The reports concerning the three previous visits to Ukraine in 1998, 1999 and 2000 have been made public at the request of the Ukrainian government under the following references: CPT/Inf (2002) 19, CPT/Inf (2002) 21 and CPT/Inf (2002) 23. They have been published together with the Ukrainian authorities’ responses (documents CPT/Inf (2002) 20, CPT/Inf (2002) 22 and CPT/Inf (2002) 24).

- Larissa SYCH (interpreter)
- Oleksandr HULIDOV (interpreter)
- Yevhen KUZMIN (interpreter).

**B. Establishments visited**

3. The delegation visited the following places:

Militia establishments

- Ministry of Internal Affairs Central Directorate Holding Facility (ITT), Kyiv
- Ministry of Internal Affairs District Directorate Holding Facility (ITT) and Novoselytsky District Department of the Police, Novoselytsya, Chernivtsi Region
- Ministry of Internal Affairs Municipal Directorate Holding Facility (ITT), District Department of the Police and Centre for admission and distribution of minors, Zhytomyr
- Ministry of Internal Affairs Municipal Directorate Holding Facility (ITT), Vuchinetsky Subdistrict Ivano-Frankivsk City Department of the Police and Centre for the reception and allocation of vagrants, Ivano-Frankivsk
- Ministry of Internal Affairs Municipal Directorate Holding Facility (ITT), Kyivsky and Malinovsky District Departments of the Police, Odessa
- Ministry of Internal Affairs Municipal Directorate Holding Facility (ITT), Illichivsk, Odessa Region
- Ministry of Internal Affairs District Directorate Holding Facility (ITT) and Mukachivsky City Department of the Police, Mukachevo, Transcarpathian Region
- Ministry of Internal Affairs Municipal Directorate Holding Facility (ITT) and Uzhgorod City Department of the Police, Uzhgorod, Transcarpathian Region
- Ministry of Internal Affairs District Directorate Holding Facility (ITT) and District Department of the Police, Khust, Transcarpathian Region

Prisons

- Prison No. 8, Zhytomyr
- Pre-trial Prison (SIZO) No. 21, Odessa
- Colony No. 14, Odessa

Border guard establishments

- Checkpoint Temporary Detention Centre, Chop, Transcarpathian Region
- Temporary Detention Centre of Military Unit 2142 (including the Pavshino Centre for Men, the Mukachevo Detention Centre and the Mukachevo Centre for Women and Children), Mukachevo, Transcarpathian Region

Mental health establishments

- Chernivtsi Regional Clinical Psychiatric Hospital
- Neuropsychiatric Institution for Women in Pohonya, Ivano-Frankivsk Region

**C. Consultations held by the delegation**

4. The delegation held consultations with the national authorities and with representatives of international and non-governmental organisations active in areas of concern to the CPT. In addition, numerous meetings were held with local officials in charge of the places visited.

A list of the national authorities, other instances, international and non-governmental organisations with which the delegation held consultations is set out in Appendix II to this report.

**D. Cooperation between the CPT and the Ukrainian authorities**

5. The CPT's delegation held fruitful discussions with the national authorities, both at the beginning and at the end of the visit, and in particular with L. F. BYKOV, Deputy Director at the Cabinet of Ministers of Ukraine, V. A. LYOVOCHKIN and O. B. PTASHYNSKIY, respectively Director and First Deputy Director of the Department for the Execution of Sentences, V. I. VARENKO, Deputy State Secretary for Internal Affairs, A. P. KARTYSH, Deputy State Secretary for Health and O. G. MELNIK, First Deputy Director of the Committee for the Protection of National Borders of Ukraine. Equally fruitful discussions were held with V.V. KUDRYATSEV, Deputy Prosecutor General of Ukraine, and with N. KARPACHOVA, Ukrainian Parliamentary Commissioner for Human Rights.

The CPT particularly wishes to thank the representatives from the Department for the Execution of Sentences for the assistance they gave the delegation both before and during the visit.

6. The delegation received a satisfactory reception at - and rapid access to - all the establishments visited, including places which had not been notified in advance of the CPT's intention to carry out a visit.

7. That said, the delegation's activities were hampered by the failure on the part of the Ministry of Internal Affairs to provide, on time, a complete list of all places under its authority where persons are deprived of their liberty. The names of the establishments were communicated a few at a time during the course of the visit, at the delegation's insistence.

**Pursuant to Article 8, paragraph 2b of the Convention, the CPT insists that, in future, the Ukrainian authorities make sure that they provide, in good time, full information concerning all the places where people deprived of their liberty are being held.**

8. The CPT must further point out that it has serious reservations about the attitude of certain local police officials.

The delegation received indications that, in certain cases, detained persons had been transferred shortly before the delegation arrived, in order to prevent it from meeting them. This was the case at Uzhgorod ITT among others, where two detained persons had been transferred to Khust ITT. The detained persons stated that they had been hastily transferred because “inspectors were about to arrive”. In Odessa, detained persons met by the delegation, who had originally been taken into custody at Kyivsky district police station, stated that they had overheard, from their cell, militiamen discussing details of the delegation’s movements prior to its arrival at the station. During this time, certain detained persons were transferred to other police premises in the city.

Further, it was evident that the police had sought to mislead the delegation about the precise use made of custody cells in district police stations.

Moreover, many of those held in police stations were visibly afraid to talk to the delegation. The delegation gathered convincing evidence that staff had issued detained persons with verbal warnings not to talk to the delegation and that, after the delegation had left, Militia officers had arrived to question those interviewed by the delegation about what had been said in the discussions.

Action of this kind is not compatible with the principle of cooperation which governs the Convention.

**The CPT recommends that the Ukrainian authorities remind Militia senior officers and operational personnel of the obligations entered into by Ukraine under the Convention. It also recommends that they ensure that members of the Militia at all levels refrain unconditionally from intimidating detained persons before and after visits by CPT delegations.**

**E. Immediate observations under Article 8, paragraph 5, of the Convention**

9. At the end of the visit, the CPT's delegation made three immediate observations pursuant to Article 8, paragraph 5, of the Convention.

The first immediate observation concerned material conditions of detention in Ministry of Internal Affairs district police stations. In all the police stations visited, the delegation found that persons deprived of their liberty were being held for prolonged periods under intolerable conditions. They were kept in dark, insalubrious, overcrowded cells, with no ventilation; they had no means of resting and sleeping, or washing themselves. Moreover, the only food given to them was brought in by relatives. The CPT's delegation requested that the Ukrainian authorities take immediate steps to implement the recommendations which it had made in this respect in paragraphs 45 and 46 of its report on the 2000 visit, or to put an end to the practice of detaining persons in such facilities for prolonged periods.

In the second immediate observation, the CPT's delegation requested that the Ukrainian authorities allocate without delay sufficient financial resources to the agencies responsible for foreign nationals detained under aliens legislation to meet the detained persons' basic needs (sufficient food, adequate bedding and appropriate clothing), and monitor closely the use made of these resources.

In the third immediate observation, the delegation requested that the Ukrainian authorities cease to hold immigration detainees for prolonged periods in the three cells at the Headquarters of the Temporary Detention Centre of Military Unit 2142 at Mukachevo. The cells had no access to natural light and no ventilation; in addition, the detained persons had no access to outdoor exercise and no means of maintaining personal hygiene.

10. By letter of 15 April 2003, the Ukrainian authorities informed the CPT of the measures taken in response to these immediate observations. Those measures will be considered later in the report.

## II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

### A. Militia establishments

#### 1. Preliminary remarks

11. The legal framework governing deprivation of liberty by the Militia has already been described in previous CPT visit reports. The Militia, it will be recalled, can, on its own authority, hold a person suspected of a criminal offence for up to 72 hours.

However, by law of 21 July 2001, the Code of Criminal Procedure was brought into line with the Ukrainian Constitution. Now, within 72 hours of detention, the investigating bodies are required, if they wish to have a suspect remanded in custody, to bring the suspect before a judge (Articles 106 and 165-2 of the Code of Criminal Procedure). The judge can order that the suspect be remanded in custody for up to 15 days, and thereafter grant extensions for a maximum total period of 18 months<sup>2</sup>.

A person remanded in custody is in principle transferred to a pre-trial prison (SIZO). The person may nevertheless be detained in an ITT for a maximum period of up to 10 days if the transfer to the SIZO cannot be effected owing to the distance or the absence of appropriate means of communication.

12. In their reply to the report on the 2001 visit (document CPT/Inf (2002) 24), the Ukrainian authorities claimed that, thanks to the intervention of judges, overcrowding in police establishments had been substantially reduced. Unfortunately, the visit carried out at the end of 2002 demonstrated the contrary. With the sole exception of the Kyiv ITT, all the other establishments of this kind were overcrowded. It emerged that, in the various regions visited, the judges favoured an approach whereby suspects were remanded in custody, as was generally requested by the investigating bodies and prosecutors.

**The CPT recommends that the Ukrainian authorities raise the awareness of the investigating bodies and prosecutors/judges of the new legislation and encourage them to make extensive use of their power to apply non-custodial preventive measures to persons suspected of a criminal offence (cf. also paragraph 85 below).**

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<sup>2</sup> The purpose of this detention period is to allow the pre-trial investigation to be carried out. The duration of any subsequent detention on remand will depend on the court hearing the case.

13. Moreover, in 2002, in examining the relevant records, the CPT's delegation again found cases of remand prisoners being held in ITTs for considerably longer than the 10 days permitted (for example, up to 48 days at the ITT of the Ministry of Internal Affairs of the District Directorate of Khust).

In this respect, the CPT notes with interest the letter sent on 15 December 2002 by the Ukrainian Prosecutor General's Office to civil and military prosecutors, ordering them to comply strictly with the provisions of Article 155 of the Code of Criminal Procedure concerning the length of detention in ITTs. **It would like to receive information about the results obtained following these instructions.**

14. The CPT is also pleased to note that, following the delegation's meeting with representatives from the Prosecutor General's Office, instructions were likewise issued on the subject of returning remand prisoners placed in SIZOs to police custody for investigation purposes. Under a new procedure introduced in December 2002, whenever there is a request for a person to be returned to police custody, directors of the subdivisions in charge of investigations and SIZO directors are required to send the prosecutor supervising the investigation a detailed report stating the reasons for the transfer request.

This initiative meets the recommendation which the CPT reiterated in paragraph 27 of its report on the 2000 visit. **It very much hopes that this procedure will be formally incorporated into the new Code of Criminal Procedure to be adopted.**

15. Under Article 11 of the Law on the Militia, the police can detain persons suspected of vagrancy for up to 30 days, with the sole approval of the Prosecutor. **The CPT wishes to know what steps the Ukrainian authorities intend to take to bring this provision into line with Article 29 of the Constitution<sup>3</sup>.**

16. It also emerged during the visit that law enforcement agencies were using the provisions of the Code on Administrative Offences (Article 263) and Article 11 of the Law on the Militia to detain and interrogate persons outside the scope and time limit prescribed by the Code of Criminal Procedure.

The delegation came across many cases of detainees whose status had been converted from "administrative" to "criminal", on suspicion of committing a criminal offence totally different from that for which they had originally been arrested.

**The CPT recommends that the Ukrainian authorities take appropriate steps to eradicate this practice and to ensure that the detention and interrogation of persons suspected of a criminal offence are always effected in strict accordance with the provisions of the Code of Criminal Procedure.**

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<sup>3</sup> Article 29: "... No one shall be arrested or held in custody other than pursuant to a substantiated court decision and only on the grounds and in accordance with the procedure established by law. In the event of an urgent necessity to prevent or stop a crime, bodies authorised by law may hold a person in custody as a temporary preventive measure, the reasonable grounds for which shall be verified by a court within seventy-two hours. The detained person shall be released immediately, if he or she has not been provided, within seventy-two hours from the moment of detention, with a substantiated court decision in regard to the holding in custody ...".

## **2. Torture and other forms of ill-treatment**

17. The treatment of persons deprived of their liberty by members of the operational services of the Militia remains a source of grave concern for the CPT, four years after its first visit to Ukraine. Once again, widespread allegations of physical ill-treatment have been received, at the time of apprehension and in particular during questioning.

By contrast, the CPT's delegation heard no allegations of physical ill-treatment by custodial staff assigned to the ITTs visited.

18. There is no need here to set out the alleged forms of physical ill-treatment, as they are similar to those described in paragraph 18 of the report on the 2000 visit. As in the past, in many cases, the severity of the ill-treatment alleged was such that it could be considered as amounting to torture.

The delegation also heard allegations of psychological abuse. According to detained former Militia officers interviewed by the delegation, they were threatened with being placed together with other prisoners rather than separately, as well as being subjected to physical ill-treatment. A female detainee alleged that she had been threatened with the removal of her child and its placement in an orphanage, unless she signed a confession.

19. Most of the allegations of physical ill-treatment pre-dated the delegation's visit by several weeks or even months. Thus, any marks which might have been caused by the kinds of ill-treatment alleged would almost certainly have disappeared in the intervening period. The delegation did nevertheless gather a certain amount of medical data consistent with the allegations made. For example:

- one person interviewed alleged that some twelve days earlier, he had been severely punched and kicked in the face and on the head. On examination by a medical member of the delegation, the person displayed: a purple bruise under the right eye, non-tender to palpation, measuring approximately 2 cm long and 3 mm wide; a bruise under the left eye, non-tender to palpation and similar in colour and size to the previous one; a purple circular bruise measuring just under 1 cm in diameter, non-tender to palpation, on the left cheekbone; punctiform excoriations, in the process of healing, behind the left earlobe;

- another person interviewed alleged that, some twenty days earlier, he had been kicked and severely beaten with a truncheon on the head and other parts of the body by three operational police officers. On examination by a medical member of the delegation, the person displayed: seven parallel brownish lines a few millimetres broad and 4 to 8 cm long in the region of the left hemithorax at the 4<sup>th</sup>-8<sup>th</sup> rib, slightly tender to palpation; yellow, irregularly shaped bruises at the base of both hemithoraces, an oedema on the left upper lip;
  
- a third person remanded in custody alleged that, after being apprehended on 18 October 2002, he had been severely beaten by members of the Organised Crime Prevention Department in Odessa, using a hockey stick. Transferred to a district police station, the person was taken to one of the city's hospitals which issued a medical certificate on 21 October 2002, so that he could be admitted to an ITT. The medical certificate, which was included in the person's medical file at the SIZO, indicated that the person displayed a peri-orbital haematoma on the left side, a haematoma on the right side of the chest and a haematoma in the centre of the chest. An X-ray revealed broken ribs. He was examined on 21 and 22 October 2002 at the Forensic Medicine Institute of the Odessa Faculty of Medicine. The medical certificate describes in detail haematomas to the head, right and left shoulders, the left side of the chest and the right side of the buttocks. It was concluded that the injuries had been inflicted with a blunt instrument, probably on 21 October. The injuries were classified as "light bodily injury".

Notwithstanding these medical findings, the complaint filed with the Prosecutor by the person's mother was dismissed on 21 November 2002, with a sole comment to the effect that the allegations had not been confirmed.

20. In the light of the information at its disposal, the CPT can only reach the same conclusion as it had in 1998 and 2000, namely that persons deprived of their liberty by the Militia run a significant risk of being physically ill-treated at the time of their apprehension and/or while in the custody of the Militia (particularly when being questioned), and that on occasion resort may be had to severe ill-treatment/torture.

The 2002 visit showed that progress in implementing the recommendations made by the CPT in its previous report, aimed at introducing a strategy to prevent ill-treatment, has been slow. Having regard to Articles 3 and 10, paragraph 2 of the Convention, the time has come for the Ukrainian authorities to be much more energetic in combating the problem of ill-treatment by the Militia.

21. On 15 May 2001, the Collegium of the Ministry of Internal Affairs sent a message to all Militia personnel asking them to observe the law and the rights of detained persons and calling on executive staff, at all levels, to ensure that the Militia performed its tasks in an exemplary manner. This message is to be welcomed.

**The CPT recommends that this message be firmly reiterated at regular and appropriate intervals and that it be stressed in this message that abuse will not be tolerated and will be the subject of severe sanctions.**

22. It is axiomatic that one of the most effective means of preventing ill-treatment of persons deprived of their liberty lies in the diligent examination by the relevant authorities of all complaints of such treatment brought before them and, where appropriate, the imposition of a suitable penalty. This will have a very strong deterrent effect. Conversely, if the relevant authorities do not take effective action upon complaints referred to them, those minded to ill-treat persons deprived of their liberty will quickly come to believe that they can act with impunity.

23. In this respect, it must unfortunately be pointed out that, once again, the CPT's delegation heard allegations to the effect that prosecutors and judges paid little attention to complaints of ill-treatment - even when the person concerned displayed visible injuries.

In this context, the figures transmitted by the Ukrainian Prosecutor General's Office speak volumes. It seems that over the first 10 months of 2002, the Ukrainian prosecutors did not initiate any criminal proceedings against law enforcement officials under Articles 126 (assault and battery) and 127 (torture) of the Criminal Code.

**The CPT recommends that the Ukrainian Prosecutor General's Office issue directives to prosecutors that they adopt a significantly more proactive approach in the fight against ill-treatment. Every complaint of ill-treatment should be thoroughly examined. Moreover, action by prosecutors should not necessarily depend upon a formal complaint; they should take appropriate action in every case when it comes to their attention that a person may have sustained injuries while in the custody of law enforcement officials.**

**The CPT also wishes to receive all the details from the file on the third case described in paragraph 19 which led the prosecutor to dismiss the complaint.**

24. Since the coming into force of the amendments to the Code of Criminal Procedure, all persons in respect of whom the measure of remand in custody is requested must be physically brought before the judge who must order that measure. This is a most welcome development as it provides a timely opportunity for a person who has been ill-treated to lodge a complaint. Further, even in the absence of an express complaint, the fact of having the person brought before the judge enables the latter to take action in good time if there are other indications (for example, visible injuries; a person's general appearance or demeanour) that ill-treatment might have occurred.

**The CPT recommends that whenever criminal suspects brought before a judge allege ill-treatment by the Militia, the judge record the allegations in writing, order immediately a forensic medical examination and take the necessary steps to ensure that the allegations are properly investigated. Such an approach should be followed whether or not the person concerned bears visible external injuries. Further, even in the absence of an express allegation of ill-treatment, the judge should request a forensic medical examination whenever there are other grounds to believe that a person brought before him could have been the victim of ill-treatment.**

**It is also important that persons released from police custody without being brought before a judge have the right to request a forensic medical examination and certificate from a doctor with recognised forensic medical training.**

25. The CPT has stressed on many occasions that the best possible guarantee against ill-treatment is for its use to be unequivocally rejected by officers of the Militia themselves. The CPT notes that, since 2000, the Ministry of Internal Affairs has set up a new system for recruiting and training Militia personnel, based on western European experience of police training and the modern technologies used. From the information provided by the authorities, the CPT has not been able to form a clear idea of the length of this training, or the concrete measures taken to integrate human rights concepts into practical professional training for high-risk situations, such as the apprehension and interrogation of suspects. **It would like to receive details of these concrete measures.**

In addition, **the CPT would like to know whether serving Militia personnel are being given in-service professional training to ensure that they, too, benefit from the new training programmes.**

26. Finally, in the light of information gathered again during the 2002 visit, **the CPT recommends that the practice of refusing admission to an ITT detained persons with visible injuries and returning them to the district police station from whence they came, if the police are unable to provide a medical certificate recording the injuries, be as of now definitively discontinued.** The CPT understands the need in such cases to avoid ITT staff being held responsible for the injuries. However, this can be achieved by ensuring that detained persons are medically examined upon their arrival at the ITT (see paragraph 46 below).

### 3. Fundamental guarantees against ill-treatment

27. It should be recalled that the CPT attaches particular importance to three rights for persons deprived of their liberty by the Militia:

- the right of those concerned to inform a close relative or another third party of their choice of their situation;
- the right of access to a lawyer;
- the right of access to a doctor.

28. As regards the right of a detained person to inform a close relative or another third party that they are in custody, this right is currently enshrined in Article 106 of the Code of Criminal Procedure in the following terms: “the body of inquiry immediately informs one of the relatives of the detention of the person suspected of committing a crime”.

However, the delegation heard a significant number of allegations that, in practice, this right is not respected. Moreover, an examination of the detention record forms revealed that there is express provision for that right to be refused on a discretionary basis by law enforcement officials.

**The CPT recommends that measures be taken to ensure that the provisions of Article 106 of the Code of Criminal Procedure are strictly complied with in practice. It furthermore reiterates the recommendation made in paragraph 41 of its report on the 1998 visit that any possibility to exceptionally delay the exercise of this right be clearly circumscribed in law, made subject to appropriate safeguards (for example, any delay to be recorded in writing with the reasons therefor and to require the approval of a judge or a public prosecutor) and strictly limited in time.**

29. The question of access to a lawyer continues to be a source of concern for the CPT. Despite the assurances given by the Ukrainian authorities in their responses to the CPT’s reports, in practice many of the detained persons spoken to had not had access to a lawyer as from the very outset of their deprivation of liberty.

