



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 9 to 21 October 2013

The Ukrainian Government has requested the publication of this report.

Strasbourg, 29 April 2014

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Copy of the letter transmitting the CPT's report

Ministry of Justice
Horodetskooho Street, 13
01001 Kyiv
Ukraine

Strasbourg, 31 March 2014

Dear Sirs,

In pursuance of Article 10, paragraph 1, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, I 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 9 to 21 October 2013. The report was adopted by the CPT at its 83rd meeting, held from 3 to 7 March 2014.

The recommendations, comments and requests for information formulated by the CPT are listed in Appendix I. As regards more particularly the CPT's recommendations, having regard to Article 10 of the Convention, the Committee requests the Ukrainian authorities to provide **within six months** a response giving a full account of action taken to implement them. The Committee trusts that it will also be possible for the Ukrainian authorities to provide, in that response, reactions to the comments formulated in this report as well as replies to the requests for information made.

As regards the information requested in paragraph 13, the CPT asks that it be provided **every two months until the end of 2014**.

The CPT would ask, in the event of the response being forwarded in Ukrainian, that it be accompanied by an English or French translation.

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

Yours faithfully,

Latif Hüseyinov
President of the European Committee
for the Prevention of Torture and Inhuman
or Degrading Treatment or Punishment

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 9 to 21 October 2013. The visit formed part of the CPT’s programme of periodic visits for 2013. It was the Committee’s tenth visit to Ukraine.¹

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

- Lətif HÜSEYNOV, President of the Committee (Head of delegation)
- Marzena KSEL, 1st Vice-President of the CPT
- Djordje ALEMPIJEVIĆ
- Natalia KHUTORSKAYA
- Vincent THEIS
- George TUGUSHI.

They were supported by Borys WÓDZ, Head of Division, and Johan FRIESTEDT from the Committee’s Secretariat, and assisted by:

- Erik SVANIDZE, former prosecutor, Georgia (expert)
- Vadim KASTELLI (interpreter)
- Dmytro KOPYLOV (interpreter)
- Larysa SYCH (interpreter).

¹ Reports on previous visits and related Government responses have been made public and are available on the CPT’s website: <http://www.cpt.coe.int/en/states/ukr.htm>.

B. Objectives of the visit and establishments visited

3. The delegation's main objective was to re-examine the situation of persons held by law enforcement officials as well as that of remand prisoners, in particular in the light of the provisions of the new Code of Criminal Procedure (CCP) which entered into force in November 2012. The treatment of sentenced prisoners at Correctional Colony No. 81 in Stryzhavka was also reviewed; during its previous visit to this establishment in December 2012, the CPT had found that the ill-treatment of inmates was a common practice. Further, the delegation carried out for the first time a visit to Closed-Type Prison No. 3 in Krivyi Rih, which held various categories of inmate, including remand prisoners.

In this context, the CPT's delegation visited the following places of deprivation of liberty:

Internal Affairs establishments

Kyiv City

Podil'ske District Internal Affairs Directorate, Kyiv*
Svyatoshinske District Internal Affairs Directorate, Kyiv
Golosyivske District Internal Affairs Directorate, Kyiv*
Kyiv Temporary Detention Isolator (ITT)*

Autonomous Republic of Crimea

Alushta City Internal Affairs Division
Central District Internal Affairs Division, Simferopol
Alushta ITT
Simferopol ITT*
Yalta ITT

Dnipropetrovsk Region

Zhovtnyevyi District Internal Affairs Division, Dnipropetrovsk*
Line Internal Affairs Division, Dnipropetrovsk Railway Station
Saksaganskyi District Internal Affairs Division, Krivyi Rih
Dnipropetrovsk ITT*
Krivyi Rih ITT

Special reception centre for persons under administrative arrest in Dnipropetrovsk*

Odessa Region

Malinovskiy District Internal Affairs Division of Odessa City Directorate* and Khmel'nitskyi District Internal Affairs Sub-Division
Primorskyi District Internal Affairs Division of Odessa City Directorate
Suvorovskiy District Internal Affairs Division of Odessa City Directorate
Odessa ITT*

* Follow-up visit.

Vinnytsia Region

Vinnytskyi District Internal Affairs Division, Vinnytsia
2nd Sub-Division of Vinnytsia City Internal Affairs Division

Vinnytsia ITT

Penitentiary establishments

Kyiv pre-trial establishment (SIZO)*

Dnipropetrovsk SIZO*

Odessa SIZO*

Simferopol SIZO*

Closed-Type Prison No. 3, Krivyi Rih

Stryzhavska Correctional Colony No. 81*.

In the course of the visit, the delegation also went to the Secure Ward at the Kyiv Municipal Emergency Hospital to examine the relevant documentation. Further, it interviewed recently-arrived prisoners at Closed-Type Prison No. 1 in Vinnytsia.

C. Consultations held by the delegation

4. In the course of the visit, the delegation held consultations with Inna YEMELIANOVA and Maksym RAYKO, respectively First Deputy Minister of Justice and Assistant Minister of Justice, with Oleksandr LISITSKOV and Serhyi SYDORENKO, respectively Head and Deputy Head of the State Penitentiary Service, as well as with senior officials of the Ministry of Internal Affairs. The delegation also had meetings with Hryhoryi SEREDA, Deputy Prosecutor General.

The CPT regrets that the Ministry of Internal Affairs was not represented at an appropriate level during the above-mentioned consultations. The Committee wishes to emphasise the importance of the participation of high-level Government representatives, in particular at the end-of-visit talks; this is when the delegation presents its preliminary findings including observations concerning any situations where there is an urgent need to improve the treatment of persons deprived of their liberty. The CPT has no doubt that the Ukrainian authorities share this view.²

* Follow-up visit.

² Reference should be made here to the [meeting](#) held on 19 December 2013 between representatives of the CPT and the Minister of Internal Affairs in the context of high-level talks organised in the aftermath of police interventions on 30 November 2013 at Independence Square and on 1 December 2013 on Bankova Street in Kyiv.

Further, the account of the preliminary observations presented by the CPT's delegation during the end-of-visit meeting held at the Ministry of Internal Affairs in Kyiv, which was published by that Ministry on 21 October 2013, did not reflect the remarks made by the delegation concerning the treatment of detained persons by law enforcement officials. Consequently, and in application of paragraph 5 of Rule 39 of the CPT's Rules of Procedure,³ the Committee decided at its November 2013 plenary meeting to make public the full text of the preliminary observations.

The CPT hopes that the Ukrainian authorities will pay due attention to the above matters in the future.

5. During the visit, discussions were also held with Valeria LUTKOVSKA, Parliamentary Commissioner for Human Rights, and with members of the national preventive mechanism (NPM) set up under the Optional Protocol to the United Nations Convention against Torture (OPCAT). The delegation also met representatives of the United Nations High Commissioner for Refugees, members of the National Bar Association and of the Co-ordination Centre for Free Legal Aid, as well as representatives of non-governmental organisations active in areas of concern to the CPT.

6. A list of the national authorities and organisations met by the delegation is set out in Appendix II to this report.

D. Co-operation received

1. Co-operation aimed at facilitating the work of the visiting delegation

7. The CPT's delegation generally received very good co-operation from the Ministry of Internal Affairs, before and in the course of the visit. It enjoyed rapid *access to Internal Affairs establishments*, and could have *private interviews* with the persons detained and consult the *relevant documentation*. Nevertheless, reference is made to paragraph 4 in relation to the end-of-visit talks.

8. As concerns the Ministry of Justice/the State Penitentiary Service, the CPT's delegation enjoyed a very good level of co-operation at central level. Moreover, it clearly appeared at local level that action had been taken to ensure ready *access to penitentiary establishments* and to avoid a repetition of the incidents which occurred during the previous visit in 2012. Further, on the whole, the delegation was able to have *private interviews* with prisoners, had *access to all the relevant documentation* and its *requests for information* were promptly met.

³ Rule 39 reads as follows:

"1. The report transmitted to a Party following a visit is confidential. However, the Committee shall publish its report, together with any comments of the Party concerned, whenever requested to do so by that Party.
2. If the Party itself makes the report public, but does not do so in its entirety, the Committee may decide to publish the whole report.
3. Similarly, the Committee may decide to publish the whole report if the Party concerned makes a public statement summarising the report or commenting upon its contents.
4. Publication of the report by the Committee under paragraphs 1 to 3 of this Rule shall be subject to the provisions of Rule 42, paragraph 2.
5. The provisions of this Rule shall apply mutatis mutandis to other confidential communications to a Party from the Committee."

That said, at Dnipropetrovsk SIZO and Closed-Type Prison No. 3 in Krivyi Rih, the delegation was provided with incorrect information about the use of dogs inside the detention areas accommodating life-sentenced prisoners.

Further, at Krivyi Rih, certain prisoners had apparently been deliberately prevented from approaching the delegation. As regards Correctional Colony No. 81 in Stryzhavka, the CPT has serious doubts, in the light of the delegation's findings during the 2013 visit, that the confidentiality of interviews with inmates was always observed.

In the context of future visits, **the Ukrainian authorities must make it clear to all penitentiary staff that: i) the principle of co-operation enshrined in the Convention establishing the CPT encompasses the obligation to provide accurate information to visiting delegations and ii) any attempt to prevent inmates from having private interviews with delegations or to find out what inmates tell visiting delegations during private interviews is in blatant contradiction with Article 8, paragraph 3, of the Convention and would lead to severe sanctions.**

9. Possible *intimidatory or retaliatory action against prisoners prior to, during and after CPT visits* has been a recurrent issue since the very first visit of the Committee to Ukraine in 1998. When setting in motion the procedure under Article 10, paragraph 2, of the Convention in March 2013,⁴ the Committee formed the hope that the Ukrainian authorities would do their utmost to stamp out any such practice in penitentiary and other establishments, which would enable it to close the procedure. The Ukrainian authorities carried out further inquiries into the matter and made their views known. Nevertheless, the Committee could not conclude that all had been done to prevent and respond to any action of this type. Consequently, the Committee decided to keep this procedure open until it had an opportunity to examine the findings made during the 2013 visit.

The CPT notes that the delegation hardly came across any cases of intimidation of inmates prior to/during the 2013 visits to Kyiv and Simferopol SIZOs and to Vinnytsia Prison No. 1. However, the same cannot be said of the Dnipropetrovsk and Odessa SIZOs where inmates had apparently been strongly advised, by staff (at Dnipropetrovsk) or by prisoners belonging to an informal prisoner hierarchy (at Odessa), not to complain to the delegation.

Although the overall atmosphere at Stryzhavska Correctional Colony No. 81 was rather relaxed when compared to the situation observed in 2012, some inmates had allegedly been threatened with disciplinary action by staff or physical ill-treatment by fellow inmates in this establishment or after transfer to another penitentiary establishment, should they complain to the delegation during the 2013 visit.

⁴ Article 10, paragraph 2, of the Convention reads as follows: "If the Party fails to co-operate or refuses to improve the situation in the light of the Committee's recommendations, the Committee may decide, after the Party has had an opportunity to make known its views, by a majority of two-thirds of its members to make a public statement on the matter." For more details on the opening of the procedure in respect of Ukraine, see paragraph 8 of the report on the 2012 visit to Ukraine (document [CPT/Inf \(2013\) 23](#)).

The situation was of even greater concern at Krivyi Rih, where the delegation found a palpable climate of fear and intimidation. Inmates interviewed feared for their own safety and were extremely reluctant to speak openly about the manner in which they had been treated; prisoners who had a designated role to assist staff (in particular so-called '*pressovshchiki*') apparently made clear to them shortly before the delegation's visit to this establishment that anyone who complained would face serious consequences, including (further) beating.

10. At the end of the 2013 visit, the CPT's delegation alerted the Ukrainian authorities that prisoners interviewed in both of the last-mentioned establishments ran a real risk of being subjected to reprisals. It immediately received assurances from the Ministry of Justice, the State Penitentiary Service and the Prosecution Service that prompt action would be taken to prevent any such acts against prisoners in the penitentiary establishments concerned. The delegation requested that it be provided with a detailed account of steps taken in this respect.

In a letter of 27 December 2013, the Ukrainian authorities indicated that the prosecuting authorities had conducted inquiries into possible acts of reprisals and considered that no such action had taken place. They emphasised that representatives of civil society were also involved and that anonymous questionnaires were used in the context of these inquiries.

11. In the light of the delegation's findings during the 2013 visit, the CPT deeply deplores that the Ukrainian authorities did not take all the necessary measures to prevent any intimidation of prisoners by staff or fellow inmates at the instigation of staff in several of the penitentiary establishments visited. Any such behaviour is an assault on the principle of co-operation which lies at the heart of the Convention.

The CPT appreciates that the relevant authorities took the delegation's findings on intimidation of inmates seriously and conducted inquiries shortly after the delegation's visit. At the same time, the CPT knows from previous experience that the steps described by the Ukrainian authorities in their letter of 27 December 2013 are in themselves not sufficient to allay its concerns in relation to this matter. Gaining a sufficient level of trust among prisoners remains a key issue for such inquiries to be considered as effective. Regrettably, it does not transpire from the details provided to the Committee that a climate of trust was created during these inquiries. It appears that inmates did not share their concerns about tangible threats of sanctions and fears for their safety. The Committee must stress again the need for prosecutors/monitors to take measures to counter the risk of intimidation of inmates by staff or fellow prisoners, at the instigation of staff, prior to/in the course of inquiries of this kind; the use of anonymous questionnaires, for instance, is of dubious value if nothing has been done to counter that risk. Further, prosecutors/monitors should seek private interviews with prisoners. This should imply in particular that prosecutors/monitors systematically enter into direct contact with inmates and interview them in private; from the information at the disposal of the Committee, this does not appear to have always been the case.

Further, of particular concern are the clear indications received during the 2013 visit according to which, shortly after the previous visit in 2012, attempts had been made by the management of Correctional Colonies Nos. 25 and 81 to identify all the prisoners who had complained to delegation members (with the help of operational staff and/or fellow inmates), to make sure that these prisoners would not make similar complaints to prosecutors/investigators/monitors in the course of subsequent inquiries/inspections and, as regards Correctional Colony No. 25, to subject them to corporal punishment.

12. A CPT delegation returned to Prison No. 3 in Krivyi Rih in the context of the *ad hoc* visit to Ukraine in February 2014. It noted that several inspections (by the general and regional prosecution services, as well as by the regional prison administration) had been carried out to the establishment after the CPT's 2013 visit, and that the director and some of his deputies were facing disciplinary proceedings.

The delegation gained the impression that the overall atmosphere in the prison had somewhat improved, and that inmates were less intimidated than during the previous visit in October 2013. Some of the prisoners told the delegation that the confession and/or money extortion system (previously organised by the operational staff and using the so-called '*pressovshchiki*') was no longer in operation (or at least was applied on a much smaller scale); that said, prisoners were still afraid, in particular as most of the staff concerned (and some of the '*pressovshchiki*') remained present in the establishment. Among others, inmates complained that the former deputy director (responsible for operational activities) who had reportedly organised the extortion system, although no longer working in the establishment, had been promoted to the regional prison administration (where he was responsible for security matters) and was now regularly inspecting the prison and entering into contact with the inmates who had allegedly been victims of ill-treatment/extortion. It is also noteworthy that prisoners complained to the delegation that, following the CPT's 2013 visit, they had been pressurised by operational staff to make false statements on the origins of their injuries (i.e. to declare that they had resulted from accidents, while in reality they had been inflicted by fellow prisoners).

Furthermore, the delegation found that there had been no improvement as regards the recording and reporting of injuries observed on prisoners by health-care staff, and with respect to the confidentiality of medical examinations and documentation (see also paragraphs 152-154).

13. In the light of the information at its disposal, the CPT is certainly not convinced that all the necessary steps have so far been taken to stamp out – once and for all – the practices described in paragraph 11; consequently, the Committee has decided to keep open the procedure under Article 10, paragraph 2, of the Convention.

The CPT urges the Ukrainian authorities to: i) take effective measures to prevent any intimidation of inmates prior to/during future visits; ii) consider making any type of sanction, intimidation, reprisal and other prejudice against any person deprived of his or her liberty for seeking to communicate or having communicated with the CPT (or any other body active in preventing and combating torture and other forms of ill-treatment) a specific criminal offence; iii) review, in the light of the above remarks, the manner in which inquiries into possible sanctions, reprisals and other action of this kind against inmates interviewed by CPT delegations are carried out and conduct further inquiries accordingly at Correctional Colonies No. 25 in Kharkiv and No. 81 in Stryzhavka as well as in Prison No. 3 in Krivyi Rih, in close co-operation with members of the national preventive mechanism and representatives of the civil society with recognised experience in dealing with the rights of prisoners.

The CPT would like to receive, every two months throughout 2014, the results of future inquiries into possible sanctions against (former) prisoners held in the above-mentioned penitentiary establishments during the 2012 and 2013 visits, together with a detailed account of concrete steps taken to obtain these results.

