

## **Response**

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

**from 1 to 10 December 2012**

The Ukrainian Government has requested the publication of this response. The report of the CPT on its December 2012 visit to Ukraine is set out in document CPT/Inf (2013) 23.

Strasbourg, 5 September 2013



**МІНІСТЕРСТВО ЮСТИЦІЇ  
УКРАЇНИ**

вул. Городецького, 13, м. Київ, 01001  
Тел.: +380 44 278-37-23, факс: +380 44 271-17-83  
E-mail: [themis@minjust.gov.ua](mailto:themis@minjust.gov.ua)  
<http://www.minjust.gov.ua>  
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На № \_\_\_\_\_

**President of the European  
Committee for the Prevention  
of Tortures and Inhuman or  
Degrading Treatment or  
Punishment**

**Mr Lətif HÜSEYNOV**

*Secretariat of the CPT  
Human Rights Building  
Council of Europe  
F-67075 Strasbourg Cedex, France*

**Dear Mr Hüseyinov,**

With reference to your letter of 20 March 2013 on the 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 (hereinafter - CPT) that took place from 1 to 10 December 2012 I would like to inform that Ukrainian authorities are taken into consideration all CPT's recommendation and comments in order to meet standards established by European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

Let me assure you that Ukrainian authorities are going to inform CPT on further implementation of CPT's recommendation.

In addition to this I would like to submit information concerning immediate actions taken by Ukrainian authorities in order to face the most urgent matters mentioned in the CPT's report.

Annex on \_\_\_\_ pages.

Sincerely yours,

**Nazar Kultchytskyy**



**Government Agent to the  
European Court of Human Rights**

## **Information on treatment and safety of prisoners serving sentences in correctional colonies**

### **1. On use of videosurveillance in correctional colonies**

Technical means of oversight and control including videosurveillance pre-trial detention facilities and penitentiary establishments of the State penitentiary service of Ukraine are used in accordance with article 103 of Criminal-Penal Code of Ukraine:

#### **Article 103. Technical means of surveillance and control**

1. Administration of a colony has the right to use audiovisual, electronic and other technical means to prevent escapes and other crimes, violations of the statutory order of serving sentence, to obtain the necessary information about the behavior of detainees.
2. Administration of a colony is obliged to inform detainees on use of technical means of surveillance and control.
3. The list of technical means of oversight and control and their appliance order are defined by the regulations of the Ministry of justice of Ukraine.

*Article 103. Technical means of surveillance and control  
(Criminal-Penal Code, Verkhovna Rada, of 11.07.2003, № 1129-IV “Criminal-Penal Code of Ukraine”),  
articles 5, 7 of the Law of Ukraine “On pre-trial detention”:*

#### **Article 5. Detention order maintenance in pre-trial detention facilities**

The Detention order maintenance in pre-trial detention facilities is provided by administration of the pre-trial detention facilities, which acts in accordance with the Law and other legislative.

*Article 5. Detention order maintenance in pre-trial detention facilities  
(Law of Ukraine, Verkhovna Rada, of 30.06.1993, № 3352-XII “On pre-trial detention”)*

#### **Article 7. Regime in pre-trial detention facilities**

The regime in pre-trial detention facilities, i.e. terms and conditions of detention of persons taken into custody and surveillance under them in order to maintain pre-trial detention is established by the Law and other legislative acts.

The main requirements of the regime in pre-trial detention facilities are isolation of persons taken into custody, constant surveillance under them and their separate detention according to the order established by article 8 of the Law.

Persons, to whom as a restraint measure detention was chosen or to whom temporary or extradition arrest was applied are subjected to search, medical examination, fingerprinting and photographing; they are informed on their rights and regime requirements. Things that are with them as also parcels that are addressed to them should be inspected, and their correspondence should be reviewed. It is forbidden for them to have money, valuables and items that are not allowed to keep in pre-trial detention facilities. Money which were taken away from them when they were brought to pre-trial detention facilities are deposited on their personal accounts, valuables are given to a store, money and valuables which were obtained by fraud while in pre-trial detention facilities or source of which is not established are taken by the state by a reasoned decision of a head of pre-trial detention facility, which should be sanctioned by a prosecutor, a copy of which is added to a personal file of a detainee. The search of staff of intelligence agency of Ukraine, which is detained, and the review of his belongings are conducted only in presence of official representatives of the agency.