Furthermore, it emerged from interviews with Militia members and investigators that they had differing interpretations of the provisions of the Code of Criminal Procedure regarding exactly when access to a lawyer was allowed. Many believed that this right became effective only “prior to the first interrogation” (which may be at any time within 24 hours of the person being detained).

It has to be said that the provisions of the Code of Criminal Procedure are not entirely clear as to exactly when access to a lawyer is possible. The amended version of Article 106 stipulates that the investigating body must inform persons suspected of committing an offence of their right of access to a lawyer “from the moment of detention”, whereas Articles 43 and 43-1 provide that the suspect/accused is entitled to have access to - and meet with - a lawyer “prior to the first interrogation”.

**The CPT recommends that the relevant provisions of the Code of Criminal Procedure be amended so that it is clearly established that all persons deprived of their liberty by the Militia have access to a lawyer as from the very outset of their deprivation of liberty. Pending that amendment, it recommends that precise instructions be issued to Militia members so that, in accordance with Article 106, persons deprived of their liberty have access to a lawyer as from the moment of their detention, this moment being defined as the moment when a person is obliged to remain with the law enforcement officials.**

30. The question of access to a lawyer for persons without the financial resources to pay for their services was once again raised with the Ukrainian authorities. The latter said that the bodies in charge of the investigation or the court could, in accordance with the applicable procedure, appoint a lawyer via the Bar Association if the person so requested or if, under Article 45 of the Code of Criminal Procedure, the participation of a lawyer was mandatory. However, mention was made of the great difficulty in attracting lawyers, owing to the low remuneration offered.

**The CPT recommends that the Ukrainian authorities raise the awareness of the bar associations of the question of legal aid for persons deprived of their liberty by the Militia. It further recommends ensuring that persons deprived of their liberty be duly notified of the possibility of requesting a lawyer from the bar.**

31. To date the Ukrainian authorities have still not taken the necessary steps to enshrine in legislation the right of access to a doctor for a person detained by the Militia. **The CPT recommends that the necessary steps be taken without delay.**

32. As for information on the rights of detained persons, the situation is still unsatisfactory. Under Article 106 of the Code of Criminal Procedure, a copy of the detention record setting out the rights and obligations must immediately be issued to detained persons and forwarded to the prosecutor. However, the pre-printed forms seen by the delegation mentioned only that detained persons had been informed of their rights (without explaining them or, at best, referring to the numbers of the relevant articles of the Code of Criminal Procedure). Furthermore, on other occasions, the signature of detained persons required to attest that they had been informed of their rights was missing. Moreover, detained persons were informed of their rights just prior to the first interrogation and not as from the very outset of their deprivation of liberty.

**The CPT must reiterate the recommendation made in paragraph 37 of its previous report that all persons detained by the Militia be issued with a form setting out all their rights in a clear and concise manner at the very outset of their deprivation of liberty. In addition, the form should be available in an appropriate range of languages and the detained persons should be asked to sign a statement attesting that they have been informed of their rights in a language they understand.**

33. It goes without saying that the rights set out above must be guaranteed for all categories of persons deprived of their liberty by the Militia, including those detained under the Code of Administrative Offences and the Law on the Militia. **The CPT would like to know whether this is indeed the case.**

34. The CPT had also recommended that the Ukrainian authorities draw up a code of conduct for interviews (i.e. clear practical rules or guidelines on the way in which police interviews should be conducted) without delay. To date, such a code still does not exist. However, the CPT did take note of a manual on interrogation techniques submitted by the Ukrainian authorities to the delegation. The CPT believes that this manual is a useful starting point, which it would be fairly easy to update, incorporating advanced interviewing techniques and the principles set out in paragraph 52 of its report on the 1998 visit.

**The CPT recommends that the Ukrainian authorities now draw up such a code of conduct for interviews.**

35. In paragraph 39 of its report on the 2000 visit, the CPT was compelled to underline the importance of promptly and accurately recording the detention of a person (i.e. from the moment the person is obliged to remain with the Militia). The 2002 visit once again demonstrated that, on numerous occasions, this had not been the case (for example, no mention of the time of arrest or release, a lack of consistency between the duration of arrest indicated in the detention record and detention registers, crossings out, and even the total absence of any register). To sum up, persons were held by the Militia for prolonged periods without any reliable recording of their deprivation of liberty. This is a highly reprehensible state of affairs.

**The CPT recommends that the Ukrainian authorities issue, without delay, firm instructions that the detention registers are kept accurately, fully and clearly.**

#### **4. Conditions of detention**

##### **a. district police stations**

36. As mentioned in paragraph 9 above, the CPT's delegation made an immediate observation regarding the intolerable material conditions of detention for prolonged periods in the district police stations visited.

The cells contained only narrow benches (0.30 to 0.40 m wide) with no or practically no natural light and sometimes even without artificial light (this was the case in one of the cells in the Kyivsky district police station in Odessa), and were poorly ventilated. The size of the cells varied from a little more than 2 m<sup>2</sup> (in the Malinowsky district police station in Odessa) to, at best, a little more than 7 m<sup>2</sup> (in the Mukachevo district police station). The detainees were let out of their cells at fixed times to go to the toilet but had no means of maintaining personal hygiene. Moreover, it was clearly established that they relied on relatives for food.

37. At both national and local level, assurances were given to the delegation that the cells in these district police stations were reserved for detention lasting no more than three hours, serving identification purposes. Interviews with detained persons and examination of the registers showed that this was not the case.

At the Kyivsky district police station in Odessa, four persons had been held for a period ranging from 24 to 72 hours in a cell measuring 5.8 m<sup>2</sup>. Moreover, from 26 to 30 November (the eve of the delegation's visit) between sixteen and thirty-two persons had been kept in that station's three similarly-sized cells. Likewise, at the Mukachevo district police station, up to seven people had been detained together in cells of 4 m<sup>2</sup> and 7 m<sup>2</sup>. The detention had lasted up to 65 hours.

Detaining persons in the kind of conditions described above for prolonged periods could easily be qualified as inhuman and degrading treatment.

38. The Ukrainian authorities' response to the immediate observation made by the CPT's delegation is not satisfactory.

The CPT realises that it is not possible to transform, overnight, detention premises that were built at a time when "the standards of treatment for detainees and arrested persons were different". However, the intolerable situation observed by its delegation in 2002 must not be allowed to go on.

District police stations clearly are not suitable for use for prolonged periods of detention. Nevertheless, subject to certain improvements recommended below, which should not have major financial implications, those police stations could be adapted to fulfil their role of detaining persons for a few hours (i.e. not an overnight detention).

Consequently, pursuant to Articles 3 and 10, paragraph 2 of the Convention, **the CPT calls upon the Ukrainian authorities to put an immediate end to the practice of detaining persons for more than a few hours in the country's district police stations.**

**It further recommends that steps be taken in order to ensure that all the cells in district police stations are kept clean and have adequate artificial lighting and ventilation.**

Finally, **the CPT recommends that all detained persons have ready access to drinking water.**

b. Militia central holding facilities (ITTs)

39. The CPT has already noted the efforts made by the Ukrainian authorities (cf. paragraph 54 of the report on the 2000 visit and the authorities' response relating to that) to improve conditions of detention in the ITTs. Further, it understands that, owing to economic difficulties, progress is slow in this area.

According to the Ukrainian authorities' response of 15 April 2003, the refurbishment of Militia detention facilities is not provided for in the state budget. For that reason, it is for the Ministry of Internal Affairs to develop programmes with the regional authorities and find the necessary funding.

On this point, the CPT must emphasise that depriving persons of their liberty entails for the State responsibility for guaranteeing the basic necessities of life, in all circumstances, and this is a responsibility to be assumed at the highest state level. Consequently, **it calls upon all the governmental agencies concerned to provide support, including of a financial nature, to the efforts of the Ministry of Internal Affairs to improve conditions of detention in Militia central holding facilities.**

It did emerge from the meeting with the Ukrainian Parliamentary Commissioner for Human Rights that, in 2002, the Deputy Prime Minister had allegedly allocated a substantial sum to the Ministry of Internal Affairs but that the money had not been spent, as intended, on improving detention conditions. **The CPT would like to obtain the Ukrainian authorities' comments on this matter.**

40. The follow-up visit to the ITT in Kyiv revealed certain improvements: the establishment was not overcrowded (100 detainees for 156 places); the third floor had been properly renovated and all the detainees on that floor had a bed; the ventilation system on the second floor had been improved. In addition, there were now two exercise areas. However, there were numerous allegations that access to those areas was limited to ten minutes or so. Mattresses and blankets (although dirty) were available. That said, the cell windows were still hidden by shutters and the other detention floors remained in a state of severe dilapidation (cf., inter alia, paragraph 48 of the report on the 2000 visit).

41. As regards the other ITTs visited, the CPT would stress that the best material conditions observed were in the Uzhgorod facility. The cells were well-lit, in part by natural light, clean, correctly equipped (bed, mattress, blankets, table, bench) and spacious (between 11 and 25 m<sup>2</sup>). There was, however, one important deficiency, namely the absence of an outdoor exercise yard.

Elsewhere, material conditions were very mediocre. In reality, the descriptions in the previous reports still very much apply. While some efforts had been made by the authorities shortly before the CPT's visit, such as repainting cells or ensuring that mattresses and blankets were provided (as in Zhytomyr or Odessa, for example), the cells still had no access to natural light, the artificial lighting was often of poor quality and the ventilation deficient. The toilets in the cells were not properly partitioned off, if at all, and the sinks were in a bad state of repair. As in the past, access to hygiene products was dependent on parcels received by the detained persons and there were no arrangements enabling them to maintain adequate personal hygiene.

The situation was variable where food was concerned: in some ITTs, three daily meals were provided, whereas in others there were two or even just one per day.

42. Access to outdoor exercise remained the exception, and many of the ITTs visited had no such facilities. Indeed, even when there was an exercise yard, the delegation was far from sure that the detainees were allowed to take one hour's exercise in it each day. Moreover, as far as activities are concerned, the situation remains unchanged from 2000. Only on rare occasions did the detained persons have reading matter.

43. In addition, there was rampant overcrowding: for example, an analysis of the detention registers revealed that the Mukachevo ITT, with an official capacity of 28 places, regularly held up to 42 persons, and the Khust facility, with a capacity of 22 places, held up to 35.

44. In their letter of 15 April 2003, the Ukrainian authorities stated that, following talks at the end of the visit, the most substantial shortcomings had been rectified: all detained persons, in the establishments visited, now enjoyed one hour's outdoor exercise every day, they had full sets of bedding in adequate number, and work had begun on removing the shutters from cell windows in the Zhytomyr ITT. This operation was also being carried out in the other Militia establishments. In addition, 520,000 hryvnas had been made available by the local authorities for renovating the Odessa ITT and introducing exercise areas. Moreover, to avoid overcrowding in law enforcement agency establishments in Kyiv, it had been decided to build a second ITT with a capacity of 600 places, with a unit for persons suffering from tuberculosis and other infectious diseases. Moreover, work on renovating the second floor of the existing ITT in Kyiv had begun.

45. The CPT notes these measures with interest and **wishes to obtain a detailed report on the progress of the projects planned and the work embarked upon. It recommends, in this context, that a high priority be given to the swift removal of all window shutters from ITT cells throughout the country and the creation of exercise areas large enough to enable detained persons to exert themselves physically. It further recommends that steps be taken to ensure:**

- **without delay that, in those ITTs already possessing outdoor exercise areas, detained persons actually have access to them for one hour each day;**
- **without delay that, in all ITTs, detained persons are supplied with a full set of clean bedding, which is cleaned at regular intervals;**
- **without delay that, in all ITTs, detained persons are provided with essential personal hygiene products and are able to wash every day (this includes a hot shower once a week, throughout their detention);**
- **without delay that, in all ITTs, detained persons are given food at appropriate times;**
- **the proper and progressive partitioning off of toilets in cells;**
- **that detained persons, in all ITTs, have access to reading matter;**
- **that the official occupancy level of ITT facilities is not exceeded and that efforts are made gradually to reduce them; the objective should be to offer living space of at least 4 m<sup>2</sup> per person.**

46. As for health care, the situation had barely improved since the previous visit, notwithstanding the guarantees given by the Ukrainian authorities. Medical screening of detainees on admission was still not systematically carried out. At the Ivano-Frankivsk ITT, where there was no *feldsher*, it was the duty officer who asked questions of a medical nature. In the event of a complaint, the individual was sent to a hospital. In those ITTs where there was a proper medical interview upon arrival (e.g. in Kyiv), this was carried out in the presence of a member of the custodial staff.

Moreover, it was found that when detainees had been retransferred from a SIZO to an ITT, the tuberculosis treatment received by them at the SIZO had been interrupted, partly due to the lack of communication between health-care staff at the SIZO and the ITT.

The CPT once again reiterates its recommendation that all detained persons be offered a medical examination upon arrival at an ITT by a qualified member of the health-care service. This examination should be conducted out of the hearing and - unless the health-care staff member concerned requests otherwise in a particular case - out of the sight of custodial staff. It further recommends that steps to be taken to ensure:

- that all the ITTs benefit from the regular presence of a *feldsher*;
- without delay that tuberculosis treatment received by a detained person is continued in the event of a retransfer from a SIZO to an ITT. It is axiomatic that this will involve closer cooperation between health-care staff in establishments under the authority of the Department for the Execution of Sentences and those under the authority of the Ministry of Internal Affairs.

47. Regarding contact with the outside world, the situation remains unchanged, and the CPT calls upon the Ukrainian authorities finally to review the applicable regulations and practice in this area (cf. paragraphs 56 and 57 of the report on the 2000 visit).

- c. centre for the reception and allocation of vagrants

48. On the whole, the material conditions of detention at the centre for the reception and allocation of vagrants in Ivano-Frankivsk were acceptable. **However, the in-cell toilets should be partitioned off and the shower (which was not working at the time of the visit) should be repaired.**

In contrast, the situation in respect of activities was not satisfactory, given that detention may last up to thirty days. Even though the centre had an exercise yard, the detainees were not allowed to go there. Furthermore, apart from when certain cleaning chores were carried out, the detainees were locked in their cells throughout their detention. **The CPT recommends that this state of affairs be rectified.**

- d. centre for the reception and allocation of minors

49. The CPT's delegation was favourably impressed by the conditions in the centre for the reception and allocation of minors in Zhytomyr, used to accommodate minors aged between 11 and 18 years, for a period of up to 30 days which can be prolonged twice. The bedrooms and living areas were spacious, clean and very well equipped and decorated. The centre had a sports hall, a classroom and a very well equipped outdoor recreation area. In addition, the inmates benefited from a structured programme of activities throughout the day, with ongoing educational, social and psychological support.

This is an exemplary situation which can only be welcomed.

## **B. Foreign nationals detained under aliens legislation**

### **1. Preliminary remarks**

50. Under the various laws in force<sup>4</sup>, a person suspected of infringing the aliens legislation may be detained for up to 72 hours, solely on the authority of the Border Guard Forces or the Militia, provided that the public prosecutor is given notice in writing within 24 hours of the person's arrest. The period of detention may be extended to ten days with the public prosecutor's authorisation, after which, if it has been decided to deport the person in question, he or she may, pending deportation, be detained on the prosecutor's authorisation for an indefinite period of time.

The CPT was informed that the Ukrainian authorities were considering a proposal to amend the law so as to lay down a maximum detention period of six months pending deportation. **The CPT would like to receive further information on this subject.**

**In this context, and with regard to Article 29 of the Ukrainian Constitution, the CPT also wishes to know whether the Ukrainian authorities intend to empower a court to decide on the placement of a foreign national in detention beyond 72 hours.**

51. The delegation visited the temporary detention centre, comprising three cells, at the Chop checkpoint on the border with Slovakia and Hungary (two people were detained there), and the three temporary detention centres run by Military Unit 2142, namely: the three cells at the Headquarters in the town of Mukachevo, the centre for women and children on the fourth floor of a house in the same town and the Pavshino Centre for Men located in a large building in the middle of the forest some 15 kilometres from Mukachevo. Eleven persons were detained in the cells at the Headquarters; 34, including 11 minors, in the centre for women and children; and 101 in the Pavshino Centre for Men.

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<sup>4</sup> Section 7 of Law N 1777-XII, as amended, on the Ukraine Border Guard Forces; Article 2 of the Instruction on Detention Procedure and Guarding of Detainees by Border Guard Forces of Ukraine, ratified by Order No. 176 of 12.4.1996 of the Head of the State Committee and Commander of the Ukraine border police; Articles 261, 262 and 263 of the Ukrainian Code of Administrative Offences; Section 11 of the Law on the Militia; Law N 3929-XII, as amended, on the legal status of aliens (amended, inter alia, on 1.3.2003 by Law N 506-IV, adopted on 6.2.2003).

## **2. Ill-treatment**

52. The delegation heard numerous allegations of ill-treatment at the time of apprehension by border guards, mainly in the form of punches.

In addition, certain detained persons claimed that they had been physically ill-treated at the time of apprehension or at their arrival at the Pavshino Centre (slaps, punches) by border conscripts who were demanding money or valuables from them.

**53. The CPT recommends that the Ukrainian authorities make it absolutely clear to the Border Guard Forces that no more force than is strictly necessary should be used when effecting an apprehension and that, once apprehended persons have been brought under control, there can be no justification for striking them.**

**The CPT also recommends that an inquiry be launched into the allegations of physical ill-treatment for the purposes of extorting money or valuables.**

54. The CPT must point out that, although not a question of deliberate ill-treatment, in some of the detention centres visited several immigration detainees were subjected for prolonged periods to a number of negative factors - overcrowding, deplorable material and hygiene conditions, lack of outdoor exercise, lack of a programme of activities - which could easily be said to amount to inhuman and degrading treatment (cf. paragraphs 58 and 59 below).

## **3. Conditions of detention**

### **a. material conditions**

55. In the view of the CPT, persons deprived of their liberty for an extended period under the aliens legislation should be accommodated in centres specifically designed for that purpose, offering material conditions and a regime appropriate to their legal situation and staffed by suitably qualified personnel.

Such centres should provide accommodation which is adequately furnished, clean and in a good state of repair, and which offers sufficient living space for the numbers of people involved. Further, care should be taken in the design and layout of the premises to avoid as far as possible any impression of a carceral environment.

56. **At the Mukachevo Centre for Women and Children**, the material conditions were, on the whole, acceptable, largely due to external assistance (from the Office of the United Nations High Commissioner for Refugees and certain NGOs). The rooms accommodating the detainees were of a reasonable size. The amount of daylight, the artificial lighting and the heating were adequate. The sanitary facilities, although old, were well maintained and there was hot water. In addition, there was clearly a desire to create a good atmosphere in the premises: in particular, there was a children's room with a variety of toys.

57. In **Chop** the premises were clean, adequately lit and heated, and equipped with beds, mattresses and blankets. The showers had hot water. The size of the three cells, however, was hardly sufficient for the number of beds they contained (for example, four beds in 12.5 m<sup>2</sup>). In addition, an examination of the registers showed that the premises were periodically very overcrowded.

58. **At the Pavshino Centre for Men**, only part of the premises was open for accommodation purposes and a whole wing was unused. The occupancy rate of the rooms available for use was scandalously high; there were, for example, 17 people in 17 m<sup>2</sup>. The only furniture consisted of bunk beds and, moreover, there were not enough of them. The premises were unheated; the detainees did not have warm clothes and huddled together under blankets to try to get warm. Moreover, a number of them had no shoes and were therefore obliged to walk barefoot. The only toilets, which were in an outhouse, were in a deplorable state. In addition, there were no showers in the centre, but only a few cold-water taps. The detainees were not provided with any personal hygiene products or cleaning products. Moreover, at the time of the visit, the canteen was being renovated and meals were served outdoors.

The situation of detainees who were in quarantine because they were suspected of having tuberculosis was particularly intolerable (see also paragraph 67 below). At the time of the visit, ten people were being held in isolation in a small three-roomed flat and had been there since arriving at the centre ten days before. The flat had no furniture and all the detainees slept on the floor. The artificial lighting was far from adequate - there was only one light bulb in the whole flat. The detainees were allowed to leave the premises only briefly, once a day, to go to the toilet. The rest of the day, they were obliged to relieve themselves using plastic bottles.

59. The situation was even worse in the **cells at the Headquarters in Mukachevo**.

At the time of the visit, no fewer than four people were sharing a 7.25 m<sup>2</sup> cell, far less than the already inadequate minimum of 2.5m<sup>2</sup> per detainee required by existing legislation<sup>5</sup>. Further, it emerged from an examination of the registers and interviews with the detainees present that each cell usually accommodated six to eight people.

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<sup>5</sup> Article 10, paragraph 7, of the aforementioned Instruction on Detention Procedure and Guarding of Detainees by Border Guard Forces of Ukraine.

In addition, because there was no daylight (only one of the cells had a tiny opening, measuring 20 cm by 25 cm) and practically no artificial lighting, the cells were in a permanent state of virtual darkness. There was no ventilation system. Due to a shortage of mattresses and blankets, some detainees had to sleep on the floor. There were no washrooms and the detainees had no means of washing themselves. In the whole detention unit, there was only one toilet; detainees had to summon the guards by knocking on the cell door in order to use it. Some persons had been detained in these conditions for more than a month.