2. Co-operation towards implementing effectively recommendations made by the Committee

14. As already underlined after previous CPT visits to Ukraine, the principle of co-operation between State Parties and the Committee is not limited to steps taken to facilitate the task of a visiting delegation. It also requires that effective action be taken to improve the situation in the light of the CPT's recommendations.

15. In the view of the Committee, the delegation's findings during the 2013 visit give cause for optimism in several respects. In particular, the CCP, since its entry into force in November 2012, together with the setting-up of a new free legal aid system, has begun to show its potential to combat the *phenomenon of ill-treatment by law enforcement officials*, which still persists in various parts of the country, including in its most severe forms.

Combating this phenomenon should be more than ever a top priority for the Ukrainian authorities, which should build upon their first, limited but encouraging, results to implement all the CPT's relevant recommendations and reduce the gap between the legal framework and practice (see, in particular, sections II.A.1. and II.A.4. of the present report).

16. A marked improvement was also noted in the *treatment of prisoners by staff or by fellow inmates at the instigation of staff* at Correctional Colony No. 81. However, the seriousness of the situation observed at Prison No. 3 in Krivyi Rih leads the Committee to conclude that changes in the manner in which prisoners are treated should remain one of the highest priorities for the Ukrainian prosecuting and penitentiary authorities (see section II.B.2. of this report).⁵

17. As regards the long-standing issue of *overcrowding in pre-trial establishments (SIZOs)*, a major decrease in the number of inmates was observed, mostly as a result of the adoption/entry into force of the new CCP and a wider use of alternatives to imprisonment. Localised overcrowding seen in all the SIZOs visited is a clear reminder that efforts should be pursued in this area (see section II.B.1. of the present report).

18. The CPT notes with concern that there are key areas where the delegation found that virtually no progress was made to implement the Committee's recommendations. By way of illustration, the Committee noted that no decisive action had been taken to upgrade *material conditions* in most SIZOs visited and to introduce *programmes of out-of-cell activities for adult remand prisoners*. Further, the situation of male *prisoners facing/sentenced to life imprisonment* remained basically unchanged. Measures taken to improve the *medical examination of inmates* and to ensure the proper *documentation of any injuries observed on examination* were clearly ineffective.

⁵ It should also be mentioned that information received during the 2013 visit suggests that little has been done to improve the treatment of prisoners by staff or fellow inmates designated to assist staff in certain establishments visited in the past, in particular at Correctional Colony No. 25 in Kharkiv. During the visit, the delegation shared its concerns with the Ukrainian authorities in this regard.

It should be placed on record that, in their letter of 27 December 2013, the Ukrainian authorities indicated that, on the basis of the delegation's preliminary observations, amending relevant regulations in some of these areas was being considered by the State Penitentiary Service. This is an encouraging development.

19. In the light of the above, the CPT trusts that the Ukrainian authorities will pursue their efforts to improve the situation of persons held by law enforcement officials and of prisoners, in the light of the Committee's recommendations made in this and previous reports.

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

20. During the end-of-visit talks held in Kyiv on 21 October 2013, the CPT's delegation outlined the main facts found during the visit. On that occasion, it invoked Article 8, paragraph 5, of the Convention in respect of the treatment of prisoners held at Prison No. 3 in Krivyi Rih and urged the Ukrainian authorities to carry out an immediate, thorough and independent inquiry into the manner in which that particular establishment was operating. The delegation indicated that it would like to receive, within two months, detailed information about the investigative steps taken in response to this immediate observation and the first results of the inquiry. This was subsequently confirmed by the President of the CPT in a letter dated 29 October 2013.

21. By letter of 27 December 2013, the Ukrainian authorities provided information on the measures taken in response to the above-mentioned immediate observation and, more generally, to the preliminary observations presented by the delegation in respect of penitentiary establishments. This information is examined later in the present report.

F. The development of a national preventive mechanism and interaction with the CPT

22. In the report on its 2012 visit, the CPT indicated that care should be taken to ensure, including through Council of Europe assistance, that the NPM meets the key requirements as laid down in the OPCAT and subsequently elaborated upon by the Subcommittee on the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) in its Guidelines on national preventive mechanisms (independence, expertise and experience, resourcing issues, etc.).⁶ In the light of the delegation's findings during the 2013 visit, the CPT hopes that efforts will be continued in this respect.

⁶ See paragraph 43 of the report on the 2012 visit (document [CPT/Inf \(2013\) 23](#)).

G. The setting-up of a State Bureau of Investigation

23. In previous visit reports, the CPT raised serious questions as to the effectiveness of investigations into alleged torture and other forms of ill-treatment inflicted by public officials (or at their instigation): action limited to interviewing public officials who were the subject of allegations of ill-treatment, failure to initiate criminal investigations even in the presence of strong evidence, high level of mistrust amongst potential victims/witnesses of ill-treatment in the system in place for investigating complaints against public officials, etc.⁷

It is also a matter which is under close scrutiny within the framework of the execution of judgments of the European Court of Human Rights after the Court has found repeated violations of Article 3 of the European Convention on Human Rights in this regard.⁸

24. In the report on its 2009 visit, the CPT urged the Ukrainian authorities to set up an independent agency specialised in the investigation of complaints against public officials which is demonstratively separate from Internal Affairs structures and the Prosecution Service.⁹

A “State Bureau of Investigation” (SBI) should be set up by November 2017 at the latest.¹⁰ The SBI should focus on particularly serious crimes as well as criminal offences committed by public officials. However, pending the adoption of a law establishing it, the design and terms of reference of this future body has remained under discussion.

In this context and given the urgency of the matter, the CPT recommended in the report on its 2012 visit that a two-step approach be adopted: as a first step, to set up without delay a national specialised team, whose role is to carry out investigations throughout the country into cases involving alleged ill-treatment inflicted by public officials, and to provide it with its own support staff for the operational conduct of the investigations; as a second step, to examine the feasibility, in the medium term, of completely separating such a team from the Prosecution Service so as to establish a genuine independent specialised agency for investigations of this type.¹¹

⁷ See in particular paragraph 25 of the report on the 2005 visit (document [CPT/Inf \(2007\) 22](#)), paragraph 20 of the report on the 2009 visit (document [CPT/Inf \(2011\) 29](#)) and paragraph 39 of the report on the 2012 visit (document [CPT/Inf \(2013\) 23](#)).

⁸ Reference is made here to the enhanced supervision of the [execution](#) of the judgment of the European Court of Human Rights in the *Afanasyev* group of cases and the “quasi-pilot” judgment of *Kaverzin v. Ukraine* (which became final on 15 August 2012) by the Committee of Ministers of the Council of Europe. It should be recalled that the Court found that the situation in the *Kaverzin* case “must be characterised as resulting from systemic problems at the national level which, given the fundamental values of democratic society they concern, call for the prompt implementation of comprehensive and complex measures”. In this context, the Court highlighted the need for the Ukrainian authorities to “urgently put in place specific reforms in its legal system in order to ensure [...] that effective investigation is conducted in accordance with Article 3 of the Convention in every single case where an arguable complaint of ill-treatment is raised and that any shortcomings in such investigation are effectively remedied at the domestic level” (paragraphs 181 and 183).

⁹ See paragraph 20 of the report on the 2009 periodic visit to Ukraine (document [CPT/Inf \(2011\) 29](#)).

¹⁰ See Section 216 and Final Provisions of the new Code.

¹¹ See paragraph 39 of the report on the 2012 visit (document [CPT/Inf \(2011\) 29](#)).

25. In the course of the 2013 visit, the delegation's official interlocutors underlined that action to improve the effectiveness of investigations into any cases of alleged ill-treatment involving public officials has remained high on their agenda.¹²

Further, the first steps taken by the Ukrainian prosecuting authorities appeared to go in the direction advocated by the Committee in its report on the 2012 visit. Indeed, the CPT's delegation was informed that, with a view to improving the effectiveness of investigations into possible abuses by public officials and in anticipation of the setting-up of the SBI, the Prosecutor General had taken a number of measures within the Prosecution Service itself, including by establishing new investigative departments at national and regional levels while abolishing positions of investigators at local level.¹³

In the view of the delegation's official interlocutors, the work on a draft law establishing the SBI would be intensified as from 2014.

The CPT encourages the Ukrainian authorities to step up their efforts, in the context of the future establishment of the SBI, to ensure the prompt and full implementation of its previous recommendation in the report on its 2012 visit.

Moreover, **particular emphasis should be placed on the institutional independence of the future SBI and the existence of transparent procedures in order to enhance public confidence.**

Direct, confidential, access to the SBI for persons who are/were deprived of their liberty and allege abuses by public officials should also be secured.

¹² This message was also reiterated during [high-level talks](#) in Kyiv on 13 December 2013.

¹³ See also Conclusion of the Joint Opinion endorsed by the Venice Commission at its 96th Plenary Session, held on 11-12 October 2013, on the Public Prosecutor's Office of Ukraine (document [CDL-AD \(2013\) 025](#)).

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Persons held by Internal Affairs officials

1. Preliminary remarks

26. According to official interlocutors met by the delegation during the 2013 visit, one major impact of the entry into force of the new Code of Criminal Procedure (CCP)¹⁴ was the sharp drop in the number of persons apprehended by Internal Affairs officials: during the first eight months of 2013, a decrease of some 40% was said to have been observed. Many Internal Affairs staff met by the delegation spoke favourably about this trend and highlighted that it had to some degree eased their daily work.

Nevertheless, the delegation was told that the practical implication of the new provisions had initially generated some confusion among staff as to the division of tasks and duties; this was apparently the case for a number of operational officers who had difficulties in understanding their new responsibilities under the new Code. Such confusion was reinforced by the limited period during which Internal Affairs staff could be offered training. **The CPT encourages the Ukrainian authorities to strive to ensure that all those involved (Internal Affairs operational officers and investigators, forensic doctors, investigative judges, public prosecutors, etc.) have a good grasp of both the precise wording and the object underlying the provisions of the new Code governing their work.**

Further, some of the delegation's interlocutors considered that efforts to ensure the implementation of the CCP should go hand-in-hand with a transformation of Internal Affairs structures into what they called a "modern law enforcement agency". The delegation was informed of the setting-up of working groups under the auspices of the Ministry of Internal Affairs with a view to examining possible reforms. **The CPT would like to receive details on any progress made in this field.**

27. As regards legal time-limits of police custody, a *criminal suspect* held by law enforcement officials on their own authority must be brought before a judge deciding on the application of the measure of remand in custody or other procedural restraint measures within 60 hours or released. The whole period of police custody without a court ruling or decision from an investigative judge should not exceed 72 hours as from the moment of apprehension.¹⁵ Persons remanded in custody are in principle transferred to a SIZO, but may be held, for logistical reasons, in an Internal Affairs temporary detention isolator (ITT) for up to ten days. In specific circumstances, a person remanded in custody or serving prison sentences may be held – for as long as necessary – in an Internal Affairs or other law enforcement establishment as a protective measure.¹⁶

¹⁴ The CCP was promulgated by the President of Ukraine on 13 May 2012 and published in the "Golos Ukrainy" Official Journal on 19 May 2012. It entered into force six months later, on 19 November 2012.

¹⁵ See Section 211 CCP. Pursuant to Section 209 CCP, a person is considered to be apprehended when he or she, with the use of force or when complying with an order, has to remain with the competent public official or in the premises indicated by the competent public official.

¹⁶ See, in particular, Section 19 (1) of the Law on the Safety of Persons involved in Criminal Proceedings.

As regards *persons suspected of having committed an administrative offence*, it should be recalled that such persons may be held by law enforcement officials for up to three hours or, in connection with certain offences (e.g. drug-related offences) and for identification purposes, medical examination, or clarification of the circumstances of breaches of law, for up to three days upon notification of the public prosecutor; in the latter cases, the prosecutor should be notified within 24 hours of apprehension.¹⁷ If found guilty, the persons concerned may be sentenced by a judge for up to 15 days of administrative arrest;¹⁸ they usually serve their sentence in an Internal Affairs special reception centre.

28. The examination of custody records during the 2012 visit suggests that the above legal time-limits were formally respected. However, the delegation received many allegations from detained persons that they had been initially kept and interviewed about criminal offences by law enforcement officials for periods ranging from several hours to days on end, mainly as “witnesses”, before an appropriate protocol of detention was drawn up. In some instances, the delegation found corroborating evidence in the documentation consulted. Further, in a few cases, it spoke to persons who were being interviewed by operational officers on criminal offences as “witnesses” whereas they had been apprehended and brought to Internal Affairs premises several hours previously.

The above-mentioned practices entail a heightened risk of ill-treatment, undermining as they do the safeguards inherent in the new criminal procedure.¹⁹ **The CPT recommends that senior Internal Affairs officials, investigative judges, prosecutors and courts be particularly vigilant as to the possible exploitation by Internal Affairs staff of the provisions on interviews of witnesses to circumvent the legal time-limits and safeguards in respect of the custody of criminal suspects.**

29. It appeared during the 2013 visit that the periods of stay in ITTs of criminal suspects/persons remanded in custody were most often limited to a few days. The longest stays varied from some months to two-and-half years and officially concerned persons being the subject of a protective measure.²⁰ However, it emerged from the examination of the documentation and interviews with staff that, in some of these instances, such long stays were in fact being used by Internal Affairs or other public officials (e.g. State Security Service officials) for investigative purposes (more specifically, for the carrying out of so-called “covert investigative actions” – e.g. obtaining information from the detained persons through the use of informants within the ITTs concerned – or in order to facilitate frequent transfers to Internal Affairs Divisions). This amounts to an abuse of the provisions on protective measures. **The Committee recommends that action be taken to stamp out such practices.**

More generally, the CPT wishes to stress that **ITTs are not suitable for prolonged detention and should not be used to hold persons for longer than a few days.**

¹⁷ See Section 263 of the Code of Administrative Offences (CAO).

¹⁸ See Section 32 CAO.

¹⁹ See, in this connection, section II.A.4 of this report.

²⁰ The delegation came across such cases in the Kyiv, Dnipropetrovsk and Simferopol ITTs.

During the 2013 visit, the delegation also noted that returns of remand prisoners from SIZOs to ITTs and/or other Internal Affairs establishments in order to participate in investigative activities (e.g. further interviews with Internal Affairs officials) continued to be rather frequent. **The CPT recommends that any further interviews of remand prisoners by Internal Affairs or other law enforcement officials which may be necessary should as far as possible be carried out in a penitentiary establishment. The return of remand prisoners to Internal Affairs or other law enforcement establishments should be sought only when there is absolutely no other alternative and for the shortest time possible, and be subject to express authorisation by a judge.**

2. Treatment of persons held by Internal Affairs officials

30. The phenomenon of torture and other forms of ill-treatment of persons held by Internal Affairs officials has been an issue of grave concern for the CPT since the Committee's first visit to Ukraine 15 years ago. This matter was the subject of an *ad hoc* visit to Kyiv and Kharkiv Regions in 2011, during which the CPT was inundated with allegations of ill-treatment by Internal Affairs staff.²¹ The 2013 visit provided an opportunity to review the manner in which persons held by Internal Affairs officials were treated, in particular after the entry into force of the new CCP and other legal texts.

a. Kyiv

31. In Kyiv, the delegation found that there was a difference between the accounts given by detained persons whose apprehension took place before the entry into force of the new CCP and the experiences shared by persons who were being held/had been held by Internal Affairs officials after 19 November 2012. Persons falling under the first category very frequently alleged methods of ill-treatment which were similar to those described in previous visit reports, including severe physical abuse, whereas most of those falling under the second category indicated that Internal Affairs staff had a correct attitude towards them as from the very outset of custody.

32. Despite this positive development, many detained persons interviewed, including male juveniles, who had recently been apprehended by Internal Affairs officials, claimed that they had been subjected to physical ill-treatment. The alleged ill-treatment consisted of punches, kicks, kneeling, hitting with thick books and blows inflicted with water-filled plastic bottles, batons or other hard objects (e.g. chairs, baseball bats) to various parts of the body (including to the head, spine and genitals). The delegation also received several complaints of unduly tight handcuffing.

33. In addition, some detained persons with whom the delegation spoke complained that they had received threats of beatings by Internal Affairs staff themselves or of placement in a cell referred to as "*press-khata*"²² following transfer to a SIZO.

²¹ See paragraphs 14 to 18 of the report on the 2011 visit (document [CPT/Inf \(2012\) 30](#)).

²² In SIZOs or other penitentiary establishments, a "*press-khata*" is considered to be any cell where prisoners are said to run a high risk of being subjected to physical ill-treatment (including sexual violence) by fellow inmates if they do not immediately confess to a particular crime or provide other information.

34. The above-mentioned ill-treatment was said to have been inflicted at different stages of deprivation of liberty by Internal Affairs officials: at the time of apprehension (e.g. when the person concerned was allegedly not resisting apprehension or after he or she had been brought under control) and/or during subsequent police interviews in secluded places (e.g. in a lake area or forest) or, most often, in offices.