*Article 7. Regime in pre-trial detention facilities*

*(Law of Ukraine, Verkhovna Rada of 30.06.1993, № 3352-XII "On pre-trial detention").*

As of today, Guidelines for the use of technical means of surveillance and control, including videosurveillance are being developed by the State Penitentiary Service of Ukraine.

## **2. On staff-detainees relations**

Activities and measures that were aimed at elimination of violations of prisoners' constitutional rights and their real implementation resulted in 10% decrease of complaints and appeals in 2012. Last year by prosecutors were solved 4477 requests of the mentioned category, which is 457 less than 2011 (4934), among them were satisfied 186 or 4,2%. This year as on 01.05.2013 1314 requests were solved, among which 39 were satisfied.

Particular attention is given to statements and reports on ill-treatments, beatings, tortures, and other inhuman or degrading treatment of citizens by law-enforcement officials. Every statement should be registered in the Unified register of pre-trial investigation and should be thoroughly and impartially investigated by prosecutor with an adoption of appropriate procedural decision. The results of activities show a reduction by one-third of offences committed by law enforcement officers involving the use of violence against detained or deprived of liberty citizens. Reduction of the category of crimes was possible, as a result of preventive work among the personnel of the Interior and the penitentiary service. According to state statistics for 4 months of 2013 14 employees of penitentiary service were brought to administrative responsibility (fines were imposed) for corruption by courts, also pre-trial investigation against 8 employees was completed. In recent years, prosecutors implemented a number of organizational and practical measures that contributed to the overall strengthening of supervision of the fulfillment of constitutional rights in the institutions of pre-trial detention and penitentiary facilities, institutions of the use of coercive measures. Only in 2012 according to inspections' results 10522 response documents were submitted by prosecutors, as a result 9342 employees of Interior and penitentiary service were brought to disciplinary responsibility. From the places, where persons are deprived of their liberty, 69 persons were freed. In following year more than 3 thousand response documents were submitted by prosecutors, as a result 3 386 employees of Interior and penitentiary service were brought to disciplinary responsibility. From the places, where persons are deprived of their liberty, 64 persons were freed.

### *2.1 On Correctional Colony №89 in Dnipropetrovsk*

The whole staff of Dnipropetrovska Correctional Colony No 89 sternly warned that any form of ill-treatment of prisoners is unacceptable and any employee will be severely punished for committing, facilitating or directing the actions of torture. Additional briefings with the staff of Dnipropetrovska Correctional Colony No 89 were conducted on the prevention of illegal acts committed by staff to prisoners, as well as actions that humiliate prisoners' honor and dignity.

In service training system, in accordance with the instruction of department of State Penitentiary Service of Ukraine in Dnipropetrovski region of November 30 2012 No 15/16-8867, lectures were conducted with penitentiary staff in the region on following topics: "European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, in particular article 8 (ratified by Ukraine in 1997) and Standard minimum rules for the treatment of prisoners (UN, 1955)". Also, studying by staff of Code of ethics of State Penitentiary service of Ukraine were organized. The Code incorporated provisions of European Code of Ethics for Prison Staff (Council of Europe Committee of Ministers' Recommendation CM/Rec(2012)5 of 12 April 2012). New management of Correctional Colony No 89 in its actions to eradicate ill-treatment of prisoners by prison staff or other inmates, which are instigated by prison staff, especially in medical facility of Correctional Colony No 89, is fully supported by Regional department of SPSU in Dnipropetrovski and by SPSU itself, which by decision of its Board of 14.02.2013 No 1PK prolonged personal control of operational activity of Correctional Colony No 89 in order to provide practical assistance to correctional facility.

### *2.2 On Oleksiyivska Correctional Colony № 25*

In the facility a complex of measures were implemented in order to establish an effective system of recruitment and training of qualified personnel of the State Penitentiary Service of Ukraine, and to constitute special system of education, which would cover all forms of education, including providing of continuing education to meet the needs of Penitentiary Service.