60. As regards food, the situation was satisfactory in the centre for women and children (the women could cook with ingredients supplied to them, and there was extra milk for nursing mothers).

However, the situation was far less satisfactory in the other temporary detention centres, especially in Pavshino and the Mukachevo Headquarters, where the delegation received many complaints about the food, which was considered to be mediocre in both quantity and quality. The delegation observed that it consisted virtually exclusively of starchy food, and that there was not enough of it.

61. The above findings concerning both material conditions and food prompted the delegation at the end of the visit to make an immediate observation under Article 8, paragraph 5, of the Convention, requesting the Ukrainian authorities without delay to allocate sufficient financial resources to the agencies responsible for foreign nationals detained under aliens legislation to meet the detained persons' basic needs (i.e. sufficient food, adequate bedding and appropriate clothing) and to monitor closely the use made of these resources.

The delegation also requested that the Ukrainian authorities, in pursuance of Article 8, paragraph 5, of the Convention, cease holding people for prolonged periods in the cells in the Headquarters of Military Unit 2142 in Mukachevo.

By letter of 15 April 2003, the Ukrainian authorities informed the CPT that steps had been taken in keeping with the immediate observations made by the delegation and that the measures in question would be implemented within the framework of the 2003 budget.

**The CPT wishes to receive, within one month of receipt of this report, detailed information on the concrete measures taken. Moreover, it wishes to receive, within the same period, confirmation that persons are no longer being held for prolonged periods in cells at the Headquarters of Military Unit 2142 in Mukachevo.**

62. In addition, in the light of the preceding observations, **the CPT recommends that, in the detention centres visited and, if necessary, in the other temporary detention centres in Ukraine where the situation is similar, the Ukrainian authorities take, without delay, all the necessary measures to ensure that:**

- **the temporary detention centres have adequate lighting (including daylight), ventilation and heating;**
- **the occupancy rate of the dormitories/cells is reduced - the aim should be to offer at least 4 m<sup>2</sup> living space to each detainee;**
- **food is served in rooms specially designed for the purpose;**
- **each detained person can have at least one shower a week with an adequate amount of hot water;**
- **every detained person has the basic products required to ensure adequate personal hygiene (soap, toothbrush and toothpaste, towels, etc.) and that these products are replaced at suitable intervals;**
- **detained persons receive a sufficient quantity of cleaning products to keep their cell/dormitory and sanitary facilities clean and hygienic;**
- **each detained person has his/her own bed.**

b. activities

63. The CPT welcomes the open-door policy introduced in the centre for women and children in Mukachevo, and the Pavshino Centre for Men, which enables detainees to have access to an exercise yard at all times.

The situation was much less favourable for detainees at the Chop centre and the detention centre at the Mukachevo Headquarters, who had no access to outdoor exercise at all. They were confined to their cells 24 hours a day. In the CPT's view, this situation is unacceptable. The Committee considers it a fundamental obligation to allow all detainees at least one hour of outdoor exercise every day. **The CPT therefore recommends that the Ukrainian authorities immediately take all the necessary steps to ensure that this is the case.**

64. As already mentioned, children in the centre for women and children in Mukachevo had access to a playroom (cf. paragraph 56 above). On the other hand, no recreational activities were organised for adult detainees in any of the detention centres visited. There were no board games, and there was no television or even a radio. The regulations in force<sup>6</sup> provide for the distribution of magazines to detained persons, if possible in relevant languages. In practice, however, this did not happen, with the possible exception of Chop, where a newspaper in Ukrainian was distributed.

To sum up, virtually all the adults spent weeks or months, and in some cases over six months, in complete idleness.

65. The CPT is aware that, given the difficult economic situation that currently prevails in Ukraine, it is not possible in the immediate future to introduce a satisfactory range of activities for such people. However, it considers that efforts should be made from now on to gradually introduce a basic minimum of activities, such as providing access to a day room with a radio/television or other suitable recreational activities, such as board games or table tennis, and to ensure access to newspapers and magazines, in accordance with the regulations. **The CPT recommends that the Ukrainian authorities take the necessary steps to this end.**

It goes without saying that, once the economic situation improves, the longer the period for which persons are detained, the more varied should be the activities which are offered to them.

Furthermore, as regards the Chop centre in particular, if, given the layout of the premises, the authorities are not able to introduce an open-door policy and provide a minimum of activities, **the CPT recommends that the premises be used solely for short periods of detention.**

c. health care

66. In the various places visited by the delegation, access to a doctor and medical care were, on the whole, satisfactory. For example, at Chop a *feldsher* was available 24 hours a day, and at Pavshino a *feldsher* was on duty during the day, supported by a doctor from time to time during the week. Further, when necessary detained persons had access to the hospital facilities, which were adequate.

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<sup>6</sup> Article 2, paragraph 9, sub-paragraph 6 of the aforementioned Instruction on Detention Procedure and Guarding of Detainees by Border Guard Forces of Ukraine.

The delegation was, however, concerned about the lack of systematic and regular visits by health-care staff to the persons detained in cells in the Mukachevo Headquarters. It also observed that, in all the detention centres, although detainees could have access to a doctor or *feldsher* on request, they were not systematically seen by a member of the health-care service on admission - far from it. Medical screening on arrival is indispensable, in particular in the interests of avoiding the spread of transmissible diseases, preventing suicide, and ensuring the timely recording of injuries. **The CPT recommends that the Ukrainian authorities remedy these shortcomings.**

67. As mentioned above, at Pavshino, ten people had been in quarantine for ten days for suspected tuberculosis, pending the receipt of the results of medical tests from the hospital (cf. paragraph 58 above). It was only at the delegation's insistence that the centre checked the results with the hospital; this made it possible to lift the quarantine immediately. It is obvious that better coordination between the hospital and the Pavshino Centre would have made it possible to take these people out of isolation far more quickly, probably the day after they arrived.

**The CPT recommends the drawing up of a detailed protocol for implementation by temporary detention centres in the event of suspected tuberculosis, encompassing measures to be adopted for taking charge of the persons concerned - including living conditions.**

d. supervisory staff

68. The staff of centres for immigration detainees have a particularly onerous task. Firstly, there will inevitably be communication difficulties caused by language barriers. Secondly, many detained persons will find the fact that they have been deprived of their liberty difficult to accept. Thirdly, there is a risk of tension between detainees of different nationalities or ethnic groups. Consequently, the CPT attaches particular importance to the careful selection and appropriate training of supervisory staff in centres for immigration detainees. As well as possessing well-developed techniques of interpersonal communication, the staff concerned should be familiarised with the different cultures of the detainees and at least some of them should have relevant language skills. Further, the staff should be taught to recognise possible symptoms of stress displayed by detained persons (whether post-traumatic or induced by socio-cultural changes) and to take appropriate action.

69. The above-mentioned criteria were far from being satisfied in the centres visited. The staff consisted of career soldiers and conscripts who had no training in the detention and supervision of foreign nationals. **The CPT recommends that the Ukrainian authorities introduce special training for those required to work in detention centres for foreign nationals which takes account of these criteria.**

#### 4. Safeguards for immigration detainees

##### a. safeguards during detention

70. As mentioned above, a person suspected of infringing the aliens legislation may be detained for up to 72 hours, provided the public prosecutor is notified in writing within 24 hours of the person's apprehension, and for up to 10 days with the public prosecutor's authorisation (cf. paragraph 50 above). Nevertheless, on examining numerous files, the delegation observed that the public prosecutor had not been notified and that authorisation had not been requested in time.

**The CPT recommends that the Ukrainian authorities take immediate steps to ensure that the relevant legislation is respected.**

71. Immigration detainees should - in the same way as other categories of persons deprived of their liberty - enjoy fundamental safeguards against ill-treatment, which means that, as from the outset of their detention, they should be entitled to inform a person of their choice of their situation and to have access to a lawyer and a doctor (on this last point, cf. paragraph 66 above). Further, they should be expressly informed, without delay and in a language they understand, of all their rights and of the procedure applicable to them.

72. The information gathered during the visit in 2002 suggested that the majority of detainees did not enjoy the safeguards set out in the preceding paragraph.

The right to inform a relative or third party of their detention, provided for in the legislation in force, was non-existent in practice.

As for access to a lawyer - a right expressly mentioned in the aforementioned Instruction on Detention Procedure and Guarding of Detainees by Border Guard Forces of Ukraine - very few of the persons met by the delegation reported having enjoyed this right. During its visit to the cells in the Mukachevo Headquarters, the delegation observed a few lawyers; it subsequently emerged that they were there exceptionally - all the detainees explained to the delegation that it was the first time they had seen them. An examination of the files confirmed that lawyers were not present at hearings. Furthermore, information gathered by the delegation revealed that access to an interpreter was not guaranteed.

There was a printed sheet setting out the rights and obligations of persons held in detention centres. It emerged, however, that this was not distributed to detainees - far from it. In Chop, a copy of the sheet, drafted in Ukrainian, was posted outside the cells in which the detainees were being held. As a result, a very large number of detainees met by the delegation affirmed that they had not been informed of their rights.

73. In the light of the above observations, **the CPT recommends that the Ukrainian authorities take the necessary steps to ensure that all persons, without exception, detained under the aliens legislation:**

- **have the right, as from the outset of their detention, to inform a relative or third party of their choice of their situation;**
- **have the right of access to a lawyer and the right to talk to the lawyer at all stages of the proceedings;**
- **may, if necessary, receive the assistance of a qualified interpreter at the various stages of the proceedings;**
- **are informed without delay of their situation and their rights.**

In connection with the last point in particular, **the CPT recommends that all detained persons be systematically given, at the very outset of their detention, a document explaining the procedure applicable to them and setting out their rights. This document should be available in the languages most commonly spoken by those who are detained under the aliens legislation.**

b. risk of ill-treatment after expulsion

74. The prohibition of torture and inhuman or degrading treatment or punishment entails the obligation not to return a person to a country where there are substantial grounds for believing that he or she would run a real risk of being subjected to torture or ill-treatment. The applicable procedure should therefore offer the persons concerned a real opportunity to present their case, and officials entrusted with handling such cases should be provided with appropriate training and have access to objective and independent information about the human rights situation in other countries.

In this context, the Committee is concerned that the time limit for submitting an application for asylum is limited by law<sup>7</sup> to five days after arrival on Ukrainian territory in the case of foreigners who have entered lawfully, and three days for those who have entered unlawfully. No application lodged after these deadlines is considered. Such an approach could lead to persons being sent back to a country where they run a real risk of being subjected to torture and ill-treatment. **The CPT recommends that the Ukrainian authorities review the legal provisions in this field.**

75. Further, in view of the potential gravity of the interests at stake, a decision involving the removal of a person from a State's territory - whether or not that person has applied for asylum - should be appealable before another body of an independent nature prior to its implementation.

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<sup>7</sup> Section 9 of the Refugee Act (N 2557-III).

The delegation was unable to ascertain whether it was possible to appeal against a deportation order or the rejection of an asylum application. By letter of 15 April 2003, however, the Ukrainian authorities informed the CPT that steps had been taken to give detainees the right of appeal to the court in order to obtain refugee status.

**The CPT wishes to receive additional information about the procedures applicable and the means of appeal in such circumstances. The Committee would also like to know whether there is provision for an appeal with suspensive effect in all cases.**

76. In the light of the information available, the delegation gathered that the national authorities of the country of which the person concerned was a national were systematically informed of all cases of detention under aliens legislation, even if an asylum application had been lodged. Such a systematic notification could in certain circumstances have very unfavourable consequences. **The CPT recommends that appropriate steps be taken to ensure that the national authorities of those detained under the aliens legislation are only informed of their detention with the consent of the persons concerned.**

c. other issues

77. With regard to contact between detainees from the same family, the CPT welcomes the efforts that the authorities have made over the last few months to enable detainees from the same family to communicate with each other by letter and sometimes to meet. During the visit, the delegation even met with a man whose detention in the company of his wife and children had been authorised, exceptionally, for health reasons. The CPT considers that if families, for example, a husband, wife and children, are deprived of their liberty by the authorities under aliens legislation, every effort should be made to avoid splitting up the family. **The CPT encourages the Ukrainian authorities to continue the efforts they have made in this respect.**

78. As concerns contact with the outside world, the delegation did not meet (apart from at the Mukachevo Centre for Women and Children) any detainees who had received visits since the start of their detention and was not able to find out exactly what steps were taken in practice to facilitate visits. Further, the delegation did not observe any telephones for use by detainees in any establishment. As regards visits, **the CPT would like to receive information from the Ukrainian authorities on these questions.**

79. The delegation found different means for recording data in the establishments it visited, for example, registers and, in Pavshino, computer files. That said, it observed that the information recorded was incomplete and inaccurate. For example, in many cases, the exact dates and times of deprivation of liberty were not mentioned. **In this respect, the recommendation made in paragraph 35 above concerning the keeping of detention registers applies equally here.**

80. The delegation noted that the public prosecutor had visited the temporary detention centre in Pavshino in September 2002.

The CPT considers that visits to temporary detention centres by prosecutors can make an important contribution towards the prevention of ill-treatment of detained persons and, more generally, help to ensure satisfactory conditions of detention. **The CPT wishes to be informed whether all temporary detention centres are visited regularly by public prosecutors.**

**C. Establishments under the authority of the State Department for the Execution of Sentences**

**1. Preliminary remarks**

81. The CPT's delegation visited three penitentiary establishments: Prison No. 8 in Zhytomyr, Pre-trial Prison No. 21 (SIZO) and Colony No. 14 in Odessa. The visit to the last-named establishment was more specifically designed to assess the implementation of the CPT's recommendations concerning disciplinary matters.

82. It should be mentioned at the outset that progress has been made in one area of great concern to the CPT, namely overcrowding. In November 2002, the number of persons imprisoned stood at 197,222 (compared to 220,306 in 2000) for an official capacity of 222,797 places (compared to 207,506 in 2000).

One important development in this regard has been the series of legislative reforms of 2001, which ushered in amendments to the Code of Criminal Procedure and led to the introduction of a new Criminal Code and amendments to the Correctional Labour Code of Ukraine. In particular, provision has been made for alternatives to imprisonment, such as community service, restricted freedom in an open-type penitentiary establishment or correctional labour in the place of employment. In addition, the conditions attached to release on parole and early release have been made more flexible.

Other significant developments in this respect have been the two programmes, one aimed at improving material conditions (2000-2004) and one at introducing further reforms and support for the prison system (2002-2005), approved by the Cabinet Office. These programmes are designed, inter alia, to increase the prison estate and provide for appropriate conditions of execution of sentences with due respect for human rights.

83. The CPT welcomes the measures taken by the Ukrainian authorities. However, the information gathered by the Committee's delegation shows that there is still much to be done. More particularly, at the end of 2002, there was still rampant overcrowding in the SIZOs, with 43,273 prisoners for 36,953 places.

84. Both the national and the local Ukrainian authorities have expressed concern about this situation, which they attribute to the attitude of the prosecution authorities and the repressive courts. Although with the reform of the Code of Criminal Procedure in July 2001, which gave judges the power whether to decide to remand someone in custody, there was for a time a substantial decrease in the number of prisoners (cf. the Ukrainian authorities' response, pp. 6, 7 and 23), the opposite trend had emerged by late 2002, with a substantial increase in the number of remand prisoners. Apparently, pressure from investigators and prosecutors, as well as public opinion, would seem to largely account for the approach currently taken by judges.

85. The CPT can only deplore this trend, which risks eradicating the efforts made by the Ukrainian authorities and, in particular, the Department for the Execution of Sentences since the CPT's visit in 2000. It emphasises again that increasing the capacity of the SIZOs will not in itself provide a lasting solution (cf. paragraph 111 of the report on the 1998 visit). The CPT considers that it is essential to make law enforcement agencies and the judicial authorities aware of the need to take steps to deal with overcrowding, and ensure that they are actively involved in such measures.

**The CPT calls upon the Ukrainian authorities to ensure that all the agencies concerned are actively involved in combating overcrowding through the application in practice of all the measures introduced since 2001. The highest priority should, in accordance with the principles set out in the Council of Europe Committee of Ministers' Recommendations R (80) 11 concerning custody pending trial and R (99) 22 concerning prison overcrowding and prison population inflation - which inspired the Ukrainian lawmakers - be to ensure that detention on remand is used only exceptionally and for the minimum duration compatible with the interests of justice.**

86. The CPT also considers that the time has come for the Ukrainian authorities to consider, in the context of their efforts to humanise and modernise their penitentiary establishments, abandoning large-capacity dormitories in favour of smaller living units. Large-capacity dormitories inevitably imply a lack of privacy for prisoners in their everyday lives and entail a high risk of intimidation and violence. Such accommodation arrangements can foster the development of offender subcultures and facilitate the maintenance of the cohesion of criminal organisations. They can also render proper staff control extremely difficult, if not impossible. With such accommodation, the appropriate allocation of individual prisoners based on a case-by-case risk and needs assessment becomes an almost impossible exercise. It is axiomatic that the move away from large-capacity dormitories to smaller living units has to be accompanied by measures designed to ensure that prisoners spend a reasonable part of the day engaged in purposeful activities of a varied nature outside their living units.

**The CPT would like to receive the views of the Ukrainian authorities on this matter.**

87. The visit in 2002 also highlighted positive developments in respect of the provision of food to prisoners (cf. paragraph 60 of the report on the 2000 visit). The CPT notes with satisfaction the 2001-2005 programme for improving food and material conditions introduced by the Ukrainian authorities in order to increase prison agricultural production. Observations on the spot, however, particularly in SIZO No. 21, show that much remains to be done to ensure that prisoners receive food that is adequate in terms of quantity and quality. Consequently, **the CPT recommends that the Ukrainian authorities redouble their efforts in this respect.**

88. With regard to the organisation of activities for prisoners, the Ukrainian authorities have indicated that this was a major problem for the prison administration. The CPT notes with interest the measures provided for in this respect in the 2002-2005 programme designed to reform and support the penitentiary system by introducing incentives for firms which accept contracts with it and by putting in place a vocational training and education scheme adapted to prisoners' needs.

It is essential that these measures, which are in keeping with the CPT's recommendations, be implemented as soon as possible. This entails genuine efforts on the part not only of the Department for the Execution of Sentences but also of the other ministerial agencies referred to in the programme (the Ministries of Economy, Finance, Education and Science, the State Tax Administration, etc.).

**The CPT calls upon all the Ukrainian authorities referred to in the 2002-2005 programme to ensure that the measures to introduce a system of occupational activities, vocational training and education for inmates are implemented as soon as possible. Remand prisoners and sentenced prisoners who have appealed against their sentences should also benefit from these measures.**

## **2. Ill-treatment**

89. During the 2002 visit, the delegation received no allegations of physical ill-treatment by prison staff working in Prison No. 8 and SIZO No. 21.

90. However, in early April 2003, the CPT received allegations that, following its delegation's visit to SIZO No. 21, prisoners interviewed by the delegation had been intimidated by prison staff. It was also alleged that, between 5 February and 15 March 2003, hooded prison staff members had carried out searches in the prison, during which prisoners had been beaten because they had protested at the way in which the searches were being carried out (numerous objects, including documents concerning proceedings underway, were seized).

**The CPT recommends that the Ukrainian authorities carry out an independent and thorough investigation into these allegations, and that they inform the Committee, in due course, of the results of the investigation.**

91. At Colony No. 14, the delegation received allegations according to which, in April/May 2002, after an evening roll call, several hooded prison staff members, said to be drunk, had entered Sector No. 3 and had beaten prisoners from wards 11, 13 and 20 with truncheons, assisted by inmates who were also hooded. By letter of 15 April 2003, the Ukrainian authorities submitted the conclusions of an official inquiry into these allegations, carried out by the local and regional prison administration. It emerged from the conclusions that the allegations had not been confirmed. The conclusions were based on: written declarations by prisoners in Sector No. 3 that there had been no such incidents and that they had no complaints about the prison administration; an interview with the officer responsible for Sector No. 3, a report by the head of the operational section and an examination of various registers kept in the prison, none of which made any mention of incidents during the period in question; and the absence of requests from the prosecutor's office for an inquiry into such incidents.

The CPT is far from convinced by this inquiry and the conclusions drawn from it. It is a wholly internal non-independent prison administration inquiry.

**The CPT recommends that the Ukrainian authorities deliver to the staff of Colony No. 14 the clear message that all forms of ill-treatment are unacceptable and will, if they occur, be the subject of severe sanctions.**

92. The CPT's delegation's attention was also drawn, at Colony No. 14, to the practice of assigning to "duty prisoners", known as "Dnevalny", tasks involving the maintenance of order and control, including that of reporting to the custodial staff any incidents and violations of the regime. This practice is formally provided for in the Rules of Internal Procedure in Correctional Labour Establishments. Such prisoners, who had been selected by the prison administration, were also given supervisory tasks outside the dormitory zones, for instance, the task of supervising workshops or movements between the various sections within the Colony.

The delegation felt that there was very marked tension between these inmates and the rest of the prison population. There was a palpable distrust of the former and there were allegations that they abused their powers. Indeed, the delegation itself observed that some of the prisoners in question were noting down the names of other prisoners who were talking to the delegation; such a state of affairs is intolerable.