35. The purpose of the alleged ill-treatment was reportedly to force detained persons to confess to (additional) criminal offences, to provide other evidence or to obtain submissive behaviour from them.

36. It is noteworthy that there were various categories of Internal Affairs officials who were the subject of allegations of ill-treatment: in the main, operational staff working in Internal Affairs District or Organised Crime Directorates, District Divisions or Sub-Divisions, but also, in some instances, members of “Berkut” and “Sokil” special forces, patrol service (PPS) staff, and in isolated cases, investigators and senior Internal Affairs officials. At the same time, it should be placed on record that the delegation received no complaints about custodial staff working in the Kyiv ITT.

- b. Dnipropetrovsk, Odessa and Vinnytsia Regions as well as the Autonomous Republic of Crimea

37. In Dnipropetrovsk, Odessa and Vinnytsia Regions, as well as in the Autonomous Republic of Crimea, a significant number of detained persons interviewed, who had previous experience of police detention, stated that there had been recent improvement in the attitude of Internal Affairs officials vis-à-vis persons in their custody.

38. However, progress appeared to have been relatively less substantial than in Kyiv. Indeed, the delegation heard numerous accounts of recent physical ill-treatment from persons who were, or had recently been, detained by Internal Affairs officials. The alleged ill-treatment generally consisted of punches, kicks, slaps to ears and baton blows. In a few cases, the delegation received allegations from detained persons who had reportedly been forced to exercise physically to the point of exhaustion or who had been placed handcuffed into the boot of a car and driven at high speed on bumpy roads. It also heard a number of complaints about painful and prolonged handcuffing.

In Dnipropetrovsk, Odessa and Vinnytsia Regions, as well as in the Autonomous Republic of Crimea, the delegation came across some instances where the alleged ill-treatment was of such severity that it could be considered as amounting to torture (e.g. suspension by handcuffs and infliction of repeated and severe truncheon blows while in a suspended position; infliction of electric shocks using an electric discharge weapon or an army field telephone; burning a person’s fingers with a cigarette, asphyxiation with a gas mask or a plastic bag).

The above allegations were not only made by adult men but also by adult women and both male and female juveniles.

39. The delegation also heard several allegations of threats of severe forms of physical ill-treatment (e.g. extensive beatings, insertion of a baton into a person's anus).

40. The overwhelming majority of the allegations received referred to periods of custody immediately following apprehension, when the persons concerned were subjected to initial questioning. This initial questioning most often preceded the moment when detention was officially recorded. Other allegations referred to the time of apprehension, transportation and detention in court buildings and ITTs.

41. The main purpose of the alleged ill-treatment was said to ensure, prior to formal questioning, that the persons concerned would provide self-incriminating statements or information incriminating other persons before the investigative judge/court and/or to extort money from the detained persons. In a few cases, blows were said to have been inflicted to obtain submissive behaviour or as a form of "entertainment" for Internal Affairs officials (with some of them reportedly filming the alleged ill-treatment with mobile phones equipped with cameras).

42. The Internal Affairs officials who were the subject of allegations of ill-treatment were in most cases operational officers. In a few instances, investigators were said to have been directly involved in the alleged ill-treatment. In the Dnipropetrovsk and Odessa Regions, the delegation also received accounts or other indications of physical ill-treatment of detained persons by Internal Affairs escort/custodial staff.

c. assessment

43. The delegation's findings during the 2013 visit clearly indicate that persons apprehended by Internal Affairs staff after the entry into force of the new CCP run a lower risk of being ill-treated than those who had been detained prior to that date.

However, that risk remains high for detained persons who are not co-operative in the eyes of Internal Affairs officials²³ and/or, in the regions in particular, refuse to pay bribes. It also appeared that persons held by Internal Affairs officials outside the capital were even more likely to be subjected to severe ill-treatment/torture.

44. The allegations referred to in paragraphs 32-33 and 38-39, gathered in the course of individual interviews, were detailed, plausible and consistent. Moreover, some of them were supported by medical evidence, in the form of both lesions directly observed by the delegation's medical members and entries in the medical documentation examined in the ITTs and penitentiary establishments visited. To sum up, the allegations had a high degree of credibility.

²³ For instance, if the person concerned does not spontaneously and immediately confess to the (additional) crime(s) of which he or she is suspected or does not provide incriminating statements as demanded by Internal Affairs staff.

3. Action to combat torture and other forms of ill-treatment

- a. driving change from the highest level and developing an ethical culture among Internal Affairs officials

45. In the context of previous visits, the phenomenon of torture and other forms of ill-treatment by Internal Affairs officials had been recognised at the highest ministerial level. Further, since 2009, successive Ministers of Internal Affairs adopted firm messages of “zero tolerance” of ill-treatment and drew the attention of their staff to the need for radical change in their behaviour towards suspects.²⁴ To reinforce this initiative and to enhance its prospects of success, the CPT recommended in its report on the 2011 visit that such a message be delivered by the highest political authority.

At the beginning of the 2013 visit, the delegation’s official interlocutors indicated that the entry into force of the new Code provided a unique opportunity to bring about changes in the attitudes of Internal Affairs officials towards persons they had in their custody. In this context, key performance indicators for Internal Affairs officials, which were heavily based on high ‘clear-up’ rates, were said to have been entirely reviewed.

46. The delegation’s findings during the 2013 visit suggest that the expectations of the Ukrainian authorities are only starting to be realised. It clearly emerged that there is still a long way to go before reaching the conclusion that the phenomenon of ill-treatment has been effectively overcome.

In particular, the various messages sent from the Internal Affairs hierarchy were not received in a consistent manner by their regional/local subordinates. In Vinnystia, for instance, the delegation gained the impression that some efforts were being made by senior management officials to address the problem of ill-treatment. It appeared that committed professionals had been appointed to the task of monitoring the rights of detained persons.²⁵ They were well aware of the magnitude of the phenomenon at local level, including particularly problematic establishments,²⁶ and at times went beyond the requirements of the regulations to uncover misconduct. Further, it was made clear to the delegation that there were no longer ‘clear-up’ targets.

The situation was rather different in other regions, where the new CCP was generally perceived as generating more paperwork rather than offering better protection against ill-treatment. Talks with Internal Affairs officials in Odessa also suggested that informal ‘clear-up’ targets had been put in place in at least that part of Ukraine (with an objective of 100 solved crimes for 400 apprehensions).

It also emerged during the 2013 visit that the phenomenon of ill-treatment by Internal Affairs officials had become, more than ever, closely connected with corrupt practices within Internal Affairs structures, in particular outside Kyiv.

²⁴ See, in this connection, paragraph 15 of the report on the 2009 visit (document [CPT/Inf \(2011\) 29](#)) as well as paragraphs 16 and 19 of the report on the 2011 visit (document [CPT/Inf \(2012\) 30](#)). See also Order No. 90 of the Ministry of Internal Affairs of 26 March 2010 and Order No. 329 of 31 March 2011.

²⁵ See, in this connection, paragraph 90.

²⁶ Reference should be made, in this respect, to the 2nd Sub-Division of Vinnytsia City Internal Affairs Division.

The CPT is concerned to note that Internal Affairs officials interviewed during the visit generally appeared to have a narrow understanding of their reporting obligations as regards possible ill-treatment of detained persons by colleagues.

47. The CPT must recall that responsibility for changing the behaviour of Internal Affairs officials lies first and foremost with the Minister of Internal Affairs and senior officials at all levels. It is essential that the philosophy of going “from the evidence to the suspect” rather than “from the suspect to the evidence” prevails not only in law but also in the daily practice of all those involved in the criminal justice process (including operational officers and investigators). Further, Internal Affairs officials, in particular operational officers and members of special forces, should have a good understanding of the practical implications of the principle of proportionality when force has to be used.

In this connection, it is crucial to do more to promote, within Internal Affairs structures, a culture where it is regarded as unprofessional – and unsafe from a career path standpoint – to work and associate with colleagues who resort to ill-treatment. More precisely, an atmosphere must be created in which the right thing to do is to report ill-treatment by colleagues.

48. **The CPT recommends that the Ministry of Internal Affairs develop further, detailed, instructions from the most senior level reminding all staff, in particular operational officers, investigators, members of special forces, patrol service staff, escort officers and custodial staff working in ITTs of their obligations in relation to the treatment of persons in their custody. These instructions must be guided *inter alia* by the general principles enshrined in the European Code of Police Ethics.²⁷ In particular, it should be made clear to all Internal Affairs officials that:**

- i) they will be held accountable for having inflicted, instigated or tolerated any act of torture or other form of ill-treatment, irrespective of the circumstances and including when the ill-treatment is ordered by a superior. Every Internal Affairs official should have a clear understanding that deliberate physical ill-treatment of detained persons, whatever its severity, is a criminal offence.**

Where appropriate,²⁸ a public declaration should be adopted at the highest political level, namely at the level of the President of Ukraine;

- ii) they should oppose all forms of corruption within Internal Affairs structures;**
- iii) treating persons in custody in a correct manner and reporting any information indicative of ill-treatment (and corrupt practices) by colleagues to the appropriate authorities is their duty and will be positively recognised.**

In this context, the Committee recommends that “whistle-blower” protective measures be adopted. This implies the development of a clear reporting line to a distinct authority outside of the directorate or agency concerned as well as a framework for the legal protection of individuals who disclose information on ill-treatment and other malpractice.

²⁷ Recommendation [Rec \(2001\) 10](#) of 19 September 2001 of the Committee of Ministers of the Council of Europe.

²⁸ For instance, when particularly serious cases of ill-treatment by Internal Affairs or other law enforcement officials come to light.

- b. ensuring better identification of Internal Affairs officials

49. A number of detained persons interviewed during the 2013 visit indicated that Internal Affairs plainclothes officers apprehending them had announced that they were from an Internal Affairs agency, and introduced themselves and/or showed their identification card.

However, many detained persons claimed that apprehending officers had failed to identify themselves as law enforcement officials, even when asked to do so upon or shortly after apprehension; furthermore, they had not displayed any signs indicating that they belonged to an Internal Affairs agency. Most of the detained persons concerned apparently understood what was happening to them only once they were handcuffed.

The CPT must stress that failure by relevant officials to identify themselves as belonging to a law enforcement agency entails the risk of provoking over-reactions from the persons being apprehended, and of excessive force being used as a result.

50. The CPT also notes that a number of persons interviewed during the 2013 visit claimed that members of Internal Affairs special forces wearing balaclavas apprehending them did not wear any identification number on their uniforms/helmets (save for a special insignia on the uniform). It is of all the more concern that such staff were also the subject of allegations of ill-treatment at the time of apprehension or shortly after.²⁹

The wearing of balaclavas by members of special forces may exceptionally be justified in the context of high-risk operations taking place outside a secure environment (e.g. potentially challenging apprehensions). That said, it should be ensured that subsequent identification of the officers concerned is always possible, through the wearing of not only a clearly distinctive insignia, but also a prominent identification number on each uniform/helmet.

51. The CPT notes that, during high-level talks on 19 December 2013 in Kyiv,³⁰ the Committee's President was informed of action taken to ensure proper identification of law enforcement officials in future.

52. In this context, **the CPT recommends that the Ukrainian authorities pursue their action to improve identification of Internal Affairs officials, in particular by ensuring that:**

- i) plainclothes officers effecting an apprehension clearly identify themselves or are clearly identifiable as members of an Internal Affairs agency (for example, by showing an identification card or by wearing an armband);**
- ii) subsequent identification of members of Internal Affairs special forces is always possible, through the wearing of not only a clearly distinctive insignia, but also a prominent identification number on each uniform/helmet;**
- iii) interventions by Internal Affairs special forces are videorecorded (e.g. with tactical cameras as part of the equipment of the officers concerned).**

²⁹ See paragraph 36.

³⁰ See CPT's [news flash](#) of 20 December 2013.

- c. reviewing limits and improving training on the use of physical force and “special means”

53. The use of physical force and “special means”³¹ by Internal Affairs officials, reporting mechanisms and the obligations to provide health care in the case of injuries are governed *inter alia* by Sections 12, 13 and 14 of the Law on the “Militia”.

However, the legal framework appears to be unclear as to the circumstances in which each type of “special means” may be used. In the CPT’s view, this leaves the door open to a disproportionate response. Indeed, in the course of the 2013 visit, the delegation heard many accounts of inappropriate use of “special means” (in particular, handcuffs, batons and electric stun devices) by Internal Affairs officials: reference was made to the alleged resort to “special means” whilst apprehended persons had already been handcuffed/brought under control, unduly tight handcuffing and/or handcuffing to a radiator or another fixed object on Internal Affairs premises.

Further, as indicated in paragraphs 34 and 40, the delegation received a number of complaints of excessive use of physical force at the time of apprehension (e.g. punches/kicks whilst the person concerned was allegedly complying with Internal Affairs officials’ orders).

54. The CPT recommends that the Ukrainian authorities review the legal framework for the use of physical force and “special means”, in the light of the delegation’s findings, and ensure that the circumstances in which each type of force may be used are clearly specified in the legislation and/or the relevant regulations.

In addition, the Committee recommends that Internal Affairs officials be provided with further instructions and suitable training to ensure in particular that:

- **physical force is used only when strictly necessary and only to the extent required to attain a legitimate objective;**
- **where it is deemed essential to handcuff a person, the handcuffs are under no circumstances excessively tight and are applied only for as long as is strictly necessary.³² Further, a detained person should never be handcuffed to fixed objects; in the event of a person in custody acting in a highly agitated or violent manner, the individual concerned should instead be kept under close supervision in an appropriate setting. In the event of agitation brought about by the state of health of a detained person, Internal Affairs officials should request medical assistance and follow the instructions of the health-care professional;**
- **batons are only used when there is a risk to life or limb, and only to address that threat directly;**

³¹ E.g. handcuffs, batons, tear gas, stun devices.

³² It should be noted that excessively tight handcuffing can have serious medical consequences (for example, sometimes causing severe and permanent impairment of the hand(s)).

- **the use of stun devices is confined to situations of real and immediate danger to life or of an obvious risk of serious injury, and is subject to the principles of necessity, subsidiarity, proportionality, advance warning (where feasible) and precaution. Recourse to such devices for the sole purpose of securing compliance with an order is inadmissible. Internal Affairs officials who are entitled to use these devices must be specifically selected and suitably trained, and they should receive detailed instructions concerning their use. The legal reporting obligations should lead to close monitoring by the competent authorities of the use of stun devices. Anyone against whom an electric stun device has been used should, in all cases, be seen by a health-care professional and, where necessary, taken to hospital, and a copy of the medical certificate should be given to the person concerned (and/or to his/her lawyer, upon request).**³³

- d. reducing the reliance on confessional evidence and improving interviewing standards and procedures

55. In previous reports, the CPT indicated that the ill-treatment of persons held by Internal Affairs officials all too often appeared to be related to an overemphasis on confessions during criminal proceedings. The Committee recommended, *inter alia*, that i) professional training be further improved; ii) the CCP be amended so as to reduce the incentive to seek to extract confessions; statements which have been made as a result of torture or other forms of ill-treatment should be inadmissible as evidence in any proceedings, except against a person accused of ill-treatment as evidence that the statement was made; iii) standards and procedures for interviews of persons by Internal Affairs officials be drawn up (e.g. save for exceptional circumstances, detained persons shall not be subjected to questioning by Internal Affairs officials for more than two hours without a break; all interviews must be recorded in writing contemporaneously). The CPT also encouraged the Ukrainian authorities to take the necessary steps to ensure that interviews of detained persons with operational officers and investigators are systematically subjected to electronic recording.³⁴

56. In their response to the report on the 2011 visit, the Ukrainian authorities indicated that they had improved professional training, notably through the organisation of specific seminars. The procedure for holding training seminars had also been revised and appropriate guidelines adopted.³⁵

³³ See also paragraphs 65-84 of the CPT's 20th General Report.

³⁴ See, for instance, paragraph 16 of the report on the 2009 visit (document [CPT/Inf \(2011\) 29](#)) and paragraph 20 of the report on the 2011 visit (document [CPT/Inf \(2012\) 30](#)).

³⁵ Cf. Order No. 318 of the Ministry of Internal Affairs of 14 April 2012.