In particular, penitentiary personnel familiarization with the Code of ethics under personal signature with appropriate notice in personal file is provided Senior management of all levels conducts every month briefings of educational and preventive nature with subordinate staff in order to determine moral values, professional and ethical requirements to behavior, staff ethics training.

In service training study by personnel of the main provisions of international treaties and standards of treatment of prisoners, explaining the relevant documents to the personnel, as also appropriate handouts are provided. The results of the corresponding activities in form of differentiated assessment are recorded quarterly.

For every employee a job instruction is provided and adopted, by which their organizational and legal status, as well as their concrete tasks and duties, rights and responsibilities are defined.

### *2.3 On special-purpose forces*

In order to determine the organization of special-purpose forces of the State Penitentiary Service of Ukraine elaborated a draft order of Ministry of Justice of Ukraine "On approval of the Statute of special-purpose forces of the State Penitentiary Service of Ukraine".

The draft of the abovementioned document agreed with the Anti-Terrorist Center of the Security Service of Ukraine and the General Prosecutor's Office of Ukraine is being analyzed by the Ministry of Justice of Ukraine.

### **3. As to the conducted investigation concerning the situation with prisoners in correctional colonies.**

During inspections prosecutors primarily responded to violation of the law, which can lead to torture and other ill-treatment, including aspects of living and medicosanitary conditions of the detainees, prisoners and convicted persons, compliance with operational requirements, cessation of illegal detention and placement persons to institutions of police and prison service, etc.

Condition of public prosecutions on these issues was discussed at an enlarged meeting on 04.04.2013 of the Board of the General Prosecutor's Office of Ukraine with participation of the Government Agent before the European Court of Human Rights, the Ukrainian Parliament Commissioner for Human Rights, the leaders of Ministry of Justice, Ministry of Health and Ministry of Internal Affairs of Ukraine, the State Penitentiary Service of Ukraine.

The Parliament of Ukraine and Prime Minister of Ukraine was informed about the state of the law in this area.

The above legitimacy shows that the prosecutor's authorities essentially respond to all violations of the constitutional rights of prisoners.

It should be noted that the President of Ukraine passed a Decree "On the decision of the National Security and Defense Council of Ukraine of 12 March 2013 "On urgent measures for Ukraine's European integration", which provides solutions to some issues of observance of prisoner's rights:

- to take measures in due course to ensure the financing of expenses of the state budget of Ukraine related to the implementation of the Criminal Procedural Code of Ukraine, the Law of Ukraine "On the Bar and legal practice", activities of the national preventive mechanism under the Optional Protocol to the Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;
- to take measures to ensure implementation of the European Court's of Human Rights decisions in Ukraine, the implementation of the Council's of Europe recommendations concerning the detention conditions, providing them with medical care.

As it was noted earlier after CPT's the preliminary observation receipt, the prosecutor's authorities of Vinnytsa, Dnipropetrovsk and Kharkiv conducted comprehensive investigations into keeping the constitutional rights of the prisoners in Correctional Colonies nos. 81, 89, 25, 54. During the investigation the members of supervising committees and local government representatives, human rights activists and representatives of civil society, external experts of territorial institution of health care, veterinary medicine, sanitary and epidemiological service, labor safety and the State Inspection on Technological Safety of Ukraine were involved. Herewith conducted examinations concerning ill-treatment and torture of prisoners did not find objective confirmation. Moreover, according to the letter of 21 March 2013 the CPT informed that the measure undertaken by the Government did not meet requirements of the effective investigation. Thus the General Prosecutor's Office of Ukraine instructed additionally the local prosecutor's office to investigate the abovementioned questions. CPT also informed that the Committee has continued to receive reports of intimidatory action by staff against inmates in connection with their interviews with CPT. Herewith conducted examinations concerning ill-treatment and torture of prisoners did not find objective confirmation.