By letter of 15 April 2003, the Ukrainian authorities contested the fact that the "Dnevalny" were assigned duties which involved keeping order and control. The CPT does not share this view. Indeed, many of the duties listed in the aforementioned Rules of Internal Procedure fall well within this definition.

The partial abrogation of the responsibility for order and security - which properly falls within the ambit of custodial staff - is unacceptable. It exposes weaker prisoners to the risk of exploitation by fellow inmates and could lead to inter-prisoner violence and intimidation. **The CPT recommends that the Ukrainian authorities amend the Rules of Internal Procedure in Correctional Labour Establishments with a view to ensuring that no prisoner is entrusted with tasks relating to the maintenance of good order and control.**

### 3. Specific categories of prisoners

93. In the light of the delegation's observations during its visit in 2002, the CPT wishes to highlight several issues concerning certain categories of prisoners.

- a. conditions of detention of prisoners sentenced to life imprisonment and to the "Tyurma" regime

94. In its report on the 2000 visit (paragraphs 67 to 77), the CPT stated that the treatment of prisoners *servicing life sentences* was a major source of concern to the Committee, and it made a whole series of recommendations with a view to improving their situation.

The delegation's on-the-spot observations in 2002 in Zhytomyr Prison No. 8 and SIZO No. 21 confirmed that certain improvements have been made to material conditions and some aspects of the regime.

95. Material conditions of detention for these prisoners in Zhytomyr Prison No. 8 and SIZO No. 21 were acceptable. The cells were clean, properly lit and ventilated, equipped with beds with full bedding, a table, a stool and toilets that were partitioned off. The cells measured 6 to 10.2 m<sup>2</sup>. They had all been originally designed for two prisoners, although sometimes they accommodated only one.

The CPT would stress that cells measuring 6 to 7 m<sup>2</sup> should, as a rule, be reserved for one prisoner (except in exceptional circumstances, where it is inadvisable to leave a prisoner alone). Cells measuring 10 m<sup>2</sup> could be considered acceptable for two people, provided the prisoners are able to spend a reasonable part of the day outside their cell.

In both establishments, the artificial lighting was permanently on in the cells accommodating prisoners serving life sentences, although in Zhytomyr the intensity was reduced at night. This contradicts the Ukrainian authorities' response to the CPT's report on the 2000 visit, which stated that an electric lighting system had been installed in the cells for life-sentenced prisoners which made it possible to turn on the light at night to control prisoners, if necessary.

The delegation also observed that life-sentenced prisoners had been issued with a bright orange prison uniform with the label "Lifer"; this is unnecessarily stigmatising.

96. The 2002 visit confirmed that life-sentenced prisoners may now receive two large parcels weighing 30 kg each a year and two small packets weighing 2 kg each a year; they may also buy supplies at the prison shop. It emerged, however, that the amount they could receive was much smaller than that which sentenced persons in the colonies could receive. In addition, for many of them, access to supplies from the prison shop was only theoretical since, because of lack of work, they did not earn any money.

97. As regards the regime for life-sentenced prisoners, they are guaranteed one hour of outdoor exercise every day (up to two hours in the case of good behaviour) and they now have the right to work. The rules governing contact with the outside world have been relaxed: two short visits of up to four hours each per year are authorised (an additional visit may be allowed in the case of good behaviour), correspondence is unrestricted and they may use a telephone (if they pay for it) for 15 minutes every three months.

98. This progress is clearly to be welcomed. However, the objectives recommended by the CPT as regards the provision of purposeful activities outside the cells, appropriate human contact and contact with the outside world are far from being achieved.

In practice, life-sentenced prisoners spent 23 hours a day in their cells, their only pastimes being reading, board games and listening to radio programmes in their cells, and, for the few prisoners who had a television set, watching television.

Access to work - which took place in the cell - was occasional, and depended on the orders placed with the prison; for example, in Zhytomyr Prison No. 8, an average of 56 persons (out of 170) serving life sentences did piecework.

99. As for contact with the outside world, the two "short" visits allowed to this category of prisoners do not meet the CPT's recommendation in paragraph 73 of its report on the 2000 visit to the effect that their visiting rights be aligned with those of sentenced prisoners in colonies, as provided for in Section 39 of the Correctional Labour Code.

100. In the light of the above, **the CPT recommends that the Ukrainian authorities:**

- **provide life-sentenced prisoners with prison uniforms of a colour which is not stigmatising and refrain from putting a label on them concerning their sentences;**
- **ensure that, in accordance with instructions, artificial lighting is not switched on at night except when necessary;**
- **redouble their efforts to provide life-sentenced prisoners with more opportunities for work and other purposeful activities outside their cells (sport, education, leisure, etc.);**
- **bring the visiting rights of life-sentenced prisoners into line with those of sentenced persons in colonies.**

**As for the right to receive parcels, reference should be made to the recommendation in paragraph 118 below.**

101. In addition, the Ukrainian authorities have still not introduced a proper prison management policy for life-sentenced prisoners. The CPT refers in this connection to the guidelines set out in paragraph 75 of its report on the 2000 visit **and recommends that a high priority be given as from now to the introduction of such a policy.**

102. The CPT also remains concerned by the fact that, contrary to the assurances given by the Ukrainian authorities, the practice of routinely handcuffing life-sentenced prisoners whenever they are taken out of their cells or even when somebody enters the cell, persists (for example, in SIZO No. 21). Moreover, in SIZO No. 21 such prisoners were handcuffed by one hand to a permanently fixed table in front of their visitors.

The CPT recalls that the practice of routinely handcuffing life-sentenced prisoners when they are outside their cells is highly questionable, all the more so when it is applied in what is already a secure environment. Such a measure can only be seen as disproportionate and punitive. Moreover, to be handcuffed when receiving a visit could certainly be considered as degrading for both the prisoner and his visitor.

**The CPT recommends that the Ukrainian authorities put an immediate end to the practices described above.**

103. In its previous report (paragraph 80), the CPT recommended that *the detention conditions of prisoners subjected to the “Tyurma” regime* be urgently reviewed. The delegation which carried out the 2002 visit examined in detail the current situation of the 204 prisoners in Zhytomyr Prison No. 8 who fell into this category.

104. The material conditions of detention of these prisoners were comparable to those of the rest of the prison population, as described in paragraph 111 below. Nevertheless, as regards the right to receive parcels and contact with the outside world, the situation was similar to that of life-sentenced prisoners. **It therefore calls for the same recommendations as made in paragraph 100 above in respect of life-sentenced prisoners.**

105. In Prison No. 8, the delegation observed the practice of frequently moving life-sentenced prisoners and those under the “Tyurma” regime to different cells. Life-sentenced prisoners changed cells within the section every week and changed floors every six months; those under the “Tyurma” regime changed cells roughly every six months.

The CPT has already dealt with this issue in paragraph 127 of its report on the 2000 visit, in which, while acknowledging that operational considerations might exceptionally require such measures, the Committee stressed that it was desirable to avoid, as far as possible, the needless uprooting of prisoners. **The CPT recommends that the Ukrainian authorities review the policy of frequently moving prisoners to different cells in Prison No. 8 and, if necessary, in Ukraine’s other penitentiary establishments, in the light of these considerations.**

- b. regime of remand prisoners and prisoners awaiting final sentencing

106. The CPT considers that the time has also come for the Ukrainian authorities to review *the regimes applicable to remand prisoners and to prisoners awaiting final sentencing* (having appealed against their sentences). These regimes have certain unacceptable features in that prisoners were, depending on the stage of the proceedings, required to obtain authorisation from the investigator, prosecutor or court in order to work and keep in contact with the outside world (visits, correspondence).

The delegation met a considerable number of such prisoners, both adults and minors, who spent months in succession languishing in their cells for 23 hours a day, without any occupation worthy of the name, deprived of contact with their families.

The CPT recalls that it recognises that in certain cases it will be necessary, in the interests of an investigation, to limit the contacts of remand prisoners with fellow inmates or with the outside world. However, such restrictions should be decided according to the circumstances of each individual case and applied for the shortest possible time. Further, the need to impose restrictions on certain prisoners cannot justify the blanket imposition of a restrictive regime on the remand population as a whole. Finally, the CPT sees no reason why those awaiting final sentencing should be kept under such a regime solely on the grounds that they have appealed against their sentence.

**The CPT recommends that the Ukrainian authorities take steps without delay - including, if necessary, the removal of any existing legal obstacles - to put an end to the restrictive regime applicable to remand prisoners and prisoners awaiting final sentencing.**

#### **4. Conditions of detention in the penitentiary establishments visited**

107. Prison No. 8 in Zhytomyr was built in 1914. With a capacity of 1,600 places, it was accommodating 1,199 prisoners at the time of the visit. Of these, 756 were remand prisoners (including 56 women and 58 minors), 204 were sentenced to the “Tyurma” regime, 170 were serving life sentences and 69 were so-called “administrative” prisoners<sup>8</sup>. Most of the prisoners were housed in a large building in the shape of a cross (No. 1) while the women and minors were in a separate building (No. 2).

108. SIZO No. 21 in Odessa was built in 1894. It has an official capacity of 1,913 places, and was operating at an “extended” operational capacity of 2,206 places. At the end of November 2002, the SIZO accommodated 2,366 prisoners (remand prisoners, prisoners whose sentences were not final, working prisoners), including 1,934 men, 332 women and 100 minors. Most of the prisoners were housed in a large building in a shape of a cross (sections 1 to 4), while the detention areas for women, minors, new arrivals, former members of the police force and foreigners were in a separate building (sections 5 and 6).

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<sup>8</sup> These are persons sentenced for the first time for minor offences. Under Article 60 of the new Criminal Code, the sentence may vary from one to six months.

109. Colony No. 14, located a few kilometres from SIZO No. 21, dates from 1946. It is a colony with a reinforced regime, for persistent male offenders. It has an official capacity of 1,882 places, and was operating at an “extended” capacity of 2,150 places and accommodated 2,123 prisoners at the time of the visit. Given the overcrowding in SIZO No. 21, a temporary 170-place SIZO had been opened on its premises, which, at the time of the visit, accommodated 162 prisoners who had been sentenced but had appealed against their sentences.

The prisoners were accommodated in seven sections divided into units of 300 or 350 persons.

a. material conditions<sup>9</sup>

110. At Zhytomyr Prison No. 8, the building reserved for women and minors (No. 2) offered the best material conditions of the establishment. All the cells were clean and well maintained, properly equipped, benefited from good natural and artificial lighting, and had toilets that were partitioned off. In many cells, the living space, although far from ideal, was greater than that found in the other detention areas. For example, a cell measuring 29.7 m<sup>2</sup> accommodated seven women. Among the minors, a 29 m<sup>2</sup> cell accommodated three boys; it was, however, designed for eight, which is excessive. Generally speaking, the delegation observed that the potential occupancy rates of the cells in the building allowed for a living space of only 2.5 to 2.8 m<sup>2</sup> per person.

111. The CPT welcomes the fact that, in the parts of building No. 1 reserved for remand prisoners, administrative prisoners and prisoners subject to the “Tyurma” regime, there was proper access to daylight and fresh air, except in certain cells where the windows were still fitted with obstructive devices (for example, wire mesh). Otherwise, material conditions varied. Many of the cells visited, although modestly equipped, were properly maintained and clean. Others, however, had been damaged by damp and were dirtier, with toilets in relatively poor condition, rusty beds and very modest bedding infested with cockroaches and other vermin.

Given the number of prisoners they accommodated at the time of the visit, the living space in certain cells could be considered tolerable or even acceptable. For example, among the remand prisoners, a 42 m<sup>2</sup> cell accommodated twelve prisoners, a 46 m<sup>2</sup> cell housed thirteen prisoners, a 19 m<sup>2</sup> cell was occupied by four people and a 13 m<sup>2</sup> cell by three. But here again, the living space was completely taken up by surplus beds.

Finally, heating was, generally speaking, a problem, as the temperature was barely above 18°.

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<sup>9</sup> As for the material conditions of detention of life-sentenced prisoners, cf. paragraph 95 above.

112. The prison administration made real efforts to provide those prisoners who needed them with basic essentials (hygiene and cleaning products and, if necessary, extra clothing/shoes). Some women complained, however, that they were unable to obtain the special hygiene products they needed (sanitary towels/tampons). The delegation raised the issue with the prison governor, who gave assurances that the situation would be remedied. **The CPT would like to obtain confirmation that the problem has now been resolved.**

113. In SIZO No. 21 in Odessa, the situation of overcrowding, exacerbated by generally precarious material conditions, could legitimately be considered to amount to inhuman and degrading treatment.

The prisoners were crammed into a tiny living space. For instance, there were up to six prisoners in cells measuring 7 to 8 m<sup>2</sup>, up to fifteen in 18 m<sup>2</sup> and up to thirty-seven (with forty beds) in 78 m<sup>2</sup>. According to information gathered by the delegation, some parts of the prison had apparently been even more overcrowded in mid-November 2002. For instance, up to thirty-two prisoners had been placed in cells measuring 18 m<sup>2</sup> in the admissions unit, where they had had to share ten beds.

Most of the cells were very dilapidated, with damp-ridden walls and ceilings. The facilities were in a bad state of repair, the bedding was often dirty and inadequate (prisoners had to rely on relatives for sheets and blankets), and the toilets were not properly partitioned off, if at all. Moreover, in many cells, the toilets did not have a proper flush, which added to the ambient insalubrity. Worst of all, the cells were teeming with cockroaches.

In certain cells, prisoners were obliged to put blankets over the windows to keep out the draught, as panes of glass were missing. In addition, in many cells, the heating left something to be desired, as the temperature was only 17°.

In fact, the only positive feature was that the cells all had proper access to daylight and adequate artificial lighting.

114. The delegation received numerous complaints about the lack of basic hygiene and cleaning products, including toilet paper. In addition, prisoners had to wash their belongings and sheets and blankets in their cells with the means at their disposal, under highly dubious conditions of hygiene.

Furthermore, in view of the small number of showers per prison section (for example, two showers for over 170 prisoners) and their very dilapidated state, prisoners had great difficulty in maintaining satisfactory personal hygiene.

115. In their letter of 15 April 2003, the Ukrainian authorities stated that, in order to reduce overcrowding, it was planned to build a new building with a capacity of 250 places and to transfer a number of prisoners to other remand establishments in the region.

They also referred to other steps taken to remedy the hygiene problems observed (such as the provision of disinfectants and the washing of the bedding in the SIZO laundry) and indicated that prisoners were now provided with the necessary hygiene products.

116. Although the visit to Colony No. 14 focused on particular aspects (cf. paragraph 81 above), the delegation noted that in the two sections (4 and 7) which it visited the dormitories were well-lit and ventilated, and equipped with beds with full bedding, bedside tables and storage space. The sanitary annexes were clean and relatively well maintained.

The dormitories were crowded. In section 4, for instance, dormitories measuring about 61 m<sup>2</sup> were accommodating up to 35 people; however, this was somewhat offset by the fact that prisoners could move about freely during the daytime in their section and had access to an exercise yard.

In this establishment, the delegation received numerous complaints about the lack of warm winter clothes (coats and hats). The matter was raised with the prison governor who assured the delegation that there were sufficient supplies to meet prisoners' needs. **The CPT wishes to obtain confirmation that the prisoners in Colony No. 14 have clothes suitable for the weather conditions.**

117. **In the light of the above, the CPT recommends that:**

**in Prison No. 8:**

- **the necessary repairs to building No. 1 be carried out so that the material conditions equal those in building No. 2, reserved for women and minors, in all respects;**
- **the cells be adequately heated;**

**in SIZO No. 21:**

- **the material shortcomings observed be remedied, in order to ensure that:**
  - **every prisoner has his own bed with full and clean bedding;**
  - **the toilets in all the cells are properly partitioned off and have a working flush;**
  - **the windows in all the cells have glass panes in them;**
  - **the cells are adequately heated;**
  - **the showers are in a satisfactory state of repair and that, as soon as possible, the number of showers is increased;**
- **the scheduled construction of the new building with a capacity of 250 places is completed;**

- **the occupancy rates in the cells/dormitories of the three establishments be reduced, the objective being to provide 4 m<sup>2</sup> of living space per prisoner.**

118. In the establishments visited, the delegation received numerous complaints about restrictions on the number of parcels. The CPT notes that Section 41 of the Code on the Execution of Sentences provides for different entitlements in terms of the number of parcels per year, depending on the type of regime<sup>10</sup>. Remand prisoners are allowed two 8 kg parcels a month.

The CPT can understand that in certain penitentiary establishments there may be logistical, as well as security-related reasons for imposing a restriction on the number of parcels which can be received. However, this implies that the penitentiary administration is in a position to respond adequately to prisoners' fundamental needs (food, clothing, medication, etc.). The fact is that this is not yet the case, since economic problems are preventing it from meeting prisoners' basic needs. In the circumstances, the grounds for the restrictions should be reviewed. Indeed, some countries faced with a similar situation have granted prisoners the right to receive an unlimited number of parcels.

**The CPT recommends that the Ukrainian authorities review the provisions of the Code on Execution of Sentences and of the law governing detention on remand in respect of the entitlement to receive parcels, in the light of the above remarks.**

b. activities

119. In Prison No. 8, only 150 of the 1,199 prisoners worked in workshops, manufacturing metal springs, assembling parts and repairing metal parts. Thirty-six prisoners (including three minors) received schooling; efforts had also been made to provide minors with access to a recreational activity (billiards).

In SIZO No. 21, no activities of any kind - except outdoor exercise - were offered outside the cells to the vast majority of the prison population. In all, there was only one contingent of 58 prisoners who were "economic" workers.

In Colony No. 14, the vast workshops (foundry, production of spare parts for agricultural machinery, manufacture of PVC windows, etc.) were under-used. Of the 2,123 prisoners, only 1000 were offered paid work; this was due to the state of the order book. Three months' vocational training had been offered to a further 200 or so prisoners. The prisoners also had access from time to time to a club, where they could watch films, and a modest sports ground, where they could play football. A few group activities (music, religious reading group, etc.) were also organised.

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<sup>10</sup> Under this provision, in correctional labour colonies, prisoners subject to the general regime may receive seven parcels a year, those subject to a reinforced regime six and those subject to the strict/special regime five. In educational colonies, they may receive up to ten under the general regime and nine under the reinforced regime. In addition, all prisoners are allowed to receive two small packets a year. In corrective labour colony camps, there are no restrictions on the number of parcels.

To sum up, in Prison No. 8 and SIZO No. 21, most of the prisoners languished for 22 or 23 hours a day in their cells, often without the opportunity to watch television, listen to the radio or even read. In Colony No. 14, even if prisoners could move freely in their detention area during the day, over 50% of the prison population passed the time in utter idleness.

120. More generally, the CPT has already called upon the Ukrainian authorities (cf. paragraph 88 above) to ensure that steps are taken as soon as possible to introduce, in all penitentiary establishments in the country, arrangements for purposeful activities, vocational training and education for all prisoners. **This recommendation also applies to the establishments visited. As far as minors are concerned, a high priority should immediately be given to the needs of such prisoners in Prison No. 8 and SIZO No. 21, by introducing a full programme of educational, recreational and sporting activities designed to stimulate their potential for social integration/rehabilitation.**

121. The CPT has criticised the exercise yards it has seen in Ukrainian prisons on several occasions in its previous reports. During the visit in 2002, the delegation once again observed, in Prison No. 8 and SIZO No. 21, that the outdoor exercise yards did not enable the prisoners to really exert themselves physically. Designed as enclosures, surrounded by high walls and generally covered with wire netting, the yards were small.

**The CPT once again recommends that the Ukrainian authorities review the design of the exercise yards in penitentiary establishments with a view to enabling prisoners to really exert themselves physically, or even engage in sporting activities.**

## 5. Health care

### a. combating tuberculosis and other transmissible diseases

122. In its report on the visit made in 2000 (paragraph 111), the CPT called upon the Ukrainian authorities to ensure that the penitentiary system was in a position to pursue a strategy for effective screening for, and action against, tuberculosis.

The CPT welcomes the developments that have since occurred in this respect in Ukraine, namely: the law of July 2001 on combating tuberculosis, which provides for specific measures for the penitentiary system, the adoption by the Department for the Execution of Sentences of a programme for 2002-2005 for preventing, diagnosing and treating the disease and the introduction, through a pilot project, of the DOTS strategy in prisons. All these measures are being implemented in close cooperation with the Ministry of Health.

123. According to the delegation's observations on the spot and its talks with those responsible at national and local level, the measures taken have already begun to bear fruit. The number of prisoners suffering from tuberculosis has fallen by 50% and there has been a decrease in the number of deaths due to the disease (from 600 in 2001 to 400 in November 2002).

Substantial efforts have also been made to ensure that penitentiary establishments are provided with sufficient quantities of appropriate medication for the treatment of tuberculosis.

Finally, the Ukrainian authorities are endeavouring to improve the standard of food for prisoners suffering from tuberculosis (Decision No. 1752 of 27 December 2001 on the norms of nutrition for tuberculosis patients and TB mycobacteria-infected individuals). Progress is slow in this field, however, as the prison administration has only 2.8 hryvnas per prisoner per day; it indicated that it would need at least 6.38 hryvnas.