The CPT is pleased to note that the new CCP makes clear in its Section 87 that any evidence obtained through serious violations of international and national human rights legal obligations or information resulting from evidence of this kind is inadmissible.³⁶ The Code also provides that, as a rule, information contained in testimonies, objects and documents that have not been directly examined by court may not be admitted as evidence.³⁷

The Committee also welcomes the fact that the new Code contains some standards for interviewing detained persons (*donum*). Pursuant to Section 224 (2) of the Code, interviews should, *inter alia*, not last more than two hours without a break and not more than eight hours in total per day.³⁸ The rights of the persons concerned and the manner in which the interviews are to be carried out should be explained prior to the interviews. According to Section 224 (5) of the Code, audio- and/or videorecording may be used and pictures may be taken during the interviews. Further, juveniles should be interviewed in the presence of a legal representative, a pedagogue or a psychologist and, when necessary, a medical practitioner.³⁹

57. The information gathered by the CPT's delegation during the 2013 visit indicates that action has been taken in this area, not only at legislative level, but also in practice. Several detained persons told the delegation that they had promptly been interviewed by operational officers (upon the request of an investigator) and/or an investigator himself or herself for one or two hours before being offered a break and that the fact that they had initially refused to answer questions/provide evidence did not have negative repercussions on their treatment. It also appeared that Internal Affairs officials increasingly tended to rely on physical evidence when carrying out investigations. Further, the delegation saw that efforts had been made to equip rooms designed for police interviews with video-surveillance, in particular in Kyiv. The CPT welcomes these positive developments.

58. Nevertheless, practices consisting of interviewing apprehended persons/criminal suspects as "witnesses" outside any formal legal proceedings in order to detect crimes and gather evidence appeared to continue unabated in all parts of Ukraine visited by the CPT's delegation. These alleged practices frequently involved large groups of interviewers, as well as physical and other forms of ill-treatment and/or threats of fabricating serious criminal charges against the persons interviewed. It is also of serious concern that, despite the new provisions of the CCP, the manner in which statements from "witnesses"/criminal suspects were delivered appeared in many instances to be unchallenged by the various actors of the Ukrainian criminal justice system (see, in this connection, paragraphs 65 and 66). Obviously, any such practices should not only be considered as illegal but also seriously call into question the intrinsic reliability of criminal investigations carried out by Internal Affairs officials in such cases.

³⁶ Pursuant to Section 87 of the CCP, judges are required to consider the following acts as serious human rights violations: obtaining evidence by subjecting a person to torture and inhuman or degrading treatment or threats to apply such treatment; violating the right of a person to legal assistance; obtaining testimonies or explanations from a person who has not been informed of his or her rights to refuse to give evidence or answer questions, or if these were obtained in violation of this right; obtaining testimonies from a witness who was subsequently found to be a criminal suspect or accused of criminal offences in the same proceedings.

³⁷ See Section 23 (2) of the Code.

³⁸ In the case of juveniles, interviews should not last more than one hour without a break and not more than two hours in total per day (cf. Section 226 (2) of the Code).

³⁹ See Section 226 of the Code. See also paragraph 89 of this report.

Further, in the course of the 2013 visit, the CPT's delegation again found non-standard and unlabelled items in offices/rooms where witnesses/criminal suspects could be held/interviewed (e.g. boxing gloves, self-made hammer).

The CPT also deplores the fact that there was apparently very little support from Internal Affairs officials with whom the delegation spoke for the wider use of audio- and/or videorecording of interviews.

59. In the light of the above, **the CPT recommends that the Ukrainian authorities pursue their efforts to implement the new Code of Criminal Procedure with a view to reducing reliance on confessional evidence, notably by:**

- i) combating any practices of Internal Affairs officials seeking/obtaining statements and other evidence from so-called “witnesses” who prove to be criminal suspects or from detained persons who have not been informed of their right to refuse to give evidence or answer questions;**
- ii) pursuing efforts to place more emphasis on a physical evidence-based approach in the investigation phase, notably through initial and in-service training of operational officers and investigators. In particular, training in the seizure, retention, packaging, handling and evaluation of forensic exhibits and continuity issues pertaining thereto should be further developed.⁴⁰ At the same time, the clear message should be delivered to Internal Affairs officials that the fabrication of evidence is a serious offence and will be punished accordingly;**
- iii) removing any non-standard issue items capable of being used for inflicting ill-treatment from Internal Affairs premises where persons might be held/interviewed;**
- iv) ensuring that interviews are as a rule conducted by no more than two interviewers, in rooms specifically equipped and designed for the purpose, for no more than two hours (one hour in the case of juveniles) at a time and eight hours (two hours in the case of juveniles) per day in total;**
- v) ensuring that an accurate recording is made of all interviews (including initial interviews by apprehending officers), which should be increasingly conducted with electronic recording equipment (audio- and video-recording);**
- vi) implementing a system of ongoing monitoring of interviewing standards and procedures.**

⁴⁰ Investments should also be made to ensure ready access to evidence collection tools, such as DNA technology and automated fingerprint identification systems.

- e. strengthening the role of health-care professionals in ITTs (and medical institutions) in the prevention of ill-treatment and in the documenting and reporting of injuries

60. In the report on the 2011 visit, the CPT raised a number of long-standing issues: non-observance of medical confidentiality, examinations by health-care professionals carried out in a perfunctory manner and poor recording of injuries.

In their response, the Ukrainian authorities informed the Committee of steps taken to remedy these shortcomings, in particular through the adoption of the Guidelines of the Ministry of Internal Affairs No. 17658/УН of 12 December 2011 recommending that medical examinations of detained persons be carried out in the absence of custodial staff or any other third party.⁴¹

61. The information gathered during the 2013 visit clearly suggests that the confidentiality of medical examinations was still not respected in ITTs (or in medical institutions prior to admission to ITTs). It emerged from discussions with health-care staff working in ITTs that medical screening of detained persons generally took place at the very moment of their handover to ITTs in the presence of Internal Affairs staff who had no health-care duties. The delegation observed for itself at Kyiv ITT that subsequent examinations by health-care professionals were also carried out in the presence of custodial staff.

In addition, it appeared that medical examinations frequently consisted of a few questions and answers as to the detained persons' state of health. In a number of instances, detained persons with whom the delegation spoke indicated that they had been questioned as to the origin of their injuries in the presence of escorting staff/operational officers escorting them (some of whom were said to have been involved in the alleged ill-treatment). It came as no surprise that several detained persons interviewed who had initially claimed upon admission to an ITT that the injuries they bore were sustained before apprehension told the delegation that they had been frightened to reveal the true origin of their injuries in the presence of other Internal Affairs officials.

On a more positive note, the delegation came across cases where feldshers working in the Kyiv ITT apparently called forensic medical professionals to organise forensic examinations of detained persons displaying multiple injuries.

In the CPT's view, it is important to make a clear distinction between, on the one hand, the administrative procedures followed when detained persons are handed over to the custody of an ITT and, on the other hand, the thorough medical examinations which should follow. It is essential that, during the above-mentioned administrative procedures, health-care staff are as a rule not directly involved in the initial procedure of handover of custody and that detained persons found to display injuries on admission are not questioned about the origin of those injuries in the presence of staff with no health-care duties.⁴²

⁴¹ See paragraphs 26 to 31 of the CPT's report on the 2011 visit (document [CPT/Inf \(2012\) 30](#)) and the Government response (document [CPT/Inf \(2012\) 31](#)).

⁴² See also paragraph 154.

62. As during previous visits, the medical records seen by the delegation during the 2013 visit were on the whole of poor quality and, in many instances, unreliable. It became evident from the consultation of ITT and other medical records, as well as direct observations from the delegation's doctors, that visible injuries clearly indicative of ill-treatment often went unrecorded. Further, whenever injuries were noted down, descriptions were generally scant and the accounts of detained persons as to the origin of these injuries were frequently missing. In addition, in several instances, the delegation found mistakes regarding dates of examinations. Further, the medical documentation, which potentially contained sensitive data, was accessible to custodial staff.

It is noteworthy that, in several instances, copies of medical reports drawn up by ITT health-care professionals were given to the detained persons concerned or, upon their request, their lawyer. However, this was clearly not always the case.

63. As regards reporting procedures, the CPT is pleased to note that ITT medical records of detained persons found to display injuries were communicated to the Prosecution Service. Naturally, the above findings as regards the content of medical records seriously limited the impact of such procedures.

64. **The CPT calls upon the Ukrainian authorities to take further action, including through appropriate regulations and effective monitoring of their implementation, to ensure that:**

- **health-care professionals are as a rule not directly involved in the administrative procedure of handover of custody of detained persons to an ITT;⁴³**
- **persons found to display injuries upon admission are not questioned by anyone about the origin of those injuries during the above-mentioned handover procedure;**
- **any record made, and any photographs taken, of injuries during the handover-of-custody procedures are forwarded without delay to ITT health-care professionals;**
- **all persons admitted to ITTs are properly interviewed and thoroughly examined by qualified health-care staff as soon as possible, and no later than 24 hours after their admission; the same approach should be adopted each time a person returns to an ITT after having been taken back to the custody of another structure for investigative or other purposes;**
- **all medical examinations in ITTs (as well as in medical institutions) are conducted out of the hearing and – unless the health-care professional concerned expressly requests otherwise in a given case – out of the sight of staff not carrying out health-care duties;**

⁴³ Naturally, a health-care staff member should be consulted immediately whenever a newly-arrived detained person requires urgent medical assistance or if there are doubts as to whether the state of health of the person concerned is compatible with admission to an ITT.

- **the record drawn up following the medical examination of a detained person in an ITT contains: (i) an account of statements made by the person in question which are relevant to the medical examination (including his/her description of his/her state of health and any allegations of ill-treatment), (ii) a full account of objective medical findings based on a thorough examination (supported by a “body chart” for marking traumatic injuries); (iii) the health-care professional’s observations in the light of i) and ii), indicating the consistency between any statements made and the objective medical findings;**
- **health-care staff may inform custodial officers on a need-to-know basis about the state of health of a detained person; however, the information provided should be limited to that necessary to prevent a serious risk for the detained person or other persons, unless the detained person consents to additional information being given;**
- **health-care professionals advise the detained persons concerned of the existence of the reporting obligation, explaining that the writing of such a report falls within the framework of a system for preventing ill-treatment and that the forwarding of the report to the relevant authority is not a substitute for the lodging of a complaint in a proper form;**
- **detained persons and, upon their request, their lawyers are fully entitled to receive a copy of the medical records. When possible, photographs of injuries should be made and appended to the medical records;**
- **whenever a report on injuries is notified to the Prosecution Service, a forensic medical opinion is sought without delay and the detained person is examined promptly, physically, thoroughly and in private by a forensic doctor.**

The CPT further recommends that special training be offered to health-care professionals working in ITTs. In addition to developing the necessary competence in the documentation and interpretation of injuries as well as ensuring full knowledge of reporting obligations and procedures, this training should cover the technique of interviewing persons who may have been ill-treated.

The Committee also invites the Ukrainian authorities to consider reviewing the current reporting procedures, taking into account the reform of the Prosecution Service and the future setting-up of a State Bureau of Investigation.

More generally, as regards the independence of health-care staff working in ITTs, the CPT would like to know whether the Ukrainian authorities have considered the option of placing such staff under the authority of a structure other than the Ministry of Internal Affairs.

- f. reinforcing the role of investigative judges/courts in the prevention of ill-treatment at the remand-in-custody stage

65. In previous reports, the CPT has stressed that whenever criminal suspects brought before judicial authorities allege ill-treatment, the allegations should be recorded in writing, a forensic medical examination immediately ordered, and the necessary steps taken to ensure that the allegations are properly investigated. Such an approach should be followed whether or not the person concerned bears visible injuries. Further, even in the absence of an express allegation of ill-treatment, a forensic medical examination should be requested whenever there are other grounds to believe that a person could have been the victim of ill-treatment.⁴⁴

This long-standing recommendation was reflected in Section 206 of the new CCP. According to Section 206, whenever a person states that he or she has been subjected to ill-treatment during apprehension or detention by public officials, the investigative judge is required to record such a statement or accept a written statement from the person concerned and in particular: 1) to ensure a prompt forensic medical examination of this person; 2) to assign the investigation of the facts to the appropriate investigating authority; 3) to take the necessary measures to ensure protection of the person concerned in accordance with the law. The judge should act in the above-described manner whatever the person states or if his/her appearance or condition, or any other information known to the judge, gives grounds for him or her to believe that the person concerned has been ill-treated during apprehension or subsequent detention. The judge is not required to act in this manner if the prosecutor provides evidence that such action has already been taken or is being taken.

66. In the course of the 2013 visit, the delegation heard a few accounts from detained persons according to which investigative judges reacted to their complaints of ill-treatment or asked questions as regards their state of health and/or visible injuries (although the detained persons did not receive feedback about any action taken). However, many detained persons who apparently complained to the judge about ill-treatment (and/or unlawful initial periods of deprivation of liberty) or displayed visible injuries claimed that the judge ignored their complaints and/or did not pay attention to their injuries. The examination of the relevant documentation, including court documents, gave credence to these allegations.

The CPT is also concerned by accounts from detained persons according to which, before being brought to court, they had been threatened by Internal Affairs officials of (further) beatings if they complained to the judge.

Judges should be firmly and regularly reminded, through appropriate channels, of their legal obligations under Section 206 of the CCP.

Further, the Committee recommends that it be made clear to all Internal Affairs staff that any kind of threats or action to prevent a detained person from complaining to the judge will not be tolerated.

⁴⁴ See, for instance, paragraph 22 of the report on the 2011 visit (document [CPT/Inf \(2012\) 30](#)).

4. Fundamental safeguards against ill-treatment

a. preliminary remarks

67. The CPT has repeatedly stressed in the past that the fundamental safeguards for persons deprived of their liberty by law enforcement agencies, in particular the right to inform a close relative or another person of one's custody, the right of access to a lawyer and the right of access to a doctor, should be granted as from the very outset of the *de facto* deprivation of liberty.

As already mentioned in paragraph 15, two important new pieces of legislation, i.e. the new CCP and the Free Legal Aid Act, have entered into force since the CPT's last visit to Ukraine.⁴⁵ Clearly, the new legislation significantly reinforces safeguards against ill-treatment, in particular as regards record-keeping, information on rights and the operation of the three above-mentioned fundamental rights. The 2013 periodic visit provided the Committee with the first opportunity to assess the practical implementation of both above-mentioned acts.

68. Unfortunately, the observations made by the delegation during the 2013 visit suggest that much remains to be done in order to ensure the full and adequate implementation of the new legislation. In fact, most of the shortcomings observed during the 2011 *ad hoc* visit⁴⁶ appeared to persist. In particular, despite the positive aspects of the new CCP in this respect, it became clear that, in practice, the legal safeguards often continued to be granted, not at the outset of the *de facto* deprivation of liberty, but only once the persons concerned had been formally detained. It also remained the case that, following their deprivation of liberty, persons were often subjected to informal questioning, during which confessions were obtained, without benefiting from the above-mentioned safeguards.

Further, as had been the case during the 2011 visit,⁴⁷ the delegation received a significant number of credible accounts from detained persons – backed up by documents examined in case files as well as admissions from a number of Internal Affairs officials – that suspects were kept in Internal Affairs divisions for periods of 24 hours or even longer, sleeping on chairs in corridors or in offices of operational officers, sometimes handcuffed to radiators, or even held in other facilities (e.g. traffic police (DAI) premises; hotels⁴⁸), whilst inquiries (including interviews with operational officers) were conducted, prior to formal interviews with investigators. Such a state of affairs is totally unacceptable and also represents a flagrant disregard for the relevant legislation.

The CPT calls upon the Ukrainian authorities to take effective steps to ensure that the provisions of the new CCP (and of the Free Legal Aid Act) regarding safeguards against ill-treatment of persons deprived of their liberty by Internal Affairs officials are duly applied in practice.

⁴⁵ As previously indicated, the new CCP entered into force on 19 November 2012. Council of Europe expertise was sought and taken into account in the context of the drafting of the Code. As for the Free Legal Aid Act, it was adopted on 2 June 2011 and entered into force on 1 January 2013.

⁴⁶ See report on the 2011 visit (document [CPT/Inf \(2012\) 30](#)).

⁴⁷ See paragraph 35 of the report on the 2011 visit (document [CPT/Inf \(2012\) 30](#)).

⁴⁸ Reference was made, for instance, to "Sputnik" hotel in Kotovsk (Odessa Region).

b. combating unrecorded detentions and improving record-keeping practices

69. The CPT has stressed in the past⁴⁹ that the requirement to properly record the fact of a person's deprivation of liberty is one of the most fundamental legal safeguards against ill-treatment. In addition to facilitating control over the observance of the legal provisions concerning custody by law enforcement agencies, the accurate recording of all aspects of a person's period of detention can protect law enforcement officials by countering false allegations made against them.

70. Pursuant to Sections 208, 210 and 212 of the new CCP, a detention report (protocol) should be drawn up immediately upon a person's *de facto* deprivation of liberty⁵⁰ and should include *inter alia* the place, exact date and time (hour and minutes) of apprehension, as well as the grounds for apprehension;⁵¹ there is no provision for any possible delay in the drawing up of the protocol. A copy of the detention protocol should be handed over to the apprehended person without delay. The apprehended person should be taken to the nearest law enforcement establishment and a custody record (including the date and time when the person was taken to the establishment) should be established promptly upon the person's arrival.