#### **4. On the situation concerning Yulia Tymoshenko**

The issue of using force to Ms Tymoshenko by the staff during her transfer to medical facility no.5 on 20 April 2012, as well as the adequate medical assistance provided to her was considered by the European Court of Human Rights. In its judgment the European Court indicated no violations of Article 3 of the European Convention on Human rights (prohibition of torture or inhuman or degrading treatment or punishment) concerning alleged ill-treatment to Ms Tymoshenko during her transfer to medical facility on 20 April 2012 and effectiveness of investigation of claims concerned. As to the claims to the adequate medical treatment which was provided to the applicant, the European Court states, that the domestic authorities afforded the applicant comprehensive, effective and transparent medical assistance.

#### **5. On the measures taken to combat corruption in the activities of the State Penitentiary Service of Ukraine (hereinafter – “DPtS”)**

In order to achieve preventive effects on the staff of the State Penitentiary Service of Ukraine and to reduce instances of violation of discipline and legality corresponding work was conducted.

In particular, in all educational institutions DPtS the lesson to explain the anti-corruption legislation with specific examples of committed offenses was conducted.

The information about the activities of DPtS of Ukraine concerning anti-corruption measure were covered in mass media. On the official website of DPtS ([www.kvs.gov.ua](http://www.kvs.gov.ua)) was created and operates the link “Combating Corruption”, which accommodates analysis about operating status of compliance by the staff the requirements of anti-corruption legislation and measures taken to reduce corruption. Also, this information is distributed on the Internet and among online news agencies, printed and audiovisual mass media. In this section accommodates information about taken measures to prevent an combat corruption, on staff, brought to the disciplinary liability and against whom a criminal proceedings were instituted.

On the front pages of DPtS’s newspaper "Law and duty" articles highlighting the issues of anti-corruption are published. In addition to this an article entitled "Combating Corruption – priority of DPtS of Ukraine" was published in "Legal newspaper" (of 05.02.2013 № 06), which highlighted the issue of DPtS personnel compliance to anti-corruption legislation.

Unscheduled lectures on compliance with anti-corruption legislation are held for the staff. Tests on knowledge of the Law of Ukraine "On Prevention and Combating Corruption" are held. The relevant operational meetings and individual prevention interviews are organized.

In order to perform system analysis to measure the operational environment and performance of departments and services of agencies, to monitor the implementation of preventive and other measures, in institutions proceedings in the field of combat against corruption and crimes of economic and financial nature have been instituted.

On 14.03.2013 in the DPtS’s office lectures on anti-corruption laws were conducted by head of anti-corruption department of public safety and law enforcement NSDC of Ukraine, Candidate of Science in Public Administration Solovyov V.

In Belotserkovskom college training personnel of the State Penitentiary Service of Ukraine on 16.05.2013 an employee of the Internal Security and anti-corruption unit DPtS conducted lecture on the prevention of corruption in the State Penitentiary Service of Ukraine for the senior staff of penitentiary who are responsible for the release of prisoners.

Studying and consideration of public opinion in the formulation and implementation of state policy is provided by the regular meeting with people in the DPtS, participation of the senior executives in government hotline and operational coverage of DPtS’s of Ukraine activities on the official website.

In order to take into account public opinion and to establish a dialogue with the public on DPtS compliance with anti-corruption legislation a permanent and direct "hotline" has been introduced. Phone numbers are placed on the stands of visual information of territorial DPtS, penitentiary institutions and pre-trial detention facilities, the DPtS official website.

Consequently, as a result of complex preventive and prophylactic and other measures the level of crime has significantly reduced.

If within 4 months of 2012 concerning personnel of penal institutions and pre-trial detention facilities under the jurisdiction of the State Penitentiary Service of Ukraine 27 criminal cases against 27 persons were initiated, within 4 months of 2013 16 criminal procedures concerning 16 persons were opened, which is by 59% less than in previous year.

As a result of activities within 4 months of 2013 12 employees of penitentiary institutions and pre-trial detention facilities who have committed offenses of corruption were detected (compared to 20 persons in 4 months of 2012) and brought to justice in accordance with the Law of Ukraine "On Prevention and Combating Corruption", which is by 60% less than in previous year.

The above mentioned analysis shows a gradual decrease in acts of corruption in the State Penitentiary Service of Ukraine.

By each detected fact of corruption offense committed by staff an impartial internal investigation is conducted, the causes and conditions that led to the corruption offence are carefully studied, and steps are taken to eliminate them in future and to prosecute the guilty officials.