**124. The CPT recommends that the Ukrainian authorities spare no effort in ensuring that the measures adopted to combat tuberculosis are fully implemented. It also recommends that they ensure that penitentiary establishments continue to be supplied with appropriate quantities of medication for the treatment of tuberculosis, and that they give a high priority to the implementation of the nutritional programme for prisoners suffering from the disease.**

**Further, in this context, reference is made to the recommendation contained in paragraph 46 above concerning the continuation of tuberculosis treatment in the event of a prisoner being transferred from a SIZO to an ITT.**

125. In addition to tuberculosis, the Ukrainian prison system is currently faced with an increase in the number of HIV-positive prisoners<sup>11</sup>. The Department for the Execution of Sentences has therefore devised a priority strategy for curbing the spread of the virus, based on an awareness and information campaign targeting prisoners and prison staff, the introduction of confidential voluntary screening tests and follow-up after the tests, the provision of means of prevention and disinfection for prisoners and the absence of discrimination against HIV-positive prisoners.

The CPT welcomes the efforts made by the Ukrainian authorities in this field.

**In the light of the observations made by its delegation in the establishments visited, the CPT recommends that prisoners be offered HIV screening free of charge.**

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<sup>11</sup> Between 1987 and January 2002, 8,046 HIV-positive prisoners were identified. As of 1 October 2002, the prison system had 1,577 HIV-positive prisoners and 17 prisoners who had developed AIDS. It has to be added that the World Bank approved a \$60 million loan for a tuberculosis and HIV/AIDS control programme in Ukraine, which includes considerable support for the penitentiary system.

b. medical screening on admission/care during detention

126. The delegation's observations on the spot confirmed that the prisoners received appropriate medical examinations, out of the sight and hearing of prison staff, within 24 hours of their arrival in Prison No. 8 and SIZO No. 21.

Nevertheless, the procedure followed when new arrivals were found to have injuries has still to be improved. The description of the injuries was not accompanied, as recommended by the CPT on several occasions (cf. paragraphs 26 and 109 of the report on the 2000 visit), by an account of statements made by the person concerned which are relevant to the medical examination (including the description of his or her state of health and any allegations of ill-treatment) and the doctor's conclusions in the light of these statements and of the objective medical findings.

**The CPT recommends once again that the Ukrainian authorities implement its recommendation concerning the recording of injuries observed on prisoners, in accordance with paragraph 26 of its report on the visit in 2000.**

127. The delegation observed the professional commitment of the health-care staff at both Prison No. 8 and SIZO No. 21. On the whole, resources in terms of medical and care staff were adequate and the equipment, although modest, could be considered acceptable.

**That said, in Prison No. 8, the CPT recommends putting an immediate end to the practice of having prisoners receive injections through the hatch of the sick bay, in full view of prison staff. Treatment should always be administered in rooms set aside for that purpose, out of the hearing and - unless the doctor or nurse concerned requests otherwise in a particular case - out of the sight of prison staff.**

128. Lastly, in Prison No. 8, the delegation met two inmates serving life sentences who were psychotic and needed psychiatric treatment in a specialised hospital. It emerged from talks with the prison psychiatrist and psychologist that another prisoner serving a life sentence was in the same situation but that it would be impossible to transfer them to a psychiatric hospital as there were no facilities for this category of prisoners.

The CPT would point out that all mentally ill prisoners, including those serving life sentences, should be cared for and receive treatment in a hospital facility adequately equipped and with qualified staff. Forcing such prisoners to stay in prison, where they cannot receive appropriate treatment for lack of suitable facilities or because such a facility refuses to accept them, is an unacceptable state of affairs. The transfer of mentally ill prisoners to an appropriate psychiatric facility should be considered a high priority.

In the light of these remarks, the CPT recommends that the Ukrainian authorities ensure that inmates serving life sentences in Zhytomyr Prison No. 8 (and, if necessary, in any other penitentiary establishments in the country) who require psychiatric treatment in a specialised hospital facility can be transferred to such a hospital without undue delay.

## 6. Other issues

### a. discipline and strict cellular regime

129. The procedure for placing prisoners in a disciplinary cell (SHIZO) and the duration of such placements were outlined in paragraph 163 of the report on the 1998 visit and paragraph 114 of the report on the 2000 visit. The descriptions still apply. The delegation was able to observe in the establishments it visited that the procedure in force was observed and that this form of punishment was not misused.

130. As regards the material conditions in the disciplinary cells, those in *Prison No. 8* were - except as far as heating was concerned - quite acceptable. The cells were of an adequate size (from a little under 7 m<sup>2</sup> to 8 m<sup>2</sup>), well-lit by natural and artificial lighting, properly equipped, and very clean and well maintained. However, the delegation heard complaints from prisoners that they were obliged to wear a uniform in the disciplinary cells that did not provide sufficient protection against the cold.

In *SIZO No. 21*, material conditions were not as good. The cells were smaller (about 6 m<sup>2</sup>) and there was insufficient access to natural light. Furthermore, some cells did not have a toilet, running water or proper heating. Work was, however, in progress to remedy these three shortcomings.

In *Colony No. 14*, the disciplinary cells had adequate natural light and were properly fitted out. However, cells measuring about 10 m<sup>2</sup> sometimes accommodated up to four prisoners, which is excessive.

### **The CPT recommends:**

- **ensuring, in Prison No. 8, that the disciplinary cells are properly heated;**
- **completing renovation work on the disciplinary cells in SIZO No. 21, making sure that they benefit from adequate access to natural light;**
- **not placing more than two persons in the disciplinary cells measuring 10 m<sup>2</sup> in Colony No. 14.**

131. Despite repeated assurances from the Ukrainian authorities, in several of the establishments visited prisoners placed in disciplinary cells received only half an hour of outdoor exercise (this is, moreover, provided for in Rule 70.2 of the Rules of Internal Procedure in Correctional Labour Establishments). Furthermore, these prisoners did not always have access to reading matter.

**The CPT recommends that steps be taken without delay to ensure that prisoners placed in disciplinary cells (SHIZOs) be offered one hour of outdoor exercise every day and be given reading matter.**

132. Material conditions in the strict cellular regime (PKT) cells were similar to those in the disciplinary cells. **The recommendations in paragraph 130 above therefore apply.**

133. With regard to the regime applicable to this category of prisoner, the 2002 visit confirmed that they were entitled to one to two hours of outdoor exercise every day, were authorised to have books, magazines and newspapers in their cells and could work and correspond with their relatives. These are positive features. In Prison No. 8, they were also allowed visits while subject to the strict cellular regime. However, this was not the case in Colony No. 14, where, in addition, they were no longer allowed to receive parcels.

In paragraph 119 of the report on the 2000 visit, the CPT stressed that the prohibition of visits for the whole duration of placement under strict cellular regime (which could range from six months to one year) was an unacceptable state of affairs. It must stress that the same is true for the discontinuation of parcels for such prolonged periods.

**The CPT reiterates its recommendation that the application of the strict cellular regime be reviewed, as a matter of urgency, in order to ensure that the prisoners concerned, throughout the penitentiary system, are entitled to visits. It also recommends lifting the ban on parcels during placement in the strict cellular regime. If necessary, the relevant regulations should be amended.**

b. contact with the outside world

134. The rules governing inmates' contact with the outside world were outlined in paragraph 122 of the report on the 2000 visit.

135. During the 2002 visit, the delegation received numerous complaints in the establishments visited about the fact that prisoners or their families had to pay for visits which, as these often cost more than they could afford, they had to do without. For example, in SIZO No. 21, the prison administration charged 2 hryvnas for an open visit, and 3 hryvnas to use the telephone in the glass booths. In Colony No. 14, 2 hryvnas was charged for "short" visits and 12 hryvnas per person per day for "long" visits (of up to three days).

136. In paragraph 166 of its report on the 1998 visit, the CPT stressed how important it was for prisoners to maintain proper contact with the outside world (in particular with their family/spouse/partner/children, etc.) and set out guiding principles for such contact.

Clearly, the imposition of a financial contribution is an obstacle to visits for a number of prisoners and their relatives. For its part, the CPT considers that the opportunity to receive visits should never be dependent on such a contribution. Therefore, **it recommends that the Ukrainian authorities ensure, without delay, that “short” visits are exempt from all financial contribution on the part of the prisoners or their relatives. It also invites the authorities to abolish, as soon as possible, the practice of charging for “long” visits.**

137. With regard to the conditions under which visits take place, the CPT regrets the fact that short visits generally took place in glass booths, and prisoners and visitors had to use a telephone (which, as in SIZO No. 21, often failed to work properly), in uncomfortable conditions. For instance, in Colony No. 14, no chair was provided on the prisoner’s side, even though such visits could last up to four hours.

A welcome exception was the room set aside in SIZO No. 21 for visits “at a table” for minors and “economic” prisoners. This is an example to be followed.

**The CPT recommends that the Ukrainian authorities remedy the shortcomings described above as regards the material conditions under which short visits take place. It would finally appreciate the Ukrainian authorities’ views on the invitation to the authorities, reiterated in paragraph 123 of its report on the 2000 visit, to review the conditions under which visits take place in order to ensure that, as far as possible, both sentenced and remand prisoners receive visits in more open conditions.**

c. complaints and inspection procedures

138. In its report on the 1998 visit (paragraphs 170 to 172) and that on the 2000 visit (paragraphs 124 to 126), the CPT dealt in detail with complaints and inspection procedures.

In response to its recommendation that the Ukrainian authorities ensure that prisoners have confidential access to the national bodies authorised to receive complaints and, in accordance with the obligations which they had undertaken in this respect, to international bodies, the Ukrainian authorities stated that all the necessary practical measures had been taken.

In the light, however, of the delegation's on-the-spot observations in 2002 (which corroborate the description given in paragraph 124 of the report on the 2000 visit), **the CPT again recommends that the Ukrainian authorities ensure forthwith that all prisoners (both remand and sentenced), throughout the penitentiary system, have confidential access to the national and international bodies authorised to receive complaints, by taking the practical measures recommended in its report on the 2000 visit, namely: installing locked complaints boxes accessible to prisoners, to be opened only by specially designated persons in confidence; and providing envelopes.**

In this context, **it also recommends issuing prisoners with a leaflet explaining which national and international bodies they are entitled to apply to, with their addresses.**

139. With regard to inspections of penitentiary establishments, the CPT welcomes the work of the Ukrainian Parliamentary Commissioner for Human Rights, particularly in the context of her visits in the field, and the dialogue established with the Department for the Execution of Sentences with a view to improving the situation of these prisoners.

d. means of restraint/use of dogs

140. In building No. 1 of SIZO No. 21, each cell was opened only in the presence of a special squad equipped with truncheons, bullet-proof vests and tear gas. The squad was accompanied by a muzzled dog. It was explained to the delegation that this procedure was provided for in the rules governing the opening of large cells with a capacity exceeding the number of staff on duty.

The CPT does not agree with this practice. It considers that the deployment of such a squad and the use of such means of restraint as tear gas and dogs inside detention areas can only be justified in very exceptional circumstances.

**The CPT recommends that the Ukrainian authorities put an end to the systematic use of a squad equipped with tear gas and accompanied by a dog when cells in building No. 1 of SIZO No. 21 are opened. It also recommends ensuring that, in all penitentiary establishments, tear gas is used only in very exceptional circumstances which are exhaustively listed and subject to a strict procedure and supervision.**

- e. waiting cubicles/transport of prisoners

141. The delegation's attention was drawn to the waiting cubicles in SIZO No. 21. The large cubicles measuring about 9 m<sup>2</sup> could accommodate up to 25 people for two hours, while the small ones, measuring about 2 m<sup>2</sup>, could accommodate up to six people. Such an occupancy rate is intolerable, even for a short time. **The CPT recommends that cubicles measuring approximately 2 m<sup>2</sup> be obligatorily reserved for the placement of a single person, and that the possible occupancy rate of those measuring approximately 9 m<sup>2</sup> be considerably reduced.**

142. In its report on the 2000 visit (paragraph 131), the CPT made a number of recommendations concerning the transport of prisoners by road and rail. The matter was raised again in 2002 with the Ukrainian authorities, who stated that a working group had been set up to transfer responsibility for escorting prisoners from the Ministry of Internal Affairs to the Department for the Execution of Sentences. In the light of the critical findings again made by the delegation which carried out the 2002 visit, concerning transport vans, **the CPT recommends that the Ukrainian authorities give a high priority to resolving the issue of the conditions under which prisoners are transported, with due regard to the recommendations in paragraph 131 of its report on the 2000 visit.**

## **D. Mental health establishments**

### **1. Preliminary remarks**

143. The delegation visited two mental health establishments: the Regional Clinical Psychiatric Hospital in Chernivtsi, which is under the authority of the Ministry of Health, and the Neuropsychiatric Institution for Women in Pohonya<sup>12</sup>, which is under the authority of the Ministry of Labour and Social Affairs. It was the first time the CPT had visited a mental health establishment under the authority of the latter ministry.

144. In its previous reports, the CPT gave details of the legal framework for the committal of patients under a civil committal procedure to a psychiatric facility as provided for in the 2000 Law on Psychiatric Care (cf. CPT/Inf. (2002) 23, paragraph 159), and the legal basis for the committal to such a facility of persons who are deemed to be criminally irresponsible for their actions or who develop a mental illness after committing an offence (cf. CPT/Inf (2002) 19, paragraph 225).

145. Committal to a neuropsychiatric social protection or special education institution is governed by the 2000 Law on Psychiatric Care, but by different sections from those concerning committal to a psychiatric hospital. Under Section 23 of the law, committal requires a personal request on the part of the patient (or, in the case of minors and incapacitated adults, their parents or legal representative) and the conclusions of a panel of doctors, including a psychiatrist. Once committed, the patient must be examined at least once a year by a panel of doctors, including a psychiatrist and by a panel comprising a psychiatrist, a psychologist and a special needs teacher to determine whether he or she should continue to be held in the institution. Under Section 24, the person may be discharged at his or her request if a panel of psychiatrists concludes that he or she is able to support himself or herself; the person may also be discharged by a court decision if it rules that the person in question was committed to the institution illegally.

**In this respect, the CPT wishes to be informed whether a person who has been committed to such an institution may apply to a court at any time to contest his or her placement and, if so, under what conditions. The CPT also wishes to receive statistics for the number of cases in which the courts have decided that persons were illegally committed to such an institution since the law entered into force.**

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<sup>12</sup> Considered under the 2000 Law on Psychiatric Care as a neuropsychiatric social protection or special education institution.

146. **The Chernivtsi Regional Clinical Psychiatric Hospital**, located in the town of the same name and comprising several two-storey buildings, had 11 psychiatric wards<sup>13</sup> and a neurology ward. With an official capacity of 680 beds, including 610 psychiatric beds, at the time of the visit, the psychiatric wards held 650 patients. Eight persons had been committed under Article 13 of the Criminal Code, and a few patients had been involuntarily hospitalised under a civil committal procedure. However, it emerged during the visit that a large number of the 510 adult patients in the secure wards had not consented to their admission to a psychiatric hospital and yet could not leave the hospital of their own free will (cf. paragraph 166 below).

147. **The Pohonya Neuropsychiatric Institution for Women**, located in an old monastery in the middle of the countryside in the Ivano-Frankivsk region, consisted of a single building. It had an official capacity of 130 beds, and at the time of the visit was holding 102 patients - including one man - most of whom had been there for several years. They suffered from psychiatric disorders, mainly mental retardation, sometimes associated with somatic illnesses. All the patients had been hospitalised under the statutory procedure for committal to a neuropsychiatric institution (cf. paragraph 145 above).

## 2. Chernivtsi Regional Clinical Psychiatric Hospital

### a. ill-treatment

148. The information received by the delegation showed that virtually all the staff acted professionally and with dedication towards the patients. Having said that, the delegation heard some allegations of ill-treatment in the form of kicks from unqualified auxiliaries.

**The CPT recommends that the Ukrainian authorities take all the measures necessary to prevent patients from being physically ill-treated.**

### b. staffing

149. Staffing should be adequate in terms of number, professional categories (psychiatrists, general practitioners, psychologists, nurses, auxiliaries, occupational therapists, social workers, etc.), experience and training. Deficiencies in staff resources often seriously undermine attempts to provide quality care and organise activities.

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<sup>13</sup> Six secure general psychiatry wards for adults (three for women and three for men), one secure ward for patients with tuberculosis or infectious diseases, one secure geriatric psychiatry ward, one secure intensive care ward, one open ward for adults and one semi-secure ward for children and adolescents.

150. The medical team responsible solely for the psychiatric care of the patients in the eleven psychiatric wards consisted of the equivalent of 41.5 full-time doctors, including the equivalent of 31.75 full-time psychiatrists, the equivalent of 159.25 full-time qualified nurses and the equivalent of 244.25 full-time unqualified auxiliaries (“junior nurses”). Staffing levels did not make it possible to provide an adequate nursing presence throughout the day, and this inevitably affected the care provided to patients. For instance, in ward 8, which had 60 patients, only three unqualified auxiliaries and a single nurse were present from 4 pm until the following morning; to all intents and purposes, their role was limited to that of supervision and the administration of medication. Moreover, because of the shortage of staff, some patients were responsible for helping other patients to eat their meals or wash, and were sometimes even asked to help transport them on stretchers.

Furthermore, there were only 2.5 full-time psychologists (including one for the children’s and adolescents’ ward) and two full-time teachers (both allocated to the children’s and adolescents’ ward). Lastly, the hospital did not have an occupational therapist (cf. paragraph 161 below).

**151. The CPT recommends that the Ukrainian authorities review the staffing of the establishment visited in the light of the above remarks. In particular, it recommends that steps be taken as soon as possible:**

- **to increase the number of qualified nurses on the psychiatric wards in the afternoons and at night;**
- **to recruit a sufficient number of occupational therapists;**
- **to increase substantially the number of psychologists.**

152. The CPT considers that it is highly desirable that all categories of staff, without exception, be offered initial training and then further training opportunities at reasonably regular intervals, both in the form of refresher courses to update their theoretical knowledge, preferably given by professionals from outside the establishment, and as internships in other institutions.

The CPT welcomes the fact that this was the case in respect of the establishment’s psychiatrists and qualified nurses, who attended a compulsory one-month refresher course every five years, and a series of lectures organised in partnership with a faculty of medicine. In addition, every month the nurses could attend a class given by one of the hospital’s doctors.

On the other hand, the auxiliaries, who were usually recruited as soon as they left secondary school, had no specific basic nursing training. Moreover, they were not offered a programme of obligatory refresher courses and could not attend the medical classes reserved for nurses. The only training they received was a monthly training session which the nurse in charge of the ward organised for auxiliaries on the ward.

**The CPT recommends that the Ukrainian authorities introduce proper initial and in-service training courses for auxiliaries at Chernivtsi and in all the other health establishments in Ukraine.** Such training would, moreover, help to prevent inappropriate reactions (cf. paragraph 148 above).

c. patients' living conditions

153. Material conditions of accommodation were mediocre, despite the management's efforts to ensure that the premises were, by and large, clean and, with the notable exception of the ward for patients suffering from tuberculosis or other infectious diseases, adequately heated. The premises as a whole were in an advanced state of dilapidation.

The patients were accommodated in large dormitories with up to 23 beds in approximately 60 m<sup>2</sup>, which gave them no privacy. Because the psychiatric wards were overcrowded at the time of the visit, extra beds had been placed in the dormitories; this sometimes made it impossible to move between beds - or even in the corridors and the various communal areas. The artificial lighting was inadequate because of a shortage of light bulbs. Moreover, there were neither bedside tables nor wardrobes where patients could put their personal belongings.

The sanitary facilities were rudimentary. Moreover, because of technical problems since June 2002, there was no hot water in the various buildings in which the patients were accommodated. Makeshift showers had been set up in a disused laundry; the hospital had only four working hot-water showers in all. At best, each patient could therefore have a shower only once every ten days.

154. By letter of 15 April 2003, the Ukrainian authorities informed the CPT that instructions had been issued to remedy the shortcomings observed, within three months, particularly as regards artificial lighting and the hot-water supply. **The CPT wishes to be informed of all the specific measures actually taken.**

Furthermore, **the CPT recommends that the Ukrainian authorities immediately take the necessary steps to reduce overcrowding in Chernivtsi hospital; as a first step, the establishment should not hold more patients than it has the official capacity to accommodate and efforts should be made to gradually reduce this official capacity.**

In addition, **the CPT recommends that efforts be made to progressively convert the large dormitories into smaller units, and to provide each patient with a permanently accessible place in which to lock his or her personal belongings. In addition, it recommends that the sanitary facilities of all the hospital wards be renovated.**

155. The food provided to patients is of particular interest to the CPT; food must be adequate in terms of quantity and quality.

Due to insufficient financial resources being made available to the hospital, its food budget in 2002 amounted to less than 1.5 hryvnas per patient per day; a sum which, according to the hospital management, is less than a quarter of the establishment's needs in this respect. Thus, for instance, the hospital could not afford to give the patients fresh fruit, and they received a portion of meat or fish only once a month.