71. Despite the clear wording of the above-mentioned provisions, the CPT must conclude from the observations made during the 2013 periodic visit that the practice of unrecorded detentions of persons by Internal Affairs agencies (usually for periods of several hours to two days, but on occasion for up to a week) continues.⁵²

During those periods, detained persons who are not considered to be co-operative are exposed to the risk of ill-treatment (see paragraph 43), without any of the legal safeguards being applied to them. **The Committee calls upon the Ukrainian authorities to take decisive and energetic action to stamp out such practices. Immediate steps must be taken to ensure that whenever a person is taken or summoned to an Internal Affairs establishment, for whatever reason (including for interviews with an operational officer), his/her presence is always duly recorded.**

In particular, the records should specify who was brought in or summoned, by whom, upon whose order, at what time, for what reason, in which capacity (suspect, witness, etc.), to whom the person concerned was handed over and when the person left the premises of the Internal Affairs agency concerned.

⁴⁹ See, for example, paragraph 33 of the report on the 2009 visit (document [CPT/Inf \(2011\) 29](#)).

⁵⁰ It is noteworthy in this context that the new CCP has introduced a specific norm referring to the "moment of apprehension", which is fully compatible with the CPT's understanding of what represents the very outset of the *de facto* deprivation of liberty (see footnote 15).

⁵¹ In addition, the protocol should include information on the results of personal searches; pleas, statements or complaints of the apprehended person (if any), and a comprehensive list of the person's procedural rights and duties.

⁵² The majority of the persons interviewed by the CPT's delegation who had been detained pursuant to the new CCP alleged that the time between their actual apprehension, arrival at a law enforcement establishment and the drawing up of the detention protocol ranged from two to five hours; however, on a few occasions the alleged timescale was much longer.

72. Whenever a person's custody in an Internal Affairs establishment was documented, the quality of this documentation frequently left much to be desired. The delegation observed for itself (notably after comparing the available documentation and CCTV records⁵³) that the provisions of the new CCP concerning the recording of the actual time of apprehension were not duly applied,⁵⁴ and that inaccurate and/or conflicting times of apprehension were stated in various protocols and registers. More generally, the various custody records kept in the Internal Affairs establishments visited were often poorly kept, with frequent errors and/or omissions.

The CPT calls upon the Ukrainian authorities to take urgent steps to ensure that the legal requirement of indicating the *actual* time of apprehension in the detention protocol is always duly observed in practice. Further, the Committee strongly reiterates its long-standing recommendation that the Ukrainian authorities ensure that custody registers are properly maintained, accurately record the actual times of apprehension, placement in a cell, release or transfer, and reflect all other aspects of custody (precise location where a detained person is being held; visits by a lawyer, relative, doctor or consular officer; taking out for questioning, etc.).

- c. providing information on rights as from the very outset of deprivation of liberty

73. Pursuant to Sections 42 (2) and (3), 208 (4) and 212 of the new CCP, a detained person should be informed expressly and immediately of his/her rights (including the rights of access to a lawyer, of access to medical assistance and of notification of custody) by the apprehending official. Further, official(s) responsible for the custody of detained persons in a law enforcement establishment should inform the detained person of his/her rights immediately upon his/her arrival to the establishment.

Despite the above-mentioned provisions, the situation observed by the CPT's delegation on the ground hardly differed from that described in the previous reports,⁵⁵ namely that the written information on rights was generally only given to detained persons when the detention protocol had already been drawn up, rather than at the very outset of custody. Further, the written information was still drafted in a manner that was difficult to understand for anyone without legal training;⁵⁶ moreover, in most cases detained persons were not provided with a copy of the document.⁵⁷

⁵³ In particular, at the Malinovskyi District Internal Affairs Division in Odessa.

⁵⁴ In several cases, the comparison of arrest warrants and "acts of accusation" with the detention protocols revealed delays of up to 17 hours between the moment of the *de facto* apprehension and the drawing up of the protocol. Further, in some 70% of the detention protocols examined during the visit there was no indication of the "actual time of apprehension" (as defined in Section 209 of the new CCP); moreover, in many of those protocols the entry concerning the actual time of apprehension had been deleted by investigators from the standard protocol template, in flagrant violation of the Code.

⁵⁵ See, for example, paragraph 31 of the report on the 2009 visit (document [CPT/Inf \(2011\) 29](#)) and paragraph 35 of the report on the 2011 visit (document [CPT/Inf \(2012\) 30](#)).

⁵⁶ It was in the form of a three-page document listing articles of the Constitution and sections of other relevant acts.

⁵⁷ Instead, detained persons were asked to sign the document, which as a rule was then attached to their file.

74. Consequently, **the CPT reiterates its recommendation that effective steps be taken to ensure that all persons detained by law enforcement agencies are fully informed of all their rights (including the rights indicated above) as from the very outset of their deprivation of liberty. This should involve the provision of clear verbal information at the moment of apprehension, to be supplemented at the earliest opportunity (that is, immediately upon first entry into the premises of a law enforcement agency) by provision of a written information on rights.**

The Committee also reiterates its recommendation that the Ukrainian authorities draw up an information sheet on rights which is more simple and easier to understand and available in an appropriate range of languages. Particular care should be taken to ensure that detained persons are actually able to understand their rights; it is incumbent on Internal Affairs officials to ascertain that this is the case. The persons concerned must be allowed to keep a copy of the information sheet.

d. guaranteeing an effective right of notification of custody as from the very outset of deprivation of liberty

75. Sections 42 (3) and (7), as well as 213 (1), of the new CCP stipulate that an apprehended person must immediately be given the opportunity to inform a close relative, family member or any other third party of his/her choice of his/her detention and whereabouts. These provisions do not allow for any exception or delay in the notification of custody; if there are grounds to believe that the investigation may be jeopardised, the notification should be performed in person by the detaining law enforcement official.

Most of the detained persons interviewed by the delegation indicated that they had been informed of this right and that their detention had been notified to a family member. That said, similar to the situation observed in the past,⁵⁸ many persons complained about delays in notifying their families (e.g. until their arrival at an ITT, their first court hearing or even their admission to a SIZO), and a few persons (especially in Kyiv and Odessa) alleged that their request to notify their relatives of their detention had been expressly rejected by law enforcement officials. Further, as a result of delayed recording of custody (see paragraph 72),⁵⁹ detained persons were often unable to have their next-of-kin informed of their custody until several hours (or even days) after their *de facto* apprehension.

The CPT calls upon the Ukrainian authorities to take effective measures to ensure that all detained persons effectively benefit from the right of notification of custody as from the very outset of their deprivation of liberty.

76. As on previous visits, several detained persons told the delegation that they did not know whether their relatives had been informed of the fact of their detention. **The CPT recommends that steps be taken to ensure that detained persons are provided with feedback on whether it has been possible to notify a close relative or another person of the fact of their detention.**

⁵⁸ See paragraph 27 of the report on the 2009 visit (document [CPT/Inf \(2011\) 29](#)).

⁵⁹ As well as delays in the drawing up of detention protocols (i.e. holding detained persons as “brought in”, without specifying their legal status, for hours on end).

77. The delegation observed in the Internal Affairs establishments visited that, as a rule, the exercise of the right to notify one's next-of-kin of one's custody was not properly recorded. Neither the registers nor the protocols of detention contained reliable and accurate information on whether (and when) such notification of custody had been performed. Only a few of the numerous detention protocols examined by the delegation⁶⁰ contained the relevant details, such as the name and telephone number of the person notified, the time of notification and the detained person's signature confirming the above. **The CPT recommends that steps be taken to ensure that the fact of having notified a detained person's next-of-kin of his/her custody is duly registered in every Internal Affairs establishment, in the light of the above remarks.**

- e. improving the practical operation of the right of access to a lawyer as from the very outset of deprivation of liberty

78. The new CCP⁶¹ makes it clear that law enforcement officials must allow a detained person to have a confidential meeting with his/her lawyer prior to the first and each subsequent interview, upon the person's request. No restrictions are provided for as to the number and duration of such meetings. It is also stipulated that a detained person is entitled to have his/her lawyer present during the interview and in the course of any other procedural action.

79. In practice, it became clear during the 2013 periodic visit that access to a lawyer was still often provided only after the initial questioning by operational officers, at the moment when the detention protocol was drawn up, or even later (i.e. several hours – or even days – after the *de facto* deprivation of liberty).

As repeatedly stressed by the CPT in the past, the right of access to a lawyer should be guaranteed to all persons – including administrative detainees – as from the outset of deprivation of liberty (and not only when a detention protocol is drawn up). **The Committee calls upon the Ukrainian authorities to take steps to ensure that both the law and the practice are aligned with this precept.**

80. Similar to what had been observed on previous visits, the CPT's delegation heard allegations according to which detained persons had been forced by Internal Affairs officials to waive their right of access to a lawyer.⁶²

⁶⁰ Drawn up in the period after the entry into force of the new CCP.

⁶¹ Sections 42 (3) and 213 (4).

⁶² According to representatives of the Co-ordination Centre for Free Legal Aid (managed by the Ministry of Justice but closely co-operating with the Ukrainian Bar Association) met by the delegation at the outset of the 2013 visit, the percentage of officially recorded waivers (in the period following the entry into force of the new CCP) was initially of approximately 10% of all recorded detentions; that said, in the few months preceding the CPT's visit the percentage had been reduced to just under 8%.

The Committee calls upon the Ukrainian authorities to remind all Internal Affairs officials (including operational staff and investigators), in a firm manner, that any attempts to make detained persons renounce their right to a lawyer are illegal. In this context, the positive practice (observed in some of the Internal Affairs Directorates/Divisions visited) of such waivers being verified by called-in *ex officio* lawyers (and the fact of such verification being confirmed by the lawyer's signature in the detention protocol) merits being extended to all Internal Affairs establishments where persons deprived of their liberty may be held.

81. As already mentioned in paragraph 67, the 2013 periodic visit provided the CPT with the opportunity to assess (preliminarily) the practical implementation of the new Free Legal Aid Act.

According to the above-mentioned Act, all persons deprived of their liberty by law enforcement agencies (both criminal suspects and administrative detainees⁶³) are entitled to free legal aid as from the very outset of their deprivation of liberty,⁶⁴ regardless of their income status. The responsible law enforcement official must immediately inform the relevant Free Legal Aid Centre of the detention of a person, and an *ex officio* lawyer must arrive at the law enforcement establishment within one hour of such a notification.⁶⁵ The lawyers are assigned by the respective Free Legal Aid Centre and are not chosen/selected by law enforcement officials.⁶⁶

The CPT welcomes the setting-up of the new system of free legal aid which – once fully operational – may effectively contribute to preventing the ill-treatment of persons by law enforcement officials. That said, information gathered by the delegation in the course of the visit suggests that, presently, it remains the case that the Free Legal Aid Centres are not informed in a timely manner of each instance of deprivation of liberty; in some cases, this happens even after the detention protocol has been drawn up.⁶⁷ Clearly, the failure to notify the competent Free Legal Aid Centre – in a timely manner – of each instance of deprivation of liberty is also related with the phenomenon (referred to in paragraph 71) of unrecorded detentions and delays in drawing up the detention protocols.

The CPT recommends that the Ukrainian authorities step up their efforts to ensure that the provisions of the Free Legal Aid Act are duly implemented in practice. In particular, law enforcement agencies should be reminded of their duty to immediately inform the relevant Free Legal Aid Centre of each fact of detention, as from the moment of *de facto* deprivation of liberty (or, at the very latest, as from the moment of the detained person's arrival at an Internal Affairs establishment).

⁶³ It is to be noted that, starting from 1 July 2014, foreign nationals deprived of their liberty under aliens legislation will also become entitled to free legal aid.

⁶⁴ Section 213 (4) of the new CCP stipulates that: "An officer who carried out the apprehension should notify the body (institution) authorized by the law to provide legal aid at no cost immediately. In case the defence counsel appointed by the body (institution) authorized by the law to provide legal aid at no cost fails to arrive within the time prescribed by the law, the responsible officer will immediately advise the body (institution) authorized by the law to provide legal aid at no cost."

⁶⁵ The details of this procedure are set out in the Decree No. 1363 of the Cabinet of Ministers of Ukraine issued on 28 December 2011 (in force since 1 January 2013).

⁶⁶ The delegation was informed by the Co-ordination Centre for Free Legal Aid that such centres presently operate in all the 27 administrative divisions of Ukraine, with some 3,000 lawyers participating in the scheme (of whom some 2,000 are actively involved).

⁶⁷ This conclusion was reached following the examination by the CPT's delegation of numerous detention protocols, copies of the notes on assignment of *ex officio* lawyers and other documentation available in the personal files of inmates at the establishments visited (SIZOs and ITTs), as well as relevant records kept at the Internal Affairs Divisions visited and after interviews with some of the inmates concerned.

According to representatives of the Co-ordination Centre for Free Legal Aid, the free legal aid system was – at the time of the 2013 periodic visit – not yet fully operational in all the regions of Ukraine. **The Committee recommends that further efforts be made (in particular, in terms of human and financial resources) to ensure that the system put in place by the Free Legal Aid Act operates effectively in all the regions of Ukraine.**

82. At present, a Free Legal Aid Centre may only assign an *ex officio* lawyer to defend a detained person after it has received the official notification of detention from a law enforcement agency. In this context, representatives of the Co-ordination Centre for Free Legal Aid informed the delegation of the Centre's intention to suggest draft amendments to the relevant provisions of the Act and of the aforementioned Decree No. 1363, so as to enable the Free Legal Aid Centres to assign an *ex officio* lawyer upon receiving information on a person's detention from other sources (e.g. relatives, NGOs or the media). In view of the findings made by the CPT's delegation during the visit,⁶⁸ the Committee supports this initiative and **would like to be informed, in due course, of its outcome.**

83. The Decree No. 1363 requires law enforcement officials to register every notification of the Free Legal Aid Centre in a dedicated register. Further, a registration number is assigned to each notification (by the relevant Free Legal Aid Centre) and a special form is issued and transmitted by fax or e-mail back to the law enforcement agency concerned. This number, as well as other relevant data (in particular, the time when notification was performed) should be noted in the detention protocol.

However, the entries in the relevant paragraph of the vast majority of detention protocols examined by the delegation during the visit contained only cursory information that “the Free Legal Aid Centre has been informed”, without providing any details as to the time and other relevant details (including a registration number). **The CPT invites the Ukrainian authorities to take steps to ensure that all the relevant details related with the notification of Free Legal Aid Centres (as mentioned above) are always duly recorded in detention protocols.**

84. The delegation also observed that there was no uniform practice as to who was supposed to contact the Free Legal Aid Centres and keep the notification registers referred to in paragraph 83. While in some of the Internal Affairs establishments visited this task was performed by an investigator, in the other establishments it was done by the officers in charge of the detention area. In both cases, the officials chosen to perform these tasks were primarily responsible for later stages of custody, and for the time of arrival of persons deprived of their liberty at the establishment; this also contributed to delays in effecting the notification of the Free Legal Aid Centre. In the CPT's view, **it would be far preferable to confer the task of contacting the Free Legal Aid Centres and keeping the relevant registers to “custody officers” within the meaning of the new CCP** (reference is made, in this regard, to paragraph 90).

⁶⁸ And the Co-ordination Centre for Free Legal Aid's own estimate that the percentage of unreported detentions (to the Free Legal Aid Centres) ranged from some 10% to approximately 30%, according to the region.

85. As had been the case during the previous visits, several detained persons who had been provided with the services of *ex officio* lawyers complained about the manner in which they worked; in particular, the *ex officio* lawyers apparently often met their clients only when the latter were brought before a judge, or even demanded undue payment for carrying out their duties.⁶⁹

A number of criminal suspects interviewed during the visit, who accepted the services of *ex officio* lawyers, alleged that they did not have, and the lawyers did not insist on having, meetings in private,⁷⁰ the lawyers would arrive after unofficial questioning by operational officers and after formalising the detention protocols (or even after questioning), and they would just sign the protocol.

The CPT recommends that the Ukrainian authorities take appropriate action – in consultation with the Bar Association – to ensure the effectiveness of the system of legal aid throughout the criminal procedure, including at the initial stage of police custody. In this context, particular attention should be paid to the issue of confidentiality of client-lawyer consultations.

- f. guaranteeing an effective right to be examined by a doctor as from the very outset of deprivation of liberty

86. Section 212 of the new CCP requires law enforcement officials responsible for the custody of detained persons to ensure that adequate medical care is promptly provided and that any bodily injuries and deterioration of the detained person's state of health are duly recorded by health-care staff. If the detained person so wishes, a person of his/her own choosing qualified to provide medical care may be allowed to be one of the professionals providing medical assistance to him/her. These provisions are to be welcomed.

Having said that, the new provisions still fail to expressly grant the detained persons the right to be examined by a doctor (as opposed to the law enforcement officials' obligation to provide access to medical assistance). **The CPT calls upon the Ukrainian authorities to amend the new CCP (and other relevant provisions) so as to make it clear that persons deprived of their liberty by law enforcement officials have a right to be examined by an independent doctor (including a doctor of one's own choice, it being understood that an examination by such a doctor may be carried out at the detained person's own expense) as from the moment of the *de facto* deprivation of liberty. A request by a detained person to see a doctor should always be granted; it is not for law enforcement officials, nor for any other authority, to filter such requests.**

⁶⁹ This was reportedly related to the low fees for providing *ex officio* legal assistance – e.g. 27 UAH per hour in the Kyiv region. See also the recommendation in paragraph 81 on the need to increase the financial resources to operate the free legal aid system efficiently.

⁷⁰ In this context, it is noteworthy that representatives of the Co-ordination Centre for Free Legal Aid pointed at the lack of confidentiality of client-lawyer consultations as one of the most problematic issues in the operation of the new *ex officio* legal aid system. Reportedly, only approximately 20% of law enforcement establishments offered conditions in which confidentiality could be respected.

The CPT also reiterates its long-standing recommendation that steps (including, if necessary, of a legislative nature) be taken to enable detained persons who allege ill-treatment by members of law enforcement agencies to be examined at their own initiative by an independent doctor with recognised forensic training.⁷¹

87. The CPT was concerned to note that – as had been the case in the past – the confidentiality of medical examinations and documentation was generally not ensured in the Internal Affairs establishments visited.⁷² Further, the quality of medical documentation was often poor, especially in Internal Affairs Directorates/Divisions. **The Committee recommends that steps be taken to remedy these deficiencies.⁷³**

88. Reference has already been made to the legal obligation to provide access to medical assistance to detained persons who may need it. The facts found during the 2013 periodic visit indicate that this obligation was not always complied with in practice. The delegation heard several allegations from detained persons that medical assistance had only been provided to them after their admission to an ITT facility, i.e. on occasion 24 hours or more after their *de facto* deprivation of liberty. **The CPT recommends that steps be taken by the Ukrainian authorities to ensure that the legal obligation to provide, without delay, medical assistance to any person detained by a law enforcement agency who is in need of it, is always complied with in practice.**

g. reinforcing specific safeguards for juveniles

89. Similar to the situation observed during previous visits to Ukraine,⁷⁴ the delegation received some allegations from detained juveniles, according to which they had been questioned and made to sign documents (confessions or other statements) without the presence of a lawyer and/or another trusted person.⁷⁵

The CPT calls upon the Ukrainian authorities to take effective steps to ensure that detained juveniles are not questioned, do not make any statements or sign any documents related to the offence of which they are suspected without the benefit of a lawyer and, in principle, of another trusted adult being present and assisting the juvenile.

The Committee also once again recommends that a specific information form, setting out the particular position of detained juveniles and including a reference to the presence of a lawyer/another trusted adult, be developed and given to all such persons taken into custody. Special care should be taken to explain the information carefully to ensure comprehension.

⁷¹ See also the recommendations made in paragraph 64.

⁷² Medical examinations as a rule took place in the presence of medically untrained law enforcement officials, and written information of a medical nature was easily accessible to such officials.

⁷³ See also the recommendation in paragraph 64 on medical confidentiality in ITTs.

⁷⁴ See, for example, paragraph 32 of the report on the 2009 visit (document CPT/Inf (2011) 29).

⁷⁵ See, in this connection, paragraph 56.

- h. improving the system of “custody officers”

90. The CPT welcomes the introduction of a system of “custody officers” in Ukraine.⁷⁶ It has the potential to improve the operation of the legal safeguards referred to above. Nevertheless, the delegation noted during the 2013 visit that there was no uniform practice as to the selection of “custody officers” and as to their working methods. Further, it appeared that “custody officers” were not offered special training to carry out their duties. As a result, the impact of this measure varied much from one region (and even from one establishment) to another.

The CPT recommends that the Ukrainian authorities establish common criteria for the selection of “custody officers” in Internal Affairs establishments, and ensure that they receive specific training.

5. Conditions of detention

- a. Internal Affairs Directorates/Divisions

91. At the outset of the visit, senior officials of the Ministry of Internal Affairs informed the delegation that major efforts were underway in order to improve the material conditions in detention areas (cells) of Internal Affairs Directorates/Divisions. According to the Ministry’s representatives, 66% of the 1,187 detention areas at Internal Affairs Directorates/Divisions had already been brought into conformity with the CPT’s standards and equipped with CCTV monitoring.

Indeed, in several of the Internal Affairs Directorates/Divisions visited,⁷⁷ conditions in the cells used for overnight detention could be considered acceptable and even good (adequate lighting and ventilation, beds with mattresses and bedding, ready access to a toilet and drinking water, etc.); further, at least some of these establishments (e.g. Golosyivske District Internal Affairs Directorate in Kyiv) had arrangements in place for the provision of food to persons obliged to remain there overnight. Albeit with some reservations (concerning the poor lighting and heating at the former, and the level of cleanliness in the latter establishment), conditions could also be considered acceptable at Podil’ske District Internal Affairs Directorate in Kyiv and at the Line Internal Affairs Division in Dnipropetrovsk.

⁷⁶ In accordance with Section 212 of the new CCP, the responsibility for the custody of detained persons should be attributed to one or more law enforcement officials in the establishments concerned. The duties of such “custody officers” include the following: informing the detained persons of their rights and obligations, ensuring that the detained persons are treated correctly and their rights observed, recording all actions involving the detained persons and ensuring the provision of prompt medical assistance (with the participation, if the detained persons so wish, of health-care providers of their own choosing).

⁷⁷ E.g. Golosyivske and Svyatoshinske District Internal Affairs Directorates in Kyiv; Vinnytskyi District Internal Affairs Division and 2nd Sub-Division of Vinnytsia City Internal Affairs Division.

92. However, material conditions in the other Internal Affairs Directorates/Divisions visited were not suitable for periods of detention exceeding a few hours, and certainly not for overnight stays. Cells in some of those Internal Affairs Divisions had been officially taken out of service and sealed,⁷⁸ but persons continued to be held in these establishments overnight, in offices (sleeping on chairs or on the floor), corridors and in other premises (e.g. basements or storage rooms, traffic police (DAI) facilities), sometimes handcuffed to radiators, pipes or pieces of furniture. No arrangements were made to provide such persons with bedding for the night and with food.⁷⁹

In the light of the above, and while welcoming the ongoing improvements referred to in paragraph 91, **the CPT recommends that the Ukrainian authorities step up their efforts to provide appropriate conditions of detention to persons held in Internal Affairs Directorates/Divisions. In doing so, they should be guided by the recommendation already made by the Committee in paragraph 37 of the report on its 2009 periodic visit.**⁸⁰

As for those Internal Affairs Directorates/Divisions which do not meet the requirements enumerated in the above-mentioned recommendation (and, in particular, those where the cells have been taken out of service), immediate action is required to ensure that (save in urgent situations where delays in carrying out investigative steps may result in the loss of traces of criminal offence or in the suspect's absconding) detained persons are not held in these establishments during the night.⁸¹

b. Temporary Detention Isolators (ITTs)

93. As with the Internal Affairs Directorates/Divisions, the Ukrainian authorities were in the process of upgrading the conditions of detention in ITTs throughout the country. According to the data presented to the delegation at the outset of the visit, the Ministry of Internal Affairs had at that time entirely refurbished 107 ITTs (out of the total number of 437) and built ten new ones; in addition, 84 ITTs had been taken out of service due to their inadequate condition.

It is noteworthy that the ITTs visited by the delegation were all operating well below their official capacities; this was one of the results of the entry into force of the new CCP which had rendered recourse to custody (and pre-trial detention, see paragraph 26) much more infrequent than previously.⁸²

⁷⁸ E.g. Zhovtnyevyi District Internal Affairs Division in Dnipropetrovsk; Saksaganskyi District Internal Affairs Division in Krivyy Rih; Malinovskyy District Internal Affairs Division and Khmel'nitskyi District Internal Affairs Sub-Division in Odessa; Central District Internal Affairs Division in Simferopol.

⁷⁹ See also paragraph 68.

⁸⁰ Which enumerates the following steps to be taken in this context: "[...] ensure that:

- cells are of a reasonable size for their intended occupancy, cells measuring less than 5 m² not being used for periods of detention exceeding three hours;
- adequate in-cell lighting (access to natural light/artificial lighting), ventilation and heating are provided;
- all cells are equipped with a means of rest suitable for an overnight stay;
- all persons detained overnight are provided with clean mattresses and blankets;
- Internal Affairs Divisions are allocated a specific budget to cover the cost of providing food to detained persons."

⁸¹ See, in this connection, the recommendation in paragraph 71. See also Section 223 (4) of the Code of Criminal Procedure.

⁸² As compared with other measures such as the obligation to report to law enforcement agencies at regular intervals, a travel ban, bail, etc.

According to the figures communicated to the delegation during its meeting with representatives of the Prosecution Service, the number of persons detained in ITTs had dropped to 110,000 in comparison with 161,000 in the analogous period of the previous year. Naturally, this trend is to be welcomed.

94. As concerns the conditions in ITTs visited, the delegation observed as a positive fact that persons accommodated in these facilities were provided with bedding, offered food at normal meal times, given ready access to a toilet, and offered the possibility to use a shower facility and to take one hour of outdoor exercise every day.

That said, many of the ITTs visited were located in old and often dilapidated buildings (e.g. in Alushta and Krivyi Rih). A number of the cells seen by the delegation⁸³ had poor access to natural light and fresh air, and the in-cell toilets were invariably only partially partitioned. Further, in some of the ITTs, the cells were too small for their intended double occupancy.⁸⁴ The level of cleanliness often left much to be desired, given the lack of provision for cleaning of the cells; in this context, specific mention should be made of the very filthy cells at Dnipropetrovsk ITT.

The exercise yards were generally small and oppressive, and the so-called “winter exercise yards” at Dnipropetrovsk and Krivyi Rih ITTs were basically not yards at all, but cells without window panes.

95. **The CPT recommends that the Ukrainian authorities pursue their efforts to refurbish all ITTs, taking into account the above remarks. In particular, steps should be taken in order to:**

- **renovate, as a matter of priority, the ITTs in Alushta and Krivyi Rih;**
- **in the context of the refurbishment programme of all ITTs, ensure that in-cell sanitary annexes are fully partitioned (i.e. up to the ceiling);**
- **ensure that cells in all ITTs⁸⁵ have adequate access to natural light and fresh air;**
- **improve the level of cleanliness in the ITTs, especially in the one of Dnipropetrovsk;**
- **ensure that outdoor exercise yards are sufficiently large and adequately equipped in all ITTs (and take out of service the “winter yards” at Dnipropetrovsk and Krivyi Rih ITTs).**

Further, in the Committee’s view, **cells measuring between 6 and 7 m² should not accommodate more than one detained person overnight.**

⁸³ E.g. in Alushta, Dnipropetrovsk, Krivyi Rih, Kyiv, Odessa, Simferopol and Yalta.

⁸⁴ For example, a double cell measuring 6.5 m² (sanitary annexe included) at Kyiv ITT; a double cell (sanitary annexe included) measuring some 7 m² at Yalta ITT.

⁸⁵ Including those mentioned in footnote 83.

- c. Special Reception Centre for persons under administrative arrest in Dnipropetrovsk

96. Material conditions at the Special Reception Centre for persons under administrative arrest in Dnipropetrovsk were generally acceptable, except for the poor access to natural light in the cells and the fact that in-cell sanitary annexes were only partially screened. The main problem concerned the lack of activities. Detainees were taken out of their cells for only one hour a day, which they spent in a yard measuring some 60 m². The bulk of the detained persons were spending their time in a state of enforced idleness, with hardly any distractions available. There was no access to TV or radio, and only a very small selection of books and newspapers.

The CPT recommends that steps be taken at the Special Reception Centre for persons under administrative arrest in Dnipropetrovsk to:

- **improve access to natural light in the cells;**
- **provide in-cell sanitary annexes with full partitioning (up to the ceiling);**
- **provide some form of activity in addition to outdoor exercise (e.g. radio/TV, additional reading matter, board games, sports, more work opportunities, etc.).**

In this context, the Committee invites the Ukrainian authorities to consider developing alternatives to deprivation of liberty for administrative offences.

B. Persons held in penitentiary establishments

1. Preliminary remarks

97. As already mentioned in paragraph 3, the CPT's delegation carried out visits to four pre-trial establishments (SIZOs): in Kyiv, Dnipropetrovsk, Odessa and Simferopol. All these establishments had been visited by the Committee in the past.⁸⁶ Further, a follow-up visit was carried out to Stryzhavska Correctional Colony No. 81 (visited for the first time in 2012) and a first-time visit to Prison No. 3 in Krivyi Rih.

98. At the outset of the visit, senior officials of the Ministry of Justice told the delegation that the entry into force of the new CCP, with its restrictive provisions governing the application of the preventive measure of remand in custody, the automatic (with only limited exceptions possible) application of bail and a wide range of alternative measures, had resulted in a dramatic (57%) decrease in the number of remand prisoners.⁸⁷ In particular, some 6,000 criminal suspects had been released under the pledge not to leave their permanent place of residence, and home arrest had been applied to almost 1,000 persons.

In addition to above-mentioned developments affecting remand prisoners, a range of legislative and other steps (e.g. decriminalisation of numerous categories of petty crimes and reducing the criminal sanctions for economic offences) had also contributed to a drop in the overall prison population which, at the time of the visit, stood at 136,000 inmates as compared with approximately 152,000 in the end of 2012. Further measures, such as the adoption of the new Probation Act, were planned in the near future.⁸⁸

99. As a result of these steps, the overall level of overcrowding in the Ukrainian prison system had diminished significantly,⁸⁹ and the Ministry of Justice representatives were proud to announce that, in particular, the SIZOs now fully complied with the national legal standard of 2.5 m² of living space per prisoner (i.e. formally, pursuant to the Ukrainian legislation, they were no longer overpopulated).

The CPT welcomes all the recent, ongoing and envisaged legislative and organisational steps aimed at tackling the prison overcrowding phenomenon in Ukraine. **The Committee recommends that the Ukrainian authorities pursue their concerted efforts in this area.**

⁸⁶ Kyiv SIZO was last visited by the CPT in 2009, Simferopol SIZO in 2000, and Odessa SIZO in 2002. As for Dnipropetrovsk SIZO, the 2009 visit was of a targeted nature (focussed on newly-arrived and life-sentenced prisoners).

⁸⁷ On 1 October 2013 (the most recent data available on the first day of the CPT's visit) there were 22,664 remand prisoners in Ukraine, i.e. 9,593 less than upon the entry into force of the new CCP (on 19 November 2012).

⁸⁸ The draft Act was submitted for consideration to the Verkhovna Rada (the Ukrainian Parliament) on 10 October 2013.

⁸⁹ The total official capacity of penitentiary establishments in Ukraine (at the time of the visit) was 131,000 places.

100. Regarding the SIZOs, the CPT must once again stress that the current Ukrainian standard of living space per remand prisoner is far from acceptable (and that, consequently, from the CPT's point of view, pre-trial establishments in Ukraine continue to suffer from serious overcrowding). In addition, as will be described in more detail later in this report,⁹⁰ all the SIZOs visited in the course of the 2013 periodic visit comprised certain blocks and cells where the level of overcrowding was particularly high (even as compared with the current Ukrainian standard); this was at least partially related to the excessively complex rules on the separation of different categories of remand prisoners.

Consequently, **the CPT calls upon the Ukrainian authorities to review without further delay the norms fixed by legislation for living space per prisoner, ensuring that they provide for at least 4 m² per inmate in multi-occupancy cells (not counting the space taken up by in-cell toilets) in all the establishments under the authority of the State Penitentiary Service, pre-trial establishments (SIZOs) included. With regard to single-occupancy cells, any cells of this type should measure at least 6 m² (not counting the area taken up by in-cell toilets), and should preferably be larger.**

As for localised overcrowding in penitentiary establishments holding remand prisoners, **the Committee recommends that the Ukrainian authorities examine, in every SIZO/Closed-Type Prison, the actual living space per inmate in the cells at regular intervals (in addition to the average living space per prisoner in each establishment). This will make it possible to detect and combat the above-mentioned phenomenon.** As regards the situation in the penitentiary establishments visited, reference is made to the recommendations in paragraph 127.

101. One of the serious problems facing the Ukrainian penitentiary system is the age and the state of repair of a major proportion of the prison estate. The CPT's delegation again observed during the 2013 periodic visit that many of the establishments visited (in particular the SIZOs⁹¹) were located in very old buildings (sometimes dating back to the 18th or 19th century), which were structurally unsuited to perform their function in accordance with modern accommodation standards and, moreover, were frequently in a severely dilapidated condition.