By letter of 15 April 2003, the Ukrainian authorities informed the CPT that instructions had been issued to improve the food given to patients at Chernivtsi. **The CPT, while welcoming this initiative, reiterates its recommendation that the Ukrainian authorities ensure that all psychiatric hospitals receive sufficient funding to provide adequate food to their patients** (cf. also CPT/Inf (2002) 23, paragraph 145).

d. treatment

156. Psychiatric treatment should be based on an individualised approach, which implies, inter alia, the drawing up of a treatment plan for each patient.

Medication is often an important part of the care of patients with psychiatric disorders. Procedures should be introduced to ensure that a regular supply of appropriate medicines is guaranteed and that the medication prescribed is in fact administered.

157. The CPT was pleased to note that the hospital had a separate budget for tuberculosis medication, and that all the patients suffering from tuberculosis were indeed offered adequate treatment.

However, as regards the supply of other medication and syringes and needles, the situation gave great cause for concern because of the lack of financial resources. At the time of the visit, the budget for the purchase of psychotropic drugs, medication for somatic disorders other than tuberculosis and injection equipment, was 0.32 hryvna per patient per day, which covered only 4% of the hospital's needs in this respect. Certain categories of drugs, such as those for treating neuroleptic side effects, were completely lacking. In order to offset the chronic shortage of medicines, hospital patients or their families were advised to supply them themselves.

Such a situation is not acceptable. Even in times of grave economic difficulties, the provision of certain basic necessities of life must always be guaranteed in institutions where the State has persons under its care and/or custody. These include, in health establishments, appropriate medication.

After the visit, the authorities issued instructions to improve the supply of medication at Chernivtsi. While welcoming this initiative, **the CPT recommends that the Ukrainian authorities take the necessary measures, without delay, to ensure that Chernivtsi and all similar Ukrainian establishments continuously receive an adequate supply of appropriate medication** (see also CPT/Inf (2002) 23, paragraph 150).

158. The secure intensive care ward was a small unit with a capacity of six beds for psychiatric patients with serious somatic disorders. The CPT was pleased to note that there was extra medical and nursing staff on this ward; this meant that a doctor, two qualified nurses and an auxiliary were present 24 hours a day.

Nevertheless, the paucity of medical equipment in the unit, given its purpose, gives cause for concern. There was only one respirator (without an oxygen supply, moreover), one manual respirator and one electrocardiograph. For electroencephalograms and X-rays, patients were transported on stretchers to the neurological or central ward. **The CPT recommends that the authorities take measures to provide the medical equipment one is entitled to expect in such a unit; in particular, the unit should be provided at the earliest opportunity with an oxygen supply, at least one heart monitoring machine and a defibrillator.**

159. Electroconvulsive therapy was occasionally administered in the intensive care ward (five patients had received ECT in the first eleven months of 2002). Once the consent of the patient or family had been obtained, ECT was administered under general anaesthesia. There was a special register with the names of the patients who had been treated.

While electroconvulsive therapy is a recognised form of treatment for patients suffering from certain psychiatric disorders, the CPT considers that it should systematically be carried out in its modified form (i.e. not only with anaesthetics but also with muscle-relaxants). Moreover, the reasons for using it and the conditions under which it is administered should be set out in detail in a special register. These two requirements were only partially met at Chernivtsi. **The CPT recommends that the authorities review practices in the light of these comments. It also advocates the use of an electroencephalogram when electroconvulsive therapy is carried out, to verify the efficacy of the treatment.**

160. Therapy should also include a wide range of occupational therapy and rehabilitation activities. Patients should have regular access to suitably equipped recreation rooms and have the possibility to take outdoor exercise on a daily basis. It is also desirable for them to be offered educational activities.

161. A few occupational therapy activities, i.e. activities designed to foster cognitive or psychomotor skills, were organised for the youngest patients in the semi-secure ward for children and adolescents (jigsaw puzzle, cut-out book, embroidery, Lego, plasticine). But because of the small number of teachers on the ward (cf. paragraph 150 above), there was little variety and the sessions were insufficient in frequency and duration.

No occupational therapy or psychiatric rehabilitation activities had been offered to the adults since the closure of the workshops in 1992. The situation gave all the more cause for concern as many patients had been in hospital for several months and some for more than a year.

Moreover, there were no opportunities for recreational or occupational activities, such as a leisure club where patients could have access to newspapers or board games, or for sporting activities.

To sum up, because there were no occupational, recreational or sporting activities, virtually all the patients spent the whole day in complete enforced idleness, confined to the television room on the ward or, in certain cases, to the dormitories, where they sat on their beds.

By letter of 15 April 2003, the Ukrainian authorities informed the CPT that instructions had been issued to introduce occupational and rehabilitation activities at Chernivtsi. **The CPT would like to receive detailed information about the measures already taken in this area (specific activities introduced, number and categories of patients involved, frequency and duration of the activities). Further, it recommends that efforts also be made to introduce recreational and sporting activities.**

162. All the wards had their own outdoor exercise yard, but access was limited because certain wards did not have direct access to the yards and there was a lack of staff available to supervise. During its three-day visit to the hospital, the delegation encountered only a very small number of patients taking outdoor exercise. Moreover, it appeared that patients suffering from tuberculosis had no access at all to outdoor exercise. In addition, none of the yards offered protection from the rain.

By letter of 15 April 2003, the Ukrainian authorities informed the CPT that instructions had been given to increase the outdoor exercise time at Chernivtsi. **The CPT would like to receive confirmation that all patients without exception - including those suffering from tuberculosis - provided there are no medical reasons to the contrary, may now benefit from at least one hour of outdoor exercise every day. Further, it invites the Ukrainian authorities to take the necessary steps to ensure that this exercise takes place in satisfactory conditions (i.e. sheltered from inclement weather).**

e. means of restraint

163. The staff at Chernivtsi hospital did not resort to the seclusion of agitated and/or violent patients.

The delegation was informed that physical restraint was sometimes used, for a few hours at most. The delegation nevertheless heard some allegations from patients that they had been restrained for more than 24 hours. The delegation was not able to take the matter further as the hospital did not have a specific register to record such measures.

164. In this connection, the CPT welcomes the methodological recommendations adopted in 2001<sup>14</sup>. **It recommends that the Ukrainian authorities ensure that the provisions concerning the introduction of registers for recording seclusion and physical restraint measures are duly applied in all Ukraine's psychiatric hospitals, including Chernivtsi hospital.**

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<sup>14</sup> "Rules for applying physical restraint and isolation with respect to individuals suffering from psychiatric disorders - methodological recommendations". Ukraine Ministry of Health, Ukrainian Institute for Social and Judicial Psychiatry (2001).

f. safeguards offered to psychiatric patients

165. In its previous reports, the CPT listed the safeguards recommended for mentally ill and mentally handicapped persons admitted to a psychiatric facility (cf. CPT/Inf (2002) 19, paragraph 224 and CPT/Inf (2002) 23, paragraph 157).

166. A few patients were officially admitted on a non-voluntary basis under a civil committal procedure.

Nevertheless, as previously mentioned (cf. paragraph 146 above), a large number of the 510 adult patients in the secure wards had not consented to their admission to a psychiatric hospital and could not leave the hospital of their own free will. In practice, they did not have the slightest opportunity to benefit from the safeguards provided by the 2000 Law on Psychiatric Care, in particular the opportunity to contest their admission to hospital. In many cases, the files contained only a request for treatment made by a relative.

Worse still, an examination of the patients' files revealed that some of them had been admitted to hospital without their consent simply on the basis of a letter from a public prosecutor or at the request of the Militia, without an involuntary committal request having been submitted to the competent court.

By letter of 15 April 2003, the Ukrainian authorities informed the CPT that instructions had been issued to put into practice at Chernivtsi the 2000 Law on Psychiatric Care. **The CPT wishes to receive confirmation that this is currently the case. In addition, it recommends that the Ukrainian authorities immediately take all the necessary steps to ensure that the sections of the 2000 Law on Psychiatric Care concerning involuntary admission to hospital are scrupulously observed in all Ukrainian hospitals which admit non-voluntary patients.**

167. The delegation met a few patients who had entered the hospital of their own free will but who were apparently subsequently refused permission to leave, when they so requested, on the pretext - confirmed to the delegation by the nursing staff - that there was no relative waiting for them at home. The CPT is well aware of the difficulties in caring for the most disadvantaged and socially isolated patients. Nevertheless, in such cases, where there is no justification for recourse to Section 18, paragraph 2<sup>15</sup> of the 2000 Law on Psychiatric Care, preference should be given to alternatives to continued hospitalisation, such as follow-up at home by qualified staff. **The CPT wishes to receive the Ukrainian authorities' comments on the subject.**

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<sup>15</sup> "A person who has been hospitalised in a psychiatric institution voluntarily or with the agreement of his legal representative, may be refused permission to leave the psychiatric institution if the board of psychiatrists establishes the grounds for involuntary hospitalisation provided by Article 14 of the present law. In this case all questions in relation to person's involuntary hospitalisation, its continuation and when it should end, are decided in accordance with Articles 16 and 17 and Parts 2 and 3 of Article 22 of the present law and Part 3 of the present Article."

168. As concerns involuntary placement in the Chernivtsi hospital of persons deemed to be criminally irresponsible, under Article 3 of the Criminal Code, the delegation noted that the procedures for such admissions were observed. Moreover, the patients' files contained periodic recommendations from the panel of psychiatrists to extend hospitalisation, as provided for by law. On the other hand, the delegation did not always find in the file the court decisions, taken at least twice a year, to extend hospitalisation in the light of the recommendations from the panel of psychiatrists. **The CPT recommends that the authorities ensure that Article 95 of the Criminal Code is strictly applied in this respect.**

In addition, under the Code of Criminal Procedure (paragraph 3 of Article 419<sup>16</sup>), the court has no obligation to hear the patient when decisions are taken concerning his or her admission to a psychiatric facility, nor when the admission is to be extended. Indeed, it became apparent to the delegation during the visit that although patients' families were heard when the court took decisions, this was not the case for patients. The CPT does not endorse this approach. It considers that the patient should systematically be heard by the court provided there are no properly documented medical reasons to the contrary. **The CPT recommends that the authorities review the legislation applicable in this respect.**

169. The delegation observed that great efforts were taken at Chernivtsi hospital to obtain written consent to treatment from civil patients and those deemed to be criminally irresponsible.

The fact remains, however, that the law still does not generally require consent to treatment in the case of involuntary placement, whether by virtue of a civil or criminal procedure<sup>17</sup>. As already stated in paragraph 160 of its report on the visit in 2000 (cf. CPT/Inf (2002) 23), such a broad exception to the principle of free and informed consent to treatment is unacceptable. Consequently, **the CPT reiterates its recommendation that any derogation from this fundamental principle be applied solely in exceptional, clearly and strictly defined circumstances; if necessary the Law on Psychiatric Care should be amended accordingly.**

170. In most of the patients' files there was a form setting out patients' rights, but it was incomplete and mentioned only some of the rights provided for in Section 25 of the 2000 Law on Psychiatric Care.

**The CPT reiterates its recommendation that the Ukrainian authorities draw up a leaflet explaining how the establishment operates and setting out all the rights of patients involuntarily admitted, as provided for by law (cf. CPT/Inf (2002) 23, paragraph 162). Such a leaflet should be issued to all patients and possibly their families, on admission.**

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<sup>16</sup> The presence of the person in respect of whom the case is under consideration is not obligatory and can take place only when nature of his/her disease does not prevent it.

<sup>17</sup> Cf. Section 25 of the 2000 Law on Psychiatric Care.

171. In its previous reports, the CPT has stressed the considerable importance it attaches to regular visits to psychiatric establishments by an independent outside inspection body (e.g. a judge or supervisory committee) (cf. CPT/Inf (2002) 19, paragraph 231 and CPT/Inf (2002) 23, paragraph 163).

The CPT noted that the Chernivtsi hospital was regularly visited and inspected by representatives of the regional authority in respect of both health care and financial matters. Such an inspection by representatives had taken place in the days preceding the visit of the delegation. However, the delegation was unable to ascertain how many inspections had been carried out by the public prosecutor's office at Chernivtsi under Section 31 of the 2000 law since its enactment.

**The CPT wishes to receive the report and conclusions of the above-mentioned inspection by representatives of the regional authority. It also wishes to receive comparable information regarding visits made by the public prosecutor.**

### **3. Neuropsychiatric Institution for Women in Pohonya**

#### **a. ill-treatment**

172. The CPT would stress that the delegation heard no allegations of ill-treatment of patients by staff and gathered no other evidence of such treatment. On the contrary, it found a relaxed atmosphere and observed that relations between staff and patients were based on trust.

#### **b. staffing**

173. The situation was difficult in this respect, despite the conscientiousness and commitment of all the staff.

A doctor, a retired psychiatrist, was responsible for all somatic and psychiatric care. He was assisted in this respect by six nurses and thirty-two unqualified auxiliaries ("junior nurses"). From 5 pm until the following morning only one qualified nurse and four to six auxiliaries were on duty. In an emergency, they were to call either the psychiatrist at home (half an hour's drive away), or a hospital which was five kilometres away. The Committee considers that the number of nurses is inadequate for a neuropsychiatric institution which constantly holds more than 100 patients.

Moreover, the institution did not have any staff qualified to organise physiotherapy, occupational therapy and rehabilitation activities. However, the Ukrainian authorities informed the CPT by letter of 15 April 2003 that they had created a post of occupational therapist and a post of leisure activities organiser.

As for staff training, the situation was similar to that at Chernivtsi (cf. paragraph 152 above).

**The CPT recommends that the Ukrainian authorities take the necessary steps to significantly reinforce the nursing team and to recruit a physiotherapist. In addition, it wishes to receive confirmation that the above-mentioned posts of occupational therapist and leisure activities organiser have in fact been filled.**

c. living conditions and treatment

174. The delegation observed that the local authorities and the management of the institution had made efforts to make the material living conditions as decent as possible. However, substantial improvements still need to be made.

The premises were adequately heated as a result of the very recent purchase of a gas-fired boiler. There was sufficient natural light, but not enough artificial lighting because of the shortage of light bulbs (most of the vast communal parts were lit with a single light bulb, and that of low intensity). In addition, at the time of the visit the institution had had no running water for several days, with the result that the staff had to use cisterns.

The living space available to the patients was acceptable (for example, a room/dormitory measuring 17 m<sup>2</sup> for four persons). The management was constantly endeavouring to make the rooms more comfortable: at the time of the visit some of them were being renovated. However, only a few were equipped with bedside tables or wardrobes and most of them seemed completely impersonal, being totally devoid of decoration and personal belongings.

The sanitary facilities were dilapidated and there was a persistent smell. Furthermore, there was no provision for helping bedridden people to wash.

In the light of these observations, **the CPT encourages the Ukrainian authorities to continue their efforts to renovate the institution. In particular, it recommends that the authorities take all the necessary steps to ensure that the Pohonya institution is permanently supplied with running water and to renovate the sanitary facilities (adapting them to the needs of the residents).**

175. As concerns pharmacological treatment, the delegation observed that there was a satisfactory supply of appropriate medication. Furthermore, it did not observe any sign of overmedication among patients.

176. Occupational therapy and rehabilitation activities were completely non-existent and leisure activities were confined to the opportunity to watch one of the few television sets in the establishment. To offset the lack of activities, the patients were gathered together in large common rooms, where they sat on benches, but in a state of complete inactivity. In the above-mentioned letter of 15 April 2003, the Ukrainian authorities informed the CPT that the Ministry of Labour and Social Affairs had drawn up a plan for the Ukrainian neuropsychiatric institutions to increase the number of recreational activities and organise more physical exercise, occupational therapy and educational and cultural activities. **The CPT would like to receive detailed information about the aforementioned plan and the concrete measures already taken in this respect. It also wishes to receive a detailed description of the results of these measures at Pohonya.**

177. The delegation did not see any patients taking exercise during its visit. It emerged from talks with the nursing staff that exercise in the fresh air was arranged only in clement weather. In this context it should be noted that there was no inner courtyard suitable for the purpose.

**The CPT recommends that the Ukrainian authorities take the necessary steps to ensure that all patients at Pohonya, without exception, provided there are no medical indications to the contrary, benefit from at least one hour of outdoor exercise every day.**

d. safeguards for patients in the institution

178. The arrangements for the start, continuation and termination of placement, as provided for by law, have been set out above (cf. paragraph 145). On examining the files, the delegation observed that these arrangements were not scrupulously respected - far from it; some files did not contain the patient's initial request, or in its place there was a request from a relative, while other files did not contain the findings of the panel of doctors. **The CPT recommends that the Ukrainian authorities take all the necessary steps without delay to ensure that the sections of the 2000 Law on Psychiatric Care concerning placement in a neuropsychiatric institution are scrupulously observed, without exception.**

179. **The recommendation concerning the provision of an information leaflet for patients and their families in Chernivtsi (cf. paragraph 170 above) also applies to the Pohonya neuropsychiatric institution and to all establishments of this kind.**

With regard to inspections by independent bodies, **the CPT recommends that the authorities encourage visits by associations representing the public to Pohonya, as well as to all other neuropsychiatric institutions in Ukraine, as provided for in Section 31 of the 2000 Law on Psychiatric Care. Furthermore, it wishes to be informed of the number of inspections carried out at Pohonya by the office of the Ivano-Frankivsk public prosecutor, and of its findings.**

### III. RECAPITULATION AND CONCLUSIONS

#### A. Militia establishments

180. The treatment of persons deprived of their liberty by members of the operational services of the Militia remains a source of grave concern for the CPT, four years after its first visit to Ukraine. Once again, widespread allegations of physical ill-treatment have been received, at the time of apprehension and in particular during questioning. The alleged forms of ill-treatment were similar to those reported in the past; in many cases, the severity of the physical ill-treatment was such that it could be considered as amounting to torture.

By contrast, the CPT delegation did not hear any allegations of physical ill-treatment by custodial staff assigned to the Militia central holding facilities (ITTs) visited.

181. In the light of all the information at its disposal, including medical data compatible with the allegations heard, the CPT could only reach the same conclusion as in the past, namely that persons deprived of their liberty by the Militia run a significant risk of being physically ill-treated at the time of their apprehension and/or while in the custody of the Militia (particularly when being questioned), and that on occasion resort may be had to severe ill-treatment/torture.

The CPT stressed that the time had come for the Ukrainian authorities to be much more energetic in combating the problem of ill-treatment by the Militia.

182. The CPT recommended that the message sent by the Collegium of the Ministry of Internal Affairs on 15 May 2001 to all Militia personnel asking them to observe the law and the rights of detained persons and calling on executive staff, at all levels, to ensure that the Militia performed its tasks in an exemplary manner, be firmly reiterated at regular and appropriate intervals. It also recommended that it be stressed in this message that abuse will not be tolerated and will be the subject of severe sanctions.

In this connection, the CPT again highlighted the key role played by prosecutors - and, since the reform of the Code of Criminal Procedure in July 2001, judges - in the prevention of ill-treatment.

183. With regard to fundamental guarantees against ill-treatment, the CPT recommended that measures be taken to ensure that the provisions of Article 106 of the Code of Criminal Procedure requiring the body of inquiry immediately to inform one of the relatives of the detention of a person suspected of committing a crime were strictly complied with in practice. Any possibility of, exceptionally, delaying the exercise of this right should be clearly circumscribed in law, made subject to appropriate safeguards and strictly limited in time. The CPT also recommended amending the relevant provisions of the Code so that it was clearly established that all persons deprived of their liberty were entitled to access to a lawyer as from the very outset of their deprivation of liberty. As for the right of access to a doctor, the CPT recommended that steps be taken without delay to enshrine this right in legislation.

184. The intolerable material conditions under which detained persons were held for prolonged periods in the *district police stations* visited prompted the CPT's delegation to make an immediate observation to the Ukrainian authorities under Article 8, paragraph 5, of the Convention. Such persons were held in dark, insalubrious, overcrowded cells with no ventilation and had no means of resting, sleeping or washing themselves. Moreover, the only food given to them was brought in by relatives. The CPT called upon the Ukrainian authorities to put an immediate end to the practice of detaining persons for more than a few hours in the country's district police stations. It also recommended that other concrete steps be taken to ensure that conditions were acceptable during detention for short periods of a few hours.

185. With regard to the *Militia central holding facilities (ITTs)* visited, the CPT called upon all the governmental agencies concerned to provide support, including of a financial nature, to the efforts of the Ministry of Internal Affairs to improve conditions of detention in these facilities. In this connection, it recommended in particular that high priority be given to the swift removal of all window shutters from ITT cells throughout the country and the creation of exercise areas large enough to enable detained persons to exert themselves physically.

## **B. Foreign nationals detained under aliens legislation**

186. The CPT's delegation heard numerous allegations of ill-treatment at the time of apprehension by border guards, mainly in the form of punches. In addition, certain detained persons claimed that they had been physically ill-treated (slaps, punches) when they were apprehended or on their arrival at the Pavshino Centre for Men by border conscripts who were demanding money or valuables from them.

The CPT recommended that it be made absolutely clear to the Border Guard Forces that no more force than is strictly necessary should be used when effecting an apprehension and that, once apprehended persons have been brought under control, there can be no justification for striking them. It also recommended that an inquiry be launched into the allegations of physical ill-treatment for the purposes of extorting money or valuables.