In this context, the delegation was informed by the Ministry of Justice representatives of the existence of the Concept for the Reform of the Criminal Executive System⁹² and of the National Targeted Programme for the Reform of the Criminal Executive System for the period from 2013 to 2017,⁹³ which *inter alia* comprised detailed steps to modernise the prison estate. Approximately 5 billion UAH had reportedly been earmarked to cover the cost of implementation of the above-mentioned Targeted Programme. The CPT welcomes these steps and **recommends that the Ukrainian authorities pursue their efforts to improve the prison estate/infrastructure, in line with the Committee's standards. The recent reduction in the prison population should make it easier to address the problem.**

⁹⁰ See section II.B.3 of the present report.

⁹¹ E.g. those in Odessa and Simferopol, see paragraph 120.

⁹² Adopted by Decree of the President of Ukraine No. 631 of 8 November 2012.

⁹³ Approved by the Government on 29 April 2013.

102. In contrast with the above-mentioned developments, there had been little, if any, progress in drawing up programmes of purposeful, out-of-cell, activities (work, training, education, sports, etc.) for the inmates. In particular, remand prisoners (as well as prisoners sentenced to life imprisonment and the bulk of sentenced prisoners held in special conditions of high security or control) were locked up in their cells for most of the day, in a state of enforced idleness. Taken together with the restrictions on contact with the outside world and association, this produced a regime which was oppressive and stultifying.

The CPT calls upon the Ukrainian authorities to ensure that efforts aimed at reducing overcrowding and improving material conditions in both SIZOs and establishments for sentenced prisoners go hand-in-hand with the introduction of programmes of structured out-of-cell activities. The aim should be to enable prisoners to spend as many hours as possible each day outside their cells (preferably eight hours or more) and to participate in regular, purposeful and varied activities (work, education, sport, etc.) tailored to the needs of each category of prisoner (adult remand or sentenced prisoners, inmates serving life sentences, sentenced prisoners held in special conditions of high security or control, female prisoners, juveniles, etc.).⁹⁴

2. Treatment of persons in pre-trial detention or serving sentences

a. review of the manner in which inmates are treated in SIZOs

103. The CPT is pleased to note that, at Kyiv and Simferopol SIZOs, unlike during previous visits to these establishments, the delegation received no complaints of ill-treatment by penitentiary officers or at the instigation of staff; on the contrary, all prisoners interviewed considered that they were being treated correctly.

104. At Odessa SIZO, many inmates interviewed spoke favourably about staff. Moreover, several prisoners considered that the new management had considerably improved the situation as regards the manner in which they were treated by staff. Nevertheless, several prisoners (including women) alleged that they had recently been the subject of deliberate physical ill-treatment by custodial officers (mainly slaps, punches, kicks and baton blows).

It also appeared in a few cases that the amount of force used by custodial staff to put a stop to what they considered to be misbehaviour was disproportionate or that force had been used as a form of punishment (e.g. in reaction to inappropriate remarks from the prisoners concerned). In this connection, there were at times discrepancies between the accounts of the events given by prisoners/potential witnesses interviewed and the content of the staff's reports, thereby suggesting that the means used or the amount of force applied to handle certain situations at issue may not always have been recorded properly.

⁹⁴ Particular reference should be made in this respect to the Committee of Ministers of the Council of Europe Recommendation Rec(2006)2 to member states on the European Prison Rules, adopted on 11 January 2006 (hereafter "European Prison Rules"), as well as the Recommendation Rec(2003)23 on the management by prison administrations of life sentence and other long-term prisoners, adopted on 9 October 2003.

Further, the delegation received allegations of verbal abuse by several members of custodial staff, in particular when dealing with women or juveniles.

105. As regards Dnipropetrovsk SIZO, the delegation heard a few accounts of severe beatings of male inmates who were or had been held in that establishment. In most cases, the alleged ill-treatment was said to have been inflicted by fellow prisoners at the instigation of the establishment's operational staff. More specifically, the inmates concerned had apparently been allocated to "press-khata" cells where a couple of other prisoners were allegedly tasked with beating them until they provided self-incriminating statements or statements incriminating others in relation to criminal offences presumed to have been committed before their apprehension.⁹⁵ In at least one case, the alleged ill-treatment was of such severity that it could well amount to torture (e.g. extensive beatings for some 24 hours whilst being tied up with adhesive tape; asphyxiation with a plastic bag; strangulation with a rope to the point of losing consciousness).

106. In the light of the above, **the CPT recommends that action be taken to ensure that:**

- **the methods used by operational staff at Dnipropetrovsk SIZO to obtain information from prisoners are subject to closer and more effective independent supervision. In particular, it should be made clear to them that any attempt to seek information from inmates should be strictly limited to the establishment's needs;** reference is made in this context to the recommendation made in paragraph 117;
- **all penitentiary staff working at Dnipropetrovsk and Odessa SIZOs receive the clear message that any penitentiary official inflicting, instigating or tolerating any act of torture or other forms of ill-treatment, under any circumstances, including when ordered by a superior or when encouraged by law enforcement officials, will be held accountable. Further, staff working in these establishments should be reminded that they should at all times treat inmates with politeness and respect;**⁹⁶
- **at Odessa SIZO, physical force, "special means" and straight-jackets are only used against prisoners in self-defence or in cases of attempted escape or active or passive physical resistance to a lawful order, and always as a last resort.**⁹⁷ **Further, the management of Odessa SIZO and outside monitors should exercise extra vigilance to ensure that all instances of resort to force against prisoners are adequately recorded and assessed.**

107. It is the responsibility of the staff and of the prison administration as a whole to protect the physical and psychological integrity of all prisoners, including against assault by fellow inmates, and to take immediate, resolute and even anticipatory action to prevent episodes of inter-prisoner intimidation and violence.

⁹⁵ Such information was said to be intended for Internal Affairs structures in the region or in the capital.

⁹⁶ See also guidelines 12, 13 and 14 of the Recommendation CM/Rec (2012) 5 on the European Code of Ethics for Prison Staff adopted by the Committee of Ministers of the Council of Europe on 12 April 2012.

⁹⁷ See also guideline 16 of the above-mentioned European Code of Ethics for Prison Staff.

108. In the course of the 2013 visit, the delegation noted that in both Odessa and Simferopol SIZOs, there was a general tendency to partly delegate authority to a criminal subculture. In this connection, in both establishments, the delegation came across instances of violence between inmates. In each of these two establishments, a prisoner “leader” was clearly in charge of order among prisoners and, to assist him in his task, he or inmates directly subordinated to him reportedly moved freely in the establishments in question. Giving a reasonable degree of authority to prisoner “leaders” in order to ensure security appeared to be an acceptable practice for staff, who were in limited number in detention areas.⁹⁸

Keeping order and creating a safe environment in prison should not be based on a form of tacit agreement between inmate “leaders” looking to establish their authority among the other inmates, and members of the penitentiary staff anxious to preserve the appearance of order in the establishment. The development of constructive relations between staff and all the prisoners, based on the notion of dynamic security,⁹⁹ is a crucial factor in the effort to combat inter-prisoner intimidation and violence.

The Committee recommends that the management of Odessa and Simferopol SIZOs make use of all the means at their disposal to counter the negative impact of the informal prison hierarchy and prevent inter-prisoner intimidation and violence, in the light of the above remarks. The Ukrainian penitentiary authorities must also be vigilant as to possible collusion between staff and prisoner “leaders”.

109. The duty placed on penitentiary staff to protect the physical and psychological integrity of prisoners also includes good management of prisoners who may cause serious harm to others or themselves. During the 2013 visit, this appeared to be a particularly problematic issue at Odessa SIZO. The delegation came across several cases of inmates who apparently fell under this category and, in some instances, committed suicide.

By way of illustration, in two suicide cases, on 1 and 17 October 2013 respectively, the inmates in question were considered to be particularly challenging and had apparently been confronted with recent violent episodes (with staff or other inmates). As regards the suicide case of 1 October 2013, the examination of the documentation during the visit suggests that the staff’s responses to problematic behaviour consisted almost exclusively of using force in reaction to an assault and keeping the prisoner concerned in prolonged solitary confinement (including for more than 45 days without interruption in disciplinary solitary confinement¹⁰⁰). The prisoner attempted to commit suicide shortly after having been notified of a decision by the prosecuting authorities authorising further segregation, for preventative purposes, under Section 8 of the Pre-Trial Detention Act. After his suicide attempt, he was transferred to the establishment’s health-care unit, where his second suicide attempt was successful.

⁹⁸ See paragraph 165.

⁹⁹ Dynamic security is the development by staff of positive relationships with prisoners based on firmness and fairness, in combination with an understanding of their personal situation and any risk posed by individual prisoners.

¹⁰⁰ Reference should be made, in this respect, to paragraph 169.

In the CPT's view, the management of inmates who have caused, or are considered likely to cause, serious harm to others or who present a very serious risk to the safety or security of the SIZO should not consist of a purely passive response to their attitude and behaviour. When the prisoners in question have to be placed in segregation for preventative purposes, they should have an individual regime plan, geared to addressing the reasons for the measure. This plan should attempt to maximise contact with others – staff initially, but as soon as practicable with appropriate other prisoners – and provide as full a range of activities as is possible to fill the days. There should be strong encouragement from staff to partake in activities and contact with the outside world should be facilitated. Throughout the period of solitary confinement, the overall objective should be to persuade the prisoner to re-engage with the normal regime.

Further, the prevention of suicide, including the identification of inmates on segregation at risk, as for any other categories of prisoner, should not rest with the establishment's health-care unit alone. All penitentiary staff coming into contact with inmates should be trained in recognising indications of suicide risk. The SIZO management should ensure that appropriate suicide prevention procedures are in place. If a prisoner shows severe signs of suicidal behaviour, he or she should be placed under the direct supervision of a psychiatrist, preferably in a suitably equipped medical facility. An individualised care programme, involving a multi-disciplinary team (including staff providing professional psychological support), should be drawn up, monitored and reviewed. In addition, the person concerned should always be held in safe conditions, with no easy access to means of killing himself or herself (cell window bars, broken glass, belts or ties, etc.).

The CPT recommends that the management of prisoners who have caused, or are considered likely to cause, serious harm to others or themselves are fundamentally reviewed at Odessa SIZO, in the light of the above remarks.

- b. review of the treatment of prisoners serving sentences at Correctional Colony No. 81 in Stryzhavka

110. During the CPT's previous visit to Correctional Colony No. 81 in Stryzhavka in December 2012, the delegation gained the impression that the ill-treatment of inmates had become an almost accepted feature of keeping good order and combating prison subcultures. The means employed by staff, partly relying on a select group of inmates having a designated role to assist them, were apparently aimed at obtaining submissive behaviour from all inmates as from the days immediately following their admission. The ill-treatment alleged by persons interviewed who were held in this establishment at the time was often of such severity that it could be considered as amounting to torture.¹⁰¹

111. In the course of the 2013 visit, the delegation observed a marked improvement in the treatment of prisoners. The majority of inmates interviewed indicated that there had been a radical change in the attitude of staff towards them. This was also confirmed by interviews with penitentiary operational officers and prisoners who had previously been designated to assist staff; the methods used until December 2012 were rejected. It became evident that action taken at the highest level by the penitentiary and prosecuting authorities, but also action taken at local level, had played a major role in changing the situation of inmates for the better.

¹⁰¹ See paragraphs 17 and 18 of the report on the 2012 visit (document [CPT/Inf \(2013\) 23](#)).

However, it would appear that this positive development was overshadowed by the acting management's initiative to partly delegate the task of keeping good order to a group of inmates which operated in many respects as a criminal subculture but was somehow subordinated to the local penitentiary administration.¹⁰²

As a result, a climate of tension seems to have been introduced, which had allegedly resulted in sporadic physical ill-treatment of prisoners by fellow inmates at the instigation of staff or, in a few cases, by members of staff themselves (including senior officials). In this connection, the delegation also received several allegations according to which those not willing to give informal financial or other contributions (through their jobs in the workshops in particular) in exchange for protection were at heightened risk of intimidation/ill-treatment.

112. The CPT recommends that the Ukrainian authorities continue to exercise the greatest vigilance as regards the treatment of prisoners serving sentences in Correctional Colony No. 81 in Stryzhavka, in particular in the light of the above findings. In this context, the practice of delegating authority to a group of prisoners and using them to keep control over the establishment's inmate population must be brought to an end.

Further, the Committee recommends that all staff members working in the establishment, including senior officers, continue to receive a regular message from the highest level that i) any penitentiary official committing or aiding and abetting ill-treatment will be held accountable and that ii) they should oppose all forms of corruption and shall inform superiors and other appropriate bodies of any corrupt practices within the establishment.

c. treatment of inmates at Closed-Type Prison No. 3 in Krivyi Rih

113. The situation observed at Prison No. 3 in Krivyi Rih is of grave concern to the CPT.

The delegation heard numerous allegations and gathered other evidence (including of a medical nature¹⁰³) that the establishment's operational staff used a group of inmates (so-called "*pressovshchiki*") to physically ill-treat other prisoners¹⁰⁴ and consequently install a climate of fear and intimidation.¹⁰⁵ In some instances, the alleged ill-treatment was of such severity that it could be considered as torture (e.g. deprivation of sleep for up to several days; extensive beatings whilst being tied up with adhesive tape, suspended or after having being placed in a bag).

¹⁰² This group was operating in most parts of the establishment whilst a few other parts of the colony were under the full control of prisoners designated to assist staff and also housed inmates on protection.

¹⁰³ I.e. lesions directly observed by the delegation's forensic medical member, which were fully consistent with the allegations made by prisoners, as well as information on lesions sustained by prisoners – described in the medical documentation of the establishment – which were highly unlikely to have originated in the manner stated in those records (e.g. fractured ribs or haematomas under both eyes, allegedly resulting from "falling from the bed" or "slipping in the toilet"). See also paragraph 152.

¹⁰⁴ Mostly those on remand accommodated on the 4th floor of the establishment, and to a lesser extent remand prisoners accommodated on the 3rd floor; no such allegations were heard from life-sentenced prisoners and from sentenced prisoners held in special conditions of high security or control.

¹⁰⁵ It is noteworthy that, according to the allegations heard, the "*pressovshchiki*" were allowed by the staff to move freely from cell to cell, unlike all the other inmates.

The purpose of this ill-treatment was apparently not only to maintain strict order and discipline, but also to obtain from the inmates concerned confessions to (additional) crimes they were suspected of having committed before imprisonment.¹⁰⁶ In this context, a few prisoners also alleged that the “*pressovshchiki*” had ill-treated them in order to extort money from them and their relatives.

Further, the establishment’s health-care staff, by neither recording nor reporting clearly visible serious injuries sustained within the establishment (see paragraph 155), were facilitating the ill-treatment of prisoners.

In this context, it is also noteworthy that there were numerous registered acts of self-harm in the prison. The delegation spoke with several inmates who had committed such acts recently,¹⁰⁷ and at least some of them acknowledged that the reason for self-harming had been that they could no longer bear the ill-treatment and intimidation by other prisoners, and had hoped that by committing self-harm they would (at least for some time) be taken to the relative safety of the health-care unit.¹⁰⁸

114. As already mentioned in paragraph 20, at the end of the 2013 periodic visit, the CPT’s delegation invoked Article 8, paragraph 5, of the Convention and made an immediate observation in respect of Prison No. 3 in Krivyi Rih. The delegation requested that an immediate, thorough and independent inquiry be carried out into the manner in which this establishment was operating. The delegation indicated that it would like to receive, within two months, detailed information about the investigative steps taken and the initial results of the inquiry.

In their letter of 27 December 2013, the Ukrainian authorities informed the Committee of the steps taken. The measures enumerated in the letter included:

- a visit to Prison No. 3 in Krivyi Rih by members of the local monitoring commission composed of representatives of non-governmental and human rights organisations, in the course of which an “anonymous questionnaire” was distributed among the prisoners concerning instances of ill-treatment;¹⁰⁹
- a departmental inspection of the establishment, followed by the drawing up of a plan of corrective actions to be carried out in the work of the prison;
- instructions issued to the operational division of Prison No. 3 in Krivyi Rih, in order to bring the procedure for forwarding crime reports to law enforcement agencies into conformity with the existing legislation (in particular, the new CCP);
- a review of prisoner allocation procedures throughout the establishment, in order to ensure better separation between inmates on remand accused of committing serious crimes from the other remand prisoners;

¹⁰⁶ The delegation was struck to note that the “book of crime reports” of the establishment contained hundreds of “spontaneous” confessions by prisoners to offences committed (in almost all the cases) prior to their imprisonment.

¹⁰⁷ And who received a disciplinary punishment for this, as self-harm was considered a disciplinary offence (see also paragraph 168).

¹⁰⁸ See paragraph 146.

¹⁰⁹ See, on this issue, the comments in paragraph 11.