187. The supervisory staff consisted of career soldiers and conscripts who had no training in the detention and supervision of foreign nationals. The CPT stressed that the staff of detention centres for foreign nationals had a particularly onerous task. It was therefore essential that they received special training.

188. Material conditions were, overall, acceptable at the *Mukachevo Centre for Women and Children* and at the *Chop Checkpoint Temporary Detention Centre*.

By contrast, in the *Pavshino Centre for Men*, occupancy rates were scandalously high, the premises were unheated and the sanitary facilities were both rudimentary and in a deplorable state. The situation was even worse in *the Headquarters of Military Unit 2142 in Mukachevo*: the cells were in a permanent state of virtual darkness and there was no ventilation system. Because of a shortage of mattresses and blankets, some detainees had to sleep on the floor and, as there were no washrooms, they had no means of washing themselves. Furthermore, except in the centre for women and children, the food provided to detainees was a source of concern.

189. In the light of these findings, the CPT's delegation requested, in pursuance of Article 8, paragraph 5 of the Convention, that the Ukrainian authorities allocate without delay sufficient financial resources to the agencies responsible for the detention of foreign nationals to meet the detained persons' basic needs and monitor closely the use made of these resources. The authorities replied that, in response to this request, measures would be introduced from the beginning of 2003. Detailed information about these measures was requested.

190. With regard to activities, the CPT welcomed the open-door policy introduced in the Centre for Women and Children in Mukachevo and in the Pavshino Centre for Men. On the other hand, it recommended that the Ukrainian authorities immediately take all the necessary steps to ensure that persons detained in Chop and in the Mukachevo Headquarters were allowed at least one hour of outdoor exercise every day. It also asked them to make efforts to ensure that a basic minimum of activities was gradually introduced in such premises (for example, access to a dayroom with a radio/television, board games, and access to newspapers and magazines).

191. With regard to safeguards, the CPT recommended that all persons, without exception, detained under aliens legislation have the right in practice, from the very outset of their custody, to inform a close relative or another third party of their choice of their situation, have the right of access to a lawyer (including the right to talk to the lawyer at all stages of the proceedings), receive, if necessary, the assistance of a qualified interpreter at the various stages of the proceedings and be informed without delay of their situation and their rights.

### **C. Establishments under the authority of the State Department for the Execution of Sentences**

192. The CPT welcomed the measures taken by the Ukrainian authorities to reduce overcrowding and improve material conditions in the penitentiary establishments. Much remains to be done, however. At the end of 2002, there was still rampant overcrowding in the SIZOs. The CPT deplored the substantial increase in the number of remand prisoners and called upon the Ukrainian authorities to ensure that all the agencies concerned are actively involved in combating overcrowding through the application in practice of all the measures introduced since 2001. It stressed that the highest priority should be to ensure that detention on remand is used only exceptionally and for the minimum duration compatible with the interests of justice.

193. The delegation did not, during its visit, hear any allegations of physical ill-treatment by prison staff working in *Zhytomyr Prison No. 8 and SIZO No. 21 in Odessa*. Following the visit to SIZO No. 21, however, the CPT received allegations that prisoners interviewed by the delegation had been subjected to intimidation. It was also alleged that, between February and March 2003, hooded prison staff members had carried out searches in the prison, during which prisoners had been physically ill-treated. The CPT asked the Ukrainian authorities to carry out an independent and thorough investigation into these allegations.

Furthermore, in the light of the information obtained during the visit, the CPT recommended that the Ukrainian authorities deliver to the staff of *Colony No. 14 in Odessa* the clear message that all forms of ill-treatment were unacceptable and would, if they occurred, be the subject of severe sanctions.

194. A number of improvements had been made to the material conditions of detention and some aspects of the regime applicable to life-sentenced prisoners. While welcoming this progress, the CPT stressed the need to give a high priority to the introduction of a proper prison management policy for these prisoners. It also recommended putting an immediate end to the practices of routinely handcuffing such prisoners whenever they were taken out of their cells or during visits.

The CPT also considered that the time had come to review the regimes applicable to remand prisoners and prisoners awaiting final sentencing, which had unacceptable features. The delegation met a considerable number of such prisoners, both adults and minors, who spent months in succession languishing in their cells for 23 hours a day, without any occupation worthy of the name, deprived of contact with their families.

195. With regard to material conditions of detention, the CPT recommended that in Prison No. 8 the necessary repairs be carried out to building No. 1 so that the material conditions equalled those in building No. 2, reserved for women and minors, in all respects. In the latter building, all the cells were clean and properly equipped, and benefited from good natural and artificial lighting and toilets that were partitioned off.

In SIZO No. 21 the situation of overcrowding, exacerbated by generally precarious material conditions, could legitimately be considered to amount to inhuman and degrading treatment. The CPT made a series of practical recommendations to redress the situation, advocating in particular that the scheduled construction of a new building with a capacity of 250 places should be completed.

196. With regard to activities, the CPT called, more generally, upon the Ukrainian authorities to ensure that steps were taken as soon as possible to introduce, in all penitentiary establishments in the country, arrangements for purposeful activities, vocational training and education for all prisoners. As far as minors were concerned, the Committee recommended that a high priority be given immediately to the needs of such prisoners in Prison No. 8 and SIZO No. 21, by introducing a full programme of educational, recreational and sporting activities designed to stimulate their potential for social integration/rehabilitation.

197. With regard to health care, the CPT welcomed the progress that had been made in combating tuberculosis, in terms of a decrease in the number of prisoners suffering from tuberculosis and the fall in the number of deaths due to the disease. Substantial efforts had also been made to ensure that penitentiary establishments were provided with sufficient quantities of appropriate medication for the treatment of the disease. Progress was, however, slower with regard to the standard of food for prisoners suffering from tuberculosis, because of the limited resources of the prison administration. The CPT recommended sparing no effort in ensuring that the measures adopted to combat tuberculosis were fully implemented and giving a high priority to the implementation of the nutritional programme for prisoners suffering from the disease.

198. In connection with the other issues addressed (discipline, strict cellular regime, contact with the outside world, complaints and inspection procedures, etc.) two recommendations concerning discipline and the strict cellular regime are worth highlighting. Firstly, the CPT recommended that steps be taken without delay to ensure that prisoners placed in disciplinary cells (SHIZOs) be offered one hour of outdoor exercise every day and be given reading matter. Secondly, it called for an urgent review of the application of the strict cellular regime (PKT) to ensure that the prisoners concerned, throughout the penitentiary system, were entitled to visits and that the ban on parcels during placement under the regime was lifted.

#### **D. Mental health establishments**

199. In the *Chernivtsi Regional Clinical Psychiatric Hospital*, virtually all the staff acted professionally and with dedication towards the patients. The delegation did, however, hear some allegations of physical ill-treatment (kicks) from unqualified auxiliaries. The CPT recommended taking all the measures necessary to prevent patients from being physically ill-treated.

No allegations of ill-treatment were heard at *the Neuropsychiatric Institution for Women in Pohonya*; on the contrary, the CPT delegation found a relaxed atmosphere and observed that relations between staff and patients were based on trust.

200. The patients' living conditions in the Chernivtsi hospital were mediocre, despite the management's efforts. The premises were in an advanced state of dilapidation, overcrowded and inadequately lit; the sanitary facilities were rudimentary and, because of technical problems, there had been no hot water in the various buildings for several months. After the CPT's visit, the Ukrainian authorities took steps to remedy the shortcomings, particularly with regard to artificial lighting and the hot water supply. The CPT recommended, however, that immediate steps be taken to reduce overcrowding in the hospital, in the first instance by ensuring that the official accommodation capacity was not exceeded and subsequently by making efforts progressively to reduce this official capacity.

More generally, the CPT recommended ensuring that all psychiatric hospitals in Ukraine received sufficient financial resources to provide the patients with food that was adequate in terms of quantity and quality.

201. In the Pohonya Neuropsychiatric Institution, the local authorities and the management were endeavouring to make material conditions as decent as possible, and constant efforts were made to make the rooms more comfortable. There was, however, a shortage of electric light bulbs and, at the time of the visit, the institution had had no running water for several days. Moreover, the sanitary facilities were dilapidated. The Ukrainian authorities were encouraged to continue their efforts to renovate the institution and it was recommended that they ensure a permanent supply of running water.

202. With regard to treatment, the CPT welcomed the fact that the Chernivtsi hospital provided appropriate treatment for patients suffering from tuberculosis. By contrast, the supply of other medication gave cause for concern. It was recommended that steps be taken without delay to ensure that there was a permanent supply of appropriate medication in this establishment, as in all similar Ukrainian establishments.

203. In both institutions, the lack of occupational therapy and rehabilitation, recreational and occupational activities, was a source of concern. The Ukrainian authorities have informed the CPT that steps have been taken to introduce such activities, and detailed information about the measures taken has been requested. The CPT also recommended that all the patients in Pohonya, without exception - provided there were no medical reasons to the contrary - benefit from at least one hour or outdoor exercise every day.

204. The issue of safeguards offered to patients committed to such mental health establishments was addressed in detail. In particular, the Ukrainian authorities were recommended to take, without delay, all the measures needed to ensure that the sections of the 2000 Law on Psychiatric Care concerning involuntary admission to hospital and placement in a neuropsychiatric institution were scrupulously observed in all the Ukrainian hospitals concerned.

**E. Measures to be taken following the CPT's recommendations, comments and requests for information**

205. The CPT's various recommendations, comments and requests for information are listed in Appendix I to this report.

206. The CPT requests that, within **one month** of receipt of this report, the Ukrainian authorities:

- provide detailed information on the concrete measures taken (i) to allocate sufficient financial resources to the agencies responsible for foreign nationals detained under aliens legislation to meet the detained persons' basic needs, and (ii) to monitor closely the use made of these resources;
- to confirm that persons are no longer being held for prolonged periods in cells in the Headquarters of Military Unit 2142 in Mukachevo.

207. With regard to the CPT's other recommendations, comments and requests for information, having regard to Article 10 of the Convention, the Committee requests the Ukrainian authorities to provide, within **six months**, a response setting out in detail the action taken to implement the recommendations and its reactions to the comments and responses to the requests for information listed in the aforementioned Appendix I.

## APPENDIX I

### LIST OF THE CPT'S RECOMMENDATIONS, COMMENTS AND REQUESTS FOR INFORMATION

#### I. COOPERATION

##### recommendations

- Militia senior officers and operational personnel to be reminded of the obligations entered into by Ukraine under the Convention setting up the CPT (paragraph 8);
- members of the Militia at all levels to refrain unconditionally from intimidating detained persons before and after visits by CPT delegations (paragraph 8).

##### comments

- in future, the Ukrainian authorities to make sure that they provide to the CPT, in good time, full information concerning all the places where people deprived of their liberty are being held (paragraph 7).

#### II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

##### A. Militia establishments

##### 1. Preliminary remarks

##### recommendations

- the Ukrainian authorities to raise the awareness of the investigating bodies and prosecutors/judges of the new legislation and encourage them to make extensive use of their power to apply non-custodial preventive measures to persons suspected of a criminal offence (paragraph 12);
- appropriate steps to be taken to eradicate the practice mentioned in paragraph 16. The detention and interrogation of persons suspected of a criminal offence should always be effected in strict accordance with the provisions of the Code of Criminal Procedure (paragraph 16).

comments

- the CPT very much hopes that the new procedure introduced in December 2002 (according to which whenever there is a request for a person to be returned to police custody, the directors of the subdivisions in charge of investigations and SIZO directors are required to send the prosecutor supervising the investigation a detailed report stating the reasons for the transfer request) be formally incorporated into the new Code of Criminal Procedure to be adopted (paragraph 14).

requests for information

- information about the results obtained following the instructions sent on 15 December 2002 by the Ukrainian Prosecutor General's Office to civil and military prosecutors, ordering them to comply strictly with the provisions of Article 155 of the Code of Criminal Procedure concerning the length of detention in ITTs (paragraph 13);
- what steps the Ukrainian authorities intend to take to bring Article 11 of the Law on the Militia into line with Article 29 of the Constitution (paragraph 15).

**2. Torture and other forms of ill-treatment**

recommendations

- the message of 15 May 2001 given by the Collegium of the Ministry of Internal Affairs to all Militia personnel to be firmly reiterated at regular and appropriate intervals, and it to be stressed in this message that abuse will not be tolerated and will be the subject of severe sanctions (paragraph 21);
- the Ukrainian Prosecutor General's Office to issue directives to prosecutors that they adopt a significantly more proactive approach in the fight against ill-treatment. Every complaint of ill-treatment should be thoroughly examined. Moreover, action by prosecutors should not necessarily depend upon a formal complaint; they should take appropriate action in every case when it comes to their attention that a person may have sustained injuries while in the custody of law enforcement officials (paragraph 23);
- whenever criminal suspects brought before a judge allege ill-treatment by the Militia, the judge to record the allegations in writing, order immediately a forensic medical examination and take the necessary steps to ensure that the allegations are properly investigated. Such an approach should be followed whether or not the person concerned bears visible external injuries. Further, even in the absence of an express allegation of ill-treatment, the judge to request a forensic medical examination whenever there are other grounds to believe that a person brought before him could have been the victim of ill-treatment (paragraph 24);
- persons released from police custody, without being brought before a judge, to have the right to request a forensic medical examination and certificate from a doctor with recognised forensic medical training (paragraph 24);

- the practice of refusing admission to an ITT detained persons with visible injuries and returning them to the district police station from whence they came, if the police are unable to provide a medical certificate recording the injuries, to be as of now definitively discontinued (paragraph 26).

#### requests for information

- all the details from the file on the third case described in paragraph 19 which led the prosecutor to dismiss the complaint (paragraph 23);
- details of the length of the training set up in 2000 for Militia personnel, and the concrete measures taken to integrate human rights concepts into practical professional training for high-risk situations, such as the apprehension and interrogation of suspects (paragraph 25);
- information on whether serving Militia personnel are being given in-service professional training to ensure that they, too, benefit from the new training programmes (paragraph 25).

### **3. Fundamental guarantees against ill-treatment**

#### recommendations

- measures to be taken to ensure that the provisions of Article 106 of the Code of Criminal Procedure concerning the right of a detained person to inform a close relative or another third party that they are in custody are strictly complied with in practice (paragraph 28);
- any possibility to exceptionally delay the exercise of the right to inform a close relative or another third party to be clearly circumscribed in law, made subject to appropriate safeguards (for example, any delay to be recorded in writing with the reasons therefor and to require the approval of a judge or a public prosecutor) and strictly limited in time (paragraph 28);
- the relevant provisions of the Code of Criminal Procedure to be amended so that it is clearly established that all persons deprived of their liberty by the Militia have access to a lawyer as from the very outset of their deprivation of liberty. Pending that amendment, precise instructions to be issued to Militia members so that, in accordance with Article 106 of the Code of Criminal Procedure, persons deprived of their liberty have access to a lawyer as from the moment of their detention, this moment being defined as the moment when a person is obliged to remain with the law enforcement officials (paragraph 29);
- the awareness of the bar associations of the question of legal aid for persons deprived of their liberty by the Militia to be raised (paragraph 30);
- persons deprived of their liberty to be duly notified of the possibility of requesting a lawyer from the bar (paragraph 30);

- the necessary steps to enshrine in legislation the right of access to a doctor for a person detained by the Militia to be taken without delay (paragraph 31);
- all persons detained by the Militia to be issued with a form setting out all their rights in a clear and concise manner at the very outset of their deprivation of liberty. The form should be available in an appropriate range of languages and the detained persons should be asked to sign a statement attesting that they have been informed of their rights in a language they understand (paragraph 32);
- a code of conduct for interviews to be drawn up in the light of the remarks made in paragraph 34 (paragraph 34);
- firm instructions to be issued without delay that the detention registers are kept accurately, fully and clearly (paragraph 35).

#### requests for information

- are the three rights set out in paragraph 27 guaranteed for all categories of persons deprived of their liberty by the Militia, including those detained under the Code of Administrative Offences and the Law on the Militia? (paragraph 33).

#### **4. Conditions of detention**

##### recommendations

- an immediate end to be put to the practice of detaining persons for more than a few hours in the country's district police stations (paragraph 38);
- steps to be taken to ensure that all the cells in district police stations are kept clean and have adequate artificial lighting and ventilation (paragraph 38);
- all persons detained to have ready access to drinking water (paragraph 38);
- all the governmental agencies concerned to provide support, including of a financial nature, to the efforts of the Ministry of Internal Affairs to improve conditions of detention in Militia central holding facilities (ITTs) (paragraph 39);
- a high priority to be given to the swift removal of all window shutters from ITT cells throughout the country and the creation of exercise areas large enough to enable detained persons to exert themselves physically (paragraph 45);
- steps to be taken to ensure without delay that, in those ITTs already possessing outdoor exercise areas, detained persons actually have access to them for one hour each day; (paragraph 45);

- steps to be taken to ensure that, without delay, in all ITTs:
  - detained persons are supplied with a full set of clean bedding, which is cleaned at regular intervals;
  - detained persons are provided with essential personal hygiene products and are able to wash every day (this includes a hot shower once a week, throughout their detention);
  - detained persons are given food at appropriate times;(paragraph 45);
- steps to be taken to ensure the proper and progressive partitioning off of toilets in cells; (paragraph 45);
- steps to be taken to ensure that detained persons, in all ITTs, have access to reading matter; (paragraph 45);
- steps to be taken to ensure that the official occupancy level of ITT facilities is not exceeded and efforts to be made gradually to reduce them; the objective should be to offer living space of at least 4 m<sup>2</sup> per person (paragraph 45);
- all detained persons to be offered a medical examination upon arrival at an ITT by a qualified member of the health-care service. This examination to be conducted out of the hearing and - unless the health-care staff member concerned requests otherwise in a particular case - out of the sight of custodial staff (paragraph 46);
- all ITTs to benefit from the regular presence of a *feldsher* (paragraph 46);
- to ensure without delay that tuberculosis treatment received by a detained person be continued in the event of a retransfer from a SIZO to an ITT; it is axiomatic that this will involve closer cooperation between health-care staff in establishments under the authority of the Department for the Execution of Sentences and those under the authority of the Ministry of Internal Affairs (paragraphs 46 and 124);
- the applicable regulations and practice regarding contact with the outside world to be reviewed (paragraph 47);
- the lack of activities for detained persons at the centre for the reception and allocation of vagrants in Ivano-Frankvisk to be rectified (paragraph 48).

comments

- at the centre for the reception and allocation of vagrants in Ivano-Frankvisk, the in-cell toilets should be partitioned off and the shower should be repaired (paragraph 48).

requests for information

- the Ukrainian authorities' comments on the use made of the sum allegedly allocated in 2002 to the Ministry of Internal Affairs for improving conditions of detention (paragraph 39);
- a detailed report on the progress of the projects planned and the work embarked upon in the Militia central holding facilities (ITTs) as set out in the letter of 15 April 2003 (paragraph 45).

**B. Foreign nationals detained under aliens legislation**

**1. Preliminary remarks**

requests for information

- further information on the reform currently being considered to lay down a maximum detention period of six months pending deportation (paragraph 50);
- information on whether the Ukrainian authorities intend to empower a court to decide on the placement of a foreign national in detention beyond 72 hours (paragraph 50).

**2. Ill-treatment**

recommendations

- the Ukrainian authorities to make it absolutely clear to the Border Guard Forces that no more force than is strictly necessary should be used when effecting an apprehension and that, once apprehended persons have been brought under control, there can be no justification for striking them (paragraph 53);
- an inquiry to be launched into the allegations of physical ill-treatment of detainees by border guard conscripts at the time of the foreign nationals' apprehension or their arrival at the Pavshino Centre for Men, for the purposes of extorting money or valuables (paragraph 53).

**3. Conditions of detention**

recommendations

- all the necessary measures to be taken without delay in the detention centres visited and, if necessary, in the other temporary detention centres in Ukraine where the situation is similar, to ensure that:
  - the temporary detention centres have adequate lighting (including daylight), ventilation and heating;

- the occupancy rate of the dormitories/cells is reduced - the aim should be to offer at least 4 m<sup>2</sup> living space to each detainee;
- food is served in rooms specially designed for the purpose;
- each detained person can have at least one shower a week with an adequate amount of hot water;
- every detained person has the basic products required to ensure adequate personal hygiene (soap, toothbrush and toothpaste, towels, etc.) and that these products are replaced at suitable intervals;
- detained persons receive a sufficient quantity of cleaning products to keep their cell/dormitory clean and hygienic;
- each detained person has his/her own bed.

(paragraph 62);

- all the necessary steps to be taken immediately to ensure that at the Checkpoint Temporary Detention Centre at Chop and the detention centre at the Mukachevo Headquarters all detainees are allowed at least one hour of outdoor exercise every day (paragraph 63);
- the necessary steps to be taken to gradually introduce a basic minimum of activities for persons detained under aliens legislation (paragraph 65);
- the premises of the Chop detention centre to be used solely for short periods of detention if an open-door policy with a minimum of activities cannot be introduced in the centre (paragraph 65);
- systematic and regular visits by health-care staff to the persons detained in cells in the Mukachevo Headquarters to be ensured (paragraph 66);
- systematic medical screening on admission to be introduced in the temporary detention centres (paragraph 66);
- a detailed plan for implementation by temporary detention centres in the event of suspected tuberculosis to be drawn up, including measures to be adopted for taking charge of the persons concerned - including living conditions (paragraph 67);
- special training to be introduced for those required to work in detention centres for foreign nationals which takes account of the criteria set out in paragraph 68 (paragraph 69).

requests for information

- **within one month of receipt of this report**, detailed information on the concrete measures announced by the Ukrainian authorities in their letter of 15 April 2003 to allocate without delay sufficient financial resources to the agencies responsible for foreign nationals detained under aliens legislation to meet the detained persons' basic needs (i.e. sufficient food, adequate bedding and appropriate clothing), and to monitor closely the use made of these resources (paragraph 61);
- **within one month of receipt of this report**, confirmation that persons are no longer being held for prolonged periods in cells at the Headquarters of Military Unit 2142 in Mukachevo (paragraph 61).

**4. Safeguards for immigration detainees**

recommendations

- steps to be taken immediately to ensure that the aliens legislation is respected with regard to the obligation to provide written notification to the public prosecutor within 24 hours of a person's apprehension and the obligation to request the prosecutor's authorisation to detain such a person beyond 72 hours (paragraph 70);
- the necessary steps to be taken to ensure that all persons, without exception, detained under the aliens legislation:
  - have the right, as from the outset of their detention, to inform a relative or third party of their choice of their situation;
  - have the right of access to a lawyer and the right to talk to the lawyer at all stages of the proceedings;
  - may, if necessary, receive the assistance of a qualified interpreter at the various stages of the proceedings;
  - are informed without delay of their situation and their rights;(paragraph 73);
- all detained persons to be systematically given, at the very outset of their detention, a document explaining the procedure applicable to them and setting out their rights. This document should be available in the languages most commonly spoken by those who are detained under the aliens legislation (paragraph 73);
- the legal provisions with regard to the time limit for submitting an application for asylum to be reviewed (paragraph 74);

- appropriate steps to be taken to ensure that the national authorities of those detained under the aliens legislation are only informed of their detention with the consent of the persons concerned (paragraph 76);
- firm instructions that the detention registers are kept accurately, fully and clearly to be issued without delay (paragraph 79).

comments

- the Ukrainian authorities are encouraged to continue the efforts they have made with regard to contact between detainees from the same family (paragraph 77).

requests for information

- additional information about the procedures applicable with regard to the removal of a person from the territory of Ukraine and about the means of appeal against a deportation order or the rejection of an asylum application (paragraph 75);
- is there provision for an appeal with suspensive effect in all cases? (paragraph 75);
- what are the steps taken in practice to facilitate visits to foreign nationals in temporary detention centres as well as telephone contacts? (paragraph 78);
- are all temporary detention centres visited regularly by public prosecutors? (paragraph 80).

**C. Establishments under the authority of the State Department for the Execution of Sentences**

**1. Preliminary remarks**

recommendations

- to ensure that all the agencies concerned are actively involved in combating overcrowding through the application in practice of all the measures introduced since 2001. The highest priority should, in accordance with the principles set out in the Council of Europe Committee of Ministers' Recommendations R (80) 11 concerning custody pending trial and R (99) 22 concerning prison overcrowding and prison population inflation, be attached to ensuring that detention on remand is used only exceptionally and for the minimum duration compatible with the interests of justice (paragraph 85);
- efforts to be redoubled to ensure that prisoners receive food that is adequate in terms of quantity and quality (paragraph 87);

- all the Ukrainian authorities referred to in the 2002-2005 programme to reform and support the penitentiary system to ensure that the measures to introduce a system of occupational activities, vocational training and education for inmates are implemented as soon as possible. Remand prisoners and sentenced prisoners who have appealed against their sentences should also benefit from these measures (paragraphs 88 and 120).

requests for information

- the views of the Ukrainian authorities on the question of abandoning large-capacity dormitories in favour of smaller living units (paragraph 86).

## **2. Ill-treatment**

recommendations

- an independent and thorough investigation to be carried out into the allegations concerning the intimidation of prisoners following the visit of the CPT's delegation and those concerning the search operations between February and March 2003, and the Committee to be informed of the results of the investigation (paragraph 90);
- the clear message to be delivered to the staff of Colony No. 14 that all forms of ill-treatment are unacceptable and will, if they occur, be the subject of severe sanctions (paragraph 91);
- the Rules of Internal Procedure in Correctional Labour Establishments to be amended with a view to ensuring that no prisoner is entrusted with tasks relating to the maintenance of good order and control (paragraph 92).

## **3. Specific categories of prisoners**

recommendations

- to provide life-sentenced prisoners with prison uniforms of a colour which is not stigmatising and to refrain from putting a label on them concerning their sentences (paragraph 100);
- to ensure that, in accordance with instructions, artificial lighting in the cells of life-sentenced prisoners is not switched on at night except when necessary (paragraph 100);
- efforts to be redoubled to provide life-sentenced prisoners with more opportunities for work and other purposeful activities outside their cells (sport, education, leisure, etc.) (paragraph 100);
- the visiting rights of life-sentenced prisoners and prisoners sentenced to the "Tyurma" regime to be brought into line with those of sentenced persons in colonies (paragraphs 100 and 104);

- the entitlement of life-sentenced prisoners and prisoners sentenced to the "Tyurma" regime to receive parcels to be reviewed (paragraphs 100, 104 and 118);
- a high priority to be given to the introduction of a prison management policy for life-sentenced prisoners (paragraph 101);
- an immediate end to be put to the handcuffing practices described in paragraph 102 (paragraph 102);
- the policy of frequently moving prisoners to different cells in Prison No. 8 and, if necessary, in Ukraine's other penitentiary establishments, to be reviewed in the light of the considerations set out in paragraph 105 (paragraph 105);
- steps to be taken without delay - including, if necessary, the removal of any existing legal obstacles - to put an end to the restrictive regime applicable to remand prisoners and prisoners awaiting final sentencing (paragraph 106).

#### **4. Conditions of detention in the penitentiary establishments visited**

##### recommendations

- in Zhytomyr Prison No. 8, the necessary repairs to building No. 1 to be carried out so that the material conditions equal those in building No. 2, reserved for women and minors, in all respects (paragraph 117);
- to ensure that in Prison No. 8 all the cells are adequately heated (paragraph 117);
- in SIZO No. 21 at Odessa, the material shortcomings observed to be remedied, in order to ensure that:
  - every prisoner has his own bed with full and clean bedding;
  - the toilets in all the cells are properly partitioned off and have a working flush;
  - the windows in all the cells have glass panes in them;
  - the cells are adequately heated;
  - the showers are in a satisfactory state of repair and that, as soon as possible, the number of showers is increased;(paragraph 117);
- the scheduled construction of the new building at SIZO No. 21 with a capacity of 250 places to be completed (paragraph 117);

- the occupancy rates in the cells/dormitories of the three establishments to be reduced, the objective being to provide 4 m<sup>2</sup> of living space per prisoner (paragraph 117);
- the provisions of the Code on Execution of Sentences and of the law governing detention on remand in respect of the entitlement to receive parcels to be reviewed in the light of the remarks set out in paragraph 118 (paragraph 118);
- a high priority to be given immediately to the needs of minors in Prison No. 8 and SIZO No. 21, by introducing a full programme of educational, recreational and sporting activities designed to stimulate their potential for social integration/rehabilitation (paragraph 120);
- the design of the exercise yards in penitentiary establishments to be reviewed with a view to enabling prisoners to really exert themselves physically, or even engage in sporting activities (paragraph 121).

#### requests for information

- confirmation that the question regarding the provision of female hygiene products has now been resolved in Prison No. 8 (paragraph 112);
- confirmation that the prisoners in Colony No. 14 have clothes suitable for the weather conditions (paragraph 116).

### **5. Health care**

#### recommendations

- no effort to be spared in ensuring that the measures adopted to combat tuberculosis are fully implemented; in this respect, to ensure that penitentiary establishments continue to be supplied with appropriate quantities of medication for the treatment of tuberculosis, and to give a high priority to the implementation of the nutritional programme for prisoners suffering from the disease (paragraph 124);
- prisoners to be offered HIV screening free of charge (paragraph 125);
- the CPT's recommendation concerning the recording of injuries observed on prisoners to be implemented, in accordance with paragraph 26 of its report on the 2000 visit (paragraph 126);
- an immediate end to be put to the practice of having prisoners receive injections through the hatch of the sick bay, in full view of prison staff. Treatment should always be administered in rooms set aside for that purpose, out of the hearing and - unless the doctor or nurse concerned requests otherwise in a particular case - out of the sight of prison staff (paragraph 127);
- inmates serving life sentences in Zhytomyr Prison No. 8 (and, if necessary, in any other penitentiary establishments in the country) who require psychiatric treatment in a specialised hospital facility to be transferred to such a hospital without undue delay (paragraph 128).

### **6. Other issues**

recommendations

- to ensure, in Prison No. 8, that the disciplinary cells (SHIZOs) and the strict cellular regime cells (PKT) are properly heated (paragraphs 130 and 132);
- renovation work on the disciplinary cells in SIZO No. 21 to be completed, making sure that they benefit from adequate access to natural light (paragraphs 130 and 132);
- not more than two persons to be placed in the disciplinary cells measuring 10 m<sup>2</sup> in Colony No. 14 (paragraphs 130 and 132);
- steps to be taken without delay to ensure that prisoners placed in disciplinary cells (SHIZOs) have one hour of outdoor exercise every day and are given reading matter (paragraph 131);
- the application of the strict cellular regime to be reviewed, as a matter of urgency, in order to ensure that the prisoners concerned, throughout the penitentiary system, are entitled to visits (paragraph 133);
- the ban on parcels during placement in the strict cellular regime to be lifted. If necessary, the relevant regulations to be amended (paragraph 133);
- to ensure, without delay, that “short” visits are exempt from all financial contribution on the part of the prisoners or their relatives (paragraph 136);
- the shortcomings described in paragraph 137 regarding the material conditions under which short visits take place to be remedied (paragraph 137);
- to ensure forthwith that all prisoners (both remand and sentenced), throughout the penitentiary system, have confidential access to the national and international bodies authorised to receive complaints, by taking the practical measures recommended in its report on the CPT's 2000 visit, namely: installing locked complaints boxes accessible to prisoners, to be opened only by specially designated persons in confidence; and providing envelopes (paragraph 138);
- prisoners to be issued with a leaflet explaining which national and international bodies they are entitled to apply to, with their addresses (paragraph 138);
- an end to be put to the systematic use of a squad equipped with tear gas and accompanied by a dog when cells in building No. 1 of SIZO No. 21 are opened (paragraph 140);
- the authorities to ensure that, in all penitentiary establishments, tear gas is used only in very exceptional circumstances which are exhaustively listed and subject to a strict procedure and supervision (paragraph 140);
- cubicles in SIZO No. 1 measuring approximately 2 m<sup>2</sup> to be obligatorily reserved for the placement of a single person and the possible occupancy rate of those measuring approximately 9 m<sup>2</sup> to be considerably reduced (paragraph 141);

- a high priority to be given to resolving the issue of the conditions under which prisoners are transported, with due regard to the recommendations in paragraph 131 of its report on the 2000 visit (paragraph 142).

comment

- the Ukrainian authorities are invited to abolish as soon as possible the practice of charging for "long" visits (paragraph 136).

requests for information

- the views of the Ukrainian authorities on the invitation to the authorities, reiterated in paragraph 123 of its report on the 2000 visit, to review the conditions under which visits take place in order to ensure that, as far as possible both sentenced and remand prisoners receive visits in more open conditions (paragraph 137).

**D. Mental health establishments**

**1. Preliminary remarks**

requests for information

- can a person who has been committed to a neuropsychiatric social protection or special education institution apply to a court at any time to contest his or her placement and, if so, under what conditions? (paragraph 145);
- statistics for the number of cases in which the courts have decided that persons were illegally committed to a neuropsychiatric social protection or special education institution since the entry into force of the 2000 Law on Psychiatric Care (paragraph 145).

**2. Chernivtsi Regional Clinical Psychiatric Hospital**

recommendations

- all the necessary measures to be taken to prevent patients from being physically ill-treated (paragraph 148);
- staffing to be reviewed in the light of the remarks set out in paragraphs 149 and 150; in particular, the number of qualified nurses on psychiatric wards to be increased in the afternoons and at night; a sufficient number of occupational therapists to be recruited and the number of psychologists to be substantially increased, as soon as possible (paragraph 151);

- proper initial and in-service training courses to be introduced for auxiliaries at Chernivtsi and in all the other health establishments in Ukraine (paragraph 152);
- the necessary steps to be taken immediately to reduce overcrowding in Chernivtsi hospital; as a first step, the establishment should not hold more patients than it has the official capacity to accommodate and efforts should be made to gradually reduce this official capacity (paragraph 154);
- efforts to be made to progressively convert the large dormitories into smaller units, and to provide each patient with a permanently accessible place in which to lock his or her personal belongings (paragraph 154);
- the sanitary facilities of all the hospital wards to be renovated (paragraph 154);
- to ensure that all psychiatric hospitals receive sufficient funding to provide adequate food to their patients in terms of quantity and quality (paragraph 155);
- the necessary measures to be taken, without delay, to ensure that Chernivtsi and all similar Ukrainian establishments continuously receive an adequate supply of appropriate medication (paragraph 157);
- measures to be taken to provide the medical equipment one is entitled to expect in a unit such as the secure intensive care ward of Chernivtsi hospital; in particular, the unit to be provided at the earliest opportunity with an oxygen supply, at least one heart monitoring machine and a defibrillator (paragraph 158);
- the practices concerning electroconvulsive therapy to be reviewed in the light of the observations in paragraph 159 (paragraph 159);
- efforts to be made to introduce recreational and sporting activities (paragraph 161);
- the provisions in the methodological recommendations adopted in 2001 concerning the introduction of registers for recording seclusion and physical restraint measures to be duly applied in all Ukraine's psychiatric hospitals, including Chernivtsi hospital (paragraph 164);
- all the necessary steps to be immediately taken to ensure that the sections of the 2000 Law on Psychiatric Care concerning involuntary admission to hospital are scrupulously observed in all Ukrainian hospitals which admit non-voluntary patients (paragraph 166);
- Article 95 of the Criminal Code to be strictly applied when extending hospitalisation of persons deemed to be criminally irresponsible (paragraph 168);
- the current legislation to be reviewed to ensure that persons deemed to be criminally irresponsible are systematically heard by the court when decisions are taken concerning their admission or when the admission is to be extended, provided there are no properly documented medical reasons to the contrary (paragraph 168);

- any derogation from the fundamental principle of free and informed consent to be applied solely in exceptional, clearly and strictly defined circumstances; if necessary the Law on Psychiatric Care to be amended accordingly (paragraph 169);
- a leaflet to be produced explaining how the establishment operates and setting out all the rights of patients involuntarily admitted, as provided for by law; this leaflet to be issued to all patients and possibly their families, on admission (paragraph 170).

comments

- the CPT advocates the use of an electroencephalogram when electroconvulsive therapy is carried out, to verify the efficacy of the treatment (paragraph 159);
- the Ukrainian authorities are invited to take the necessary steps to ensure that the patients' outdoor exercise takes place in satisfactory conditions (i.e. sheltered from inclement weather) (paragraph 162).

requests for information

- information on the specific measures actually taken to remedy the material shortcomings set out in paragraph 153 (paragraph 154);
- detailed information about the measures already taken to introduce occupational and rehabilitation activities (specific activities introduced, number and categories of patients involved, frequency and duration of the activities) (paragraph 161);
- confirmation that all patients without exception - including those suffering from tuberculosis - provided there are no medical reasons to the contrary, may now benefit from at least one hour of outdoor exercise every day (paragraph 162);
- confirmation that the 2000 Law on Psychiatric Care is put into practice at Chernivtsi (paragraph 166);
- the Ukrainian authorities' comments on the situation described in paragraph 167 (paragraph 167);
- the report and conclusions of the inspection by representatives of the regional authority in the days preceding the visit of the CPT's delegation; comparable information regarding visits made by the public prosecutor (paragraph 171).

### **3. Neuropsychiatric Institution for Women in Pohonya**

#### recommendations

- the necessary steps to be taken to significantly reinforce the nursing team and to recruit a physiotherapist (paragraph 173);
- all the necessary steps to be taken to ensure that the Pohonya institution is permanently supplied with running water and to renovate the sanitary facilities (adapting them to the needs of the residents) (paragraph 174);
- all the necessary steps to be taken to ensure that all patients at Pohonya, without exception, provided there are no medical indications to the contrary, benefit from at least one hour of outdoor exercise every day (paragraph 177);
- all the necessary steps to be taken without delay to ensure that the sections of the 2000 Law on Psychiatric Care concerning placement in a neuropsychiatric institution are scrupulously observed, without exception (paragraph 178);
- an information leaflet for patients and their families, explaining how the establishment operates and setting out all the rights of the patients, to be put at the disposal of the Pohonya neuropsychiatric institution and all establishments of this kind (paragraph 179);
- the authorities to encourage visits by associations representing the public to Pohonya, as well as to all other neuropsychiatric institutions in Ukraine, as provided for in Section 31 of the 2000 Law on Psychiatric Care (paragraph 179).

#### comments

- the Ukrainian authorities are encouraged to continue their efforts to renovate the institution (paragraph 174);

#### requests for information

- confirmation that the posts of occupational therapist and leisure activities organiser have in fact been filled (paragraph 173);
- detailed information about the plan of the Ministry of Labour and Social Affairs to increase the number of recreational activities and organise more physical exercise, occupational therapy and educational and cultural activities in the Ukrainian neuropsychiatric institutions, and about the concrete measures already taken in this respect; a detailed description of the results of these measures at Pohonya (paragraph 176);
- information on the number of inspections carried out at Pohonya by the office of the Ivano-Frankivsk public prosecutor, and on its findings (paragraph 179).

**APPENDIX II**

**LIST OF THE NATIONAL AUTHORITIES, OTHER INSTANCES,  
INTERNATIONAL AND NON-GOVERNMENTAL ORGANISATIONS  
WITH WHICH THE CPT'S DELEGATION HELD CONSULTATIONS**

**National authorities:**

Cabinet of Ministers of Ukraine

L. F. BYKOV Deputy Director

Department for the Execution of Sentences

V. A. LYOVOCHKIN Director  
O. B. PTASHYNSKIY First Deputy Director  
M. G. VERBENSKIY Deputy Director  
M. I. VOYTSKHIVSKIY Deputy Director  
V. I. BILIK Deputy Director  
Y. I. GOLIKOV Deputy Director  
A. P. KUTSCHER Deputy Director  
V. I. CEROV Chief of staff  
A. S. LAHODA Head of the Administration Division

Ministry of Internal Affairs

V. I. VARENKO Deputy State Secretary  
Y. M. MAZUR Deputy Director *ad interim* of the Directorate of  
Administrative Services of the Militia  
O. D. MAKYEVA Head of the International Relations Department

Ministry of Defence

Y. Y. SHAPOVAL Head of the Military Law Enforcement Service of the Armed  
Forces of Ukraine  
O. M. DESYATNIK Deputy Head of the Military Law Enforcement Service of the  
Armed Forces of Ukraine

Ministry of Justice

M. MATJUSHKO Department of Law Enforcement

Ministry of Health

A. P. KARTYSH Deputy State Secretary  
V. V. DOMBROVSKA Chief Specialist at the Main Department of Health Care to the Population

Security Service of Ukraine

Y. O. VANDYN Deputy Director  
V. F. PETRUNYA Head of the Pre-Trial Establishments (SIZO)

Committee for the Protection of the National Borders of Ukraine

O. G. MELNIK First Deputy Director of the Committee  
B. M. MARCHENKO Deputy Director of the Border-Guards Department  
O. Y. TSEVELYOV Head of Unit of the Border-Guards Department  
S. A. IGNATYEV Legal Consultant of the Legal Department

**Other instances:**

Prosecutor General's Office

V. V. KUDRYATSEV Deputy Prosecutor General of Ukraine  
N. G. NEDILKO Head of the Department for the Supervision of Law Maintenance of Trial Decisions' Execution in Criminal Cases  
S. N. SKRIPNICHENKO Deputy Head of the Department for the Supervision of Law Maintenance by Bodies of the Ministry of Internal Affairs conducting investigations  
V. G. MALYSHEV Chief of the Law Maintenance on Minors Rights Supervision Department  
V. I. MYLOSTYVIY Head of Division at the Department of Services for Military Prosecutors  
M. V. DOTSENKO Prosecutor at the Department for the Supervision of Law Maintenance of Trial Decisions' Execution in Criminal Cases

Ukrainian Parliamentary Commissioner for Human Rights

N. KARPACHOVA Commissioner for Human Rights

International Organisation

Office of the United Nations High Commissioner for Refugees in Ukraine

Non-governmental organisations

Ukrainian Psychiatric Association

Donetsk Memorial

International Renaissance Foundation

Kharkiv Human Rights Protection Group