- increased supervision by the prison management over the activities of the establishment's health-care service as concerns the recording and reporting of injuries observed on prisoners;¹¹⁰
- additional training sessions for the staff of Prison No. 3 in Krivyi Rih (including the staff of the operational division) in the light of the results of the above-mentioned departmental inspection.

In addition, by decision dated 22 November 2013, the Prosecutor General instructed (*inter alia*) the Dnipropetrovsk Regional Prosecutor¹¹¹ to carry out a “compliance audit” (“*nepevivka*” in Ukrainian) of the observance of the constitutional rights of prisoners and measures to prevent torture and inhuman or degrading treatment or punishment in places of deprivation of liberty (including Prison No. 3 in Krivyi Rih); the procedure was still ongoing at the time of transmission of the letter of 27 December 2013.

115. The CPT takes note of all the above-mentioned measures and of the fact that (as on similar occasions in the past¹¹²) efforts have been made by the Ukrainian authorities to involve representatives of the civil society in the process. That said, the Committee cannot escape the impression that the steps taken so far have fallen short of what was requested by the Committee in the immediate observation referred to in paragraphs 20 and 114.¹¹³

In particular, as regards the “anonymous questionnaire” referred to in paragraph 114, the Committee has already expressed its serious reservations as to the use of this method and its value as a tool to establish the facts related to possible ill-treatment and inter-prisoner violence and intimidation.¹¹⁴ It is quite clear that the approach chosen by the Ukrainian authorities has not been conducive to the generation of a climate of trust amongst the inmates, as witnessed by their apparent refusal to confirm the allegations made to the CPT's delegation (which, as already stressed above, were at least partially confirmed by objective medical evidence).¹¹⁵

The other steps mentioned by the Ukrainian authorities in their letter of 27 December 2013 (in particular, the departmental (in-service) inspection and various instructions and training sessions), whilst no doubt useful and positive, cannot replace an independent and thorough inquiry into the situation at Prison No. 3 in Krivyi Rih. In the context of such an inquiry, which should normally be carried out by the competent prosecution services, particular attention would have to be paid to preventing any risk of intimidation of prisoners by staff and fellow inmates (e.g. systematic direct, confidential and individual interviews; measures to protect sources of information) and to securing any forensic medical evidence (both directly observed on the prisoners and found in the relevant documentation).¹¹⁶ Further, steps should have been taken to prevent any possible reprisals against prisoners who might make statements that were useful for the inquiry.

¹¹⁰ See also paragraph 154.

¹¹¹ The above-mentioned order was also addressed to regional-level prosecutors in the other regions visited by the CPT's delegation in the course of the 2013 periodic visit.

¹¹² See, for example, paragraph 36 of the report on the 2012 ad hoc visit (document [CPT/Inf \(2013\) 23](#)).

¹¹³ I.e. an “immediate, thorough and independent inquiry”.

¹¹⁴ See paragraph 11.

¹¹⁵ The CPT is particularly struck by the statement of the Ukrainian authorities, in their letter of 27 December 2013, that the information gathered by means of the “anonymous questionnaire” revealed “no facts of oppression, violence and other ill-treatment of prisoners”. This statement is in total contradiction with the delegation's findings. See also paragraph 12.

¹¹⁶ Although, as already mentioned in paragraph 113, the medical and other relevant documentation at Prison No. 3 in Krivyi Rih could not be considered as fully reliable in this respect.

In this context, the CPT has noted with interest the information on the above-mentioned “compliance audit” by the regional prosecutor’s office; **it is of crucial importance that the procedure in question addresses the Committee’s aforementioned concerns.**

116. **The CPT would like to be informed, in due course, of the outcome of the “compliance audit” in respect of Prison No. 3 in Krivyi Rih and, in particular, of any decisions taken subsequently (including any criminal and/or disciplinary sanctions imposed).**

The Committee also calls upon the Ukrainian authorities to take further specific measures to combat prisoner ill-treatment and intimidation at Prison No. 3 in Krivyi Rih and, in particular, to:

- **instruct the management of the establishment to exercise the greatest vigilance as regards the treatment of prisoners and to make it clear to all those concerned (at regular and frequent intervals), in particular the operational staff, that any prison official committing or aiding and abetting ill-treatment, inter-prisoner violence or intimidation will be held accountable;¹¹⁷**
- **instruct all the prison staff to actively prevent their colleagues from ill-treating prisoners (or from encouraging inter-prisoner violence) and to report, through appropriate channels, all cases of ill-treatment involving colleagues; the instruction should be accompanied by firm assurances that “whistle blowers” shall be protected from any reprisals.**

117. As mentioned in paragraph 113, one of the main apparent purposes of ill-treatment and intimidation of inmates at Prison No. 3 in Krivyi Rih was for the operational staff to obtain confessions (and other information) concerning offences allegedly committed by prisoners prior to their incarceration. Management and staff in the establishment¹¹⁸ seemed to consider that they formed part of a single law enforcement system (together with the Internal Affairs, other law enforcement agencies and the prosecution service), the task of which was to detect and fight crime.

In the CPT’s view, it is to say the least a highly questionable state of affairs that prison officers are involved in the investigation of criminal offences – and the collection of related evidence such as confessions of prisoners – in particular, when the offence in question has been committed prior to imprisonment. Such a situation is clearly detrimental to the protection of prisoners against ill-treatment (including inter-prisoner violence) and lends itself to abuse.

The Committee recommends that the Ukrainian authorities take steps, including at the legislative level, to ensure that officers of operational divisions no longer investigate criminal offences committed by prisoners outside the prison and no longer take statements from prisoners in relation to such offences.

¹¹⁷ See also Guidelines 12 and 13 of the 2012 European Code of Ethics for Prison Staff.

¹¹⁸ But also in other establishments visited such as at Dnipropetrovsk SIZO (see paragraph 105), where the Director openly stated this to the delegation.

3. Remand prisoners

118. The CPT's delegation paid follow-up visits to Kyiv, Dnipropetrovsk, Odessa and Simferopol SIZOs, where remand prisoners/inmates not yet serving their sentences represented about 90% or more of the whole prison population in these establishments. It should be noted from the outset that these establishments were operating below their official capacities at the time of the 2013 visit, although these capacities were still based on the national standard of 2.5 m² of living space per inmate:¹¹⁹

- with an official capacity of 3,271 places, Kyiv SIZO was holding 2,618 prisoners (including 207 women and 80 juveniles). The opening of a new accommodation building for women in December 2011 helped to increase the capacity of the establishment (with 173 additional places);¹²⁰
- Dnipropetrovsk SIZO was accommodating 1,777 inmates (including 129 women and 24 juveniles) for an official capacity of 3,519 places;¹²¹
- with an official capacity of 1,500 places, Odessa SIZO was holding 1,231 prisoners (including 84 women and 21 juveniles);¹²²
- Simferopol SIZO was accommodating 1,161 inmates (including 72 women and 14 juveniles) for an official capacity of 1,422 places.¹²³

In addition, the delegation examined the situation of remand prisoners held at Closed-Type Prison No. 3 in Krivyi Rih.¹²⁴ With an official capacity of 1,100 places, the establishment was housing 593 prisoners (including 28 women and one juvenile). Some 80% of the inmate population was constituted of remand prisoners or inmates not yet serving their sentences. It is noteworthy that the only juvenile was being held together with an adult. In the CPT's view, juveniles must always be accommodated separately from adults, in a distinct unit. Juveniles can be offered opportunities to participate in out-of-cell activities with adults (under appropriate supervision by staff). However, the Committee believes that the risks inherent in juvenile offenders sharing accommodation with adult offenders are such that this should not occur. **The CPT recommends that the necessary steps be taken at Krivyi Rih Prison, in the light of the above remarks.**

¹¹⁹ See also paragraphs 99 and 100.

¹²⁰ With an official capacity of 2,950 places, Kyiv SIZO was holding 3,440 prisoners at the time of the 2009 visit. For more details, see paragraph 100 of the report on the 2009 visit (document [CPT/Inf \(2011\) 29](#)).

¹²¹ At the time of the 2009 visit, it was holding 2,900 prisoners for an official capacity of 3,456 places. For more details, see paragraph 109 of the report on the 2009 visit (document [CPT/Inf \(2011\) 29](#)).

¹²² With an official capacity of 1,913 places, Odessa SIZO was holding 2,366 prisoners at the time of the 2002 visit. For more information, see paragraph 113 of the report on the 2002 visit (document [CPT/Inf \(2004\) 34](#)).

¹²³ Simferopol SIZO was holding 2,500 persons for an official capacity of 2,200 places at the time of the 2000 visit. For more details, see paragraph 86 of the report on the 2000 visit (document [CPT/Inf \(2002\) 23](#)).

¹²⁴ The establishment was inaugurated in 1989. Due to its circular shape, it was referred to by inmates as "Bublik" (i.e. "Bagel" in Ukrainian).

a. overcrowding

119. The CPT is pleased to note that in the establishments visited, all the inmates appeared to have been provided with their own beds in the cells seen by the delegation. Further, the standard advocated by the Committee of 4 m² of living space per inmate in multi-occupancy cells was observed in many cells of the establishments concerned. Both penitentiary staff and prisoners with whom the delegation spoke expressed their appreciation about the significant reduction of the prison population and the larger amount of living space in the cells in the context of the adoption and entry into force of the new CCP.¹²⁵

Nevertheless, as already mentioned in paragraph 100, the CPT's delegation observed localised overcrowding in all the establishments visited. Cell occupancy rates in many cells were not only far from meeting the CPT's standard of at least 4 m² per prisoner, but were also in breach of Ukrainian standards, with as little as 1.5 m² of living space per prisoner in some multi-occupancy cells (e.g. 38 prisoners were being held in a cell of some 57 m², without counting the space taken up by the in-cell toilet, in Kyiv SIZO; four prisoners were being accommodated in a cell of some 7 m², not including the space taken up by the in-cell toilet, at Odessa).

Further, in Kyiv and Odessa SIZOs in particular, the intended occupancy levels (i.e. number of beds/sleeping places per cell) were frequently too high to meet the requirements of the Ukrainian legislation (e.g. 31 beds in a cell of 54 m², including the space taken up by the in-cell toilet in Kyiv; 36 beds in a cell of 76 m² in Odessa). In contrast, the cells seen in the new accommodation building for women at Kyiv were of a reasonable size for their intended occupancy (e.g. double cells of 10 m², without counting the space of some 2 m² taken up by the in-cell sanitary annexe; cells intended for five inmates measuring 30 m², without counting the area taken up by the in-cell sanitary annexe).

b. material conditions

120. The material conditions in the cells of the new block for women at *Kyiv SIZO* made a good impression on the whole and, in many respects, could serve as a model for future reconstructions or renovation. The cells were adequately lit, well-ventilated, suitably equipped and clean. Nevertheless, the in-cell sanitary annexes were only partially partitioned. Further, a number of female prisoners complained that insulation/heating of the building was problematic (with high temperatures in summer and temperatures below 18°C in winter). In the other, older, accommodation blocks, the delegation could observe that the reduction of the prison population had a positive impact in terms of ventilation and hygiene in the cells, although the improvements were still limited. It also noted that ongoing efforts were being made to refurbish a number of cells.¹²⁶ Apart from this, the material conditions were similar to those described in previous visit reports.¹²⁷

¹²⁵ See paragraphs 98 and 99.

¹²⁶ For instance, transit cells were being renovated at the time of the visit (the renovations included the installation of new beds and larger windows).

¹²⁷ See in particular paragraphs 101 to 103 of the report on the 2009 visit (document [CPT/Inf \(2011\) 29](#)).

The delegation noted that at *Dnipropetrovsk SIZO*, metal shutters attached to the cells' windows in blocks Nos. 9 and 10 had been removed following the 2009 visit. Steps were also being taken to pursue gradual renovation works in the cells; most of the accommodation areas were indeed in a poor state of repair, badly ventilated and dirty. Further, in-cell toilets were only partially partitioned.

At *Prison No. 3 in Krivyi Rih*, most of the cells were clean and in an acceptable state of repair. That said, in some of the cells seen by the delegation, prisoners enjoyed only limited access to natural light and ventilation, and cell windows were fitted with frosted glass and additional bars (especially on the first floor). Moreover, as at Dnipropetrovsk, in-cell toilets were only partially screened.

The accommodation blocks of *Odessa SIZO* were generally obsolete and the appalling material conditions seen in the cells some eleven years previously remained virtually unchanged. In spite of all attempts made at local level to maintain buildings that could hardly be brought into conformity with modern accommodation standards, it appears that this establishment has become over the years a "financial sinkhole".

The situation was no better at *Simferopol SIZO*. The conditions in the cells were as miserable as some 13 years previously when the Committee had first visited this establishment. The semi-basement cells located in the establishment's block I clearly offered unacceptable conditions in terms of state of repair, humidity, in-cell lighting and ventilation.

121. The delegation observed that a number of shower facilities had recently been renovated in the establishments visited. Nevertheless, many facilities remained in poor condition (e.g. dilapidation, shower heads missing, etc.). Further, inmates were as a rule entitled to take a shower only once a week.

c. outdoor exercise

122. In all the SIZOs visited, inmates had access to one hour of daily outdoor exercise (two hours for juveniles). Nevertheless, the yards seen by the CPT's delegation were frequently too small for their intended occupancy and for real physical exertion (e.g. 9.5 m² for up to two inmates or 34 m² for up to 12 prisoners in Kyiv). They were also frequently located on the roofs of the accommodation buildings, allowing at best a sky view, as was also the case in the new block for women at Kyiv. Unsurprisingly, many prisoners told the delegation that they preferred not to take outdoor exercise daily as, one of them put it, "yards are just cells without a ceiling".

d. activity programmes

123. The philosophy behind the detention regime applicable to remand prisoners is set out in Section 7 of the Pre-Trial Detention Act. More specifically, the main characteristics of the detention regime are the “isolation” of remand prisoners, their constant supervision and the observance of the segregation rules. Accordingly, the activities which remand prisoners are entitled to consist mainly of watching TV (when a TV set is provided), playing board games, reading books/magazines and having access to religious literature.¹²⁸

Newly adopted Internal Rules on SIZOs¹²⁹ indicate that remand prisoners may have access to general education regardless of their age.¹³⁰ However, if a remand prisoner wishes to work, an authorisation from an investigator or judge should be sought.¹³¹

As regards juveniles, they should be offered opportunities to practise sports and educational activities in appropriate facilities outside their cells.¹³²

124. In the course of the 2013 visit, the delegation found that there was virtually no change as regards the provision of *out-of-cell activities* for remand prisoners. Most remand prisoners were locked up in their cells for 23 hours per day, with little to occupy themselves (e.g. watching TV or reading books). Only a few women on remand were allowed to work (e.g. in Kyiv) and none of the prisoners interviewed were offered any kind of educational activities. As on previous visits, the only exception concerned juveniles on remand, who had access to some schooling, association and sports activities during weekdays.

e. contact with the outside world

125. The CPT notes that the Pre-Trial Detention Act was amended in order to improve remand prisoners’ contact with the outside world. Section 12 of the Act, as amended in 2012, provides that remand prisoners may benefit from at least three visits of one to four hours per month. However, such visits can only take place on the basis of a written authorisation from the investigator or court. It should be recalled that similar authorisation must also be obtained as regards correspondence.¹³³ Further, as in the past, phone calls are still not allowed by law.

It emerged during the 2013 visit that the above amendment brought little progress in practice. Investigators/judges rarely authorised visits (or the possibility to send letters). Further, many inmates with whom the delegation spoke considered that they were not allowed contacts with the outside world in retaliation for their refusal to make self-incriminating statements or provide other information to investigators. As regards the small number of remand prisoners authorised to receive visits, they were as a rule not allowed physical contact with their visitors.

¹²⁸ Section 9 of the Act.

¹²⁹ Adopted on 18 March 2013 by Order No. 460/5 of the Ministry of Justice.

¹³⁰ Section VIII.1.4. of the Internal Rules on SIZOs.

¹³¹ Section 16 of the Act and Section IX.1.1. of the Internal Rules on SIZOs.

¹³² Section VIII.2.3 and VIII.2.4. of the Internal Rules on SIZOs.

¹³³ See Section 13 of the Act and Section VII.3.1. of the Internal Rules on SIZOs.

f. conclusions

126. The delegation's findings during the 2013 visit clearly indicate that the adoption/entry into force of the new CCP and other recent measures had contributed to the eradication of massive, severe, overcrowding in the establishments visited. The Ukrainian authorities should be commended for this.¹³⁴ However, overcrowding remains an issue for many inmates who still enjoy an extremely limited amount of living space (i.e. far lower than 4 m² per inmate) in cells which were often found to be in a poor condition. In addition, the bulk of remand prisoners were confined to such cells for at least 23 hours a day, with no meaningful out-of-cell activities on offer and little incentive to take daily outdoor exercise. In addition, few of them had opportunities to maintain contacts with their relatives. This situation was aggravated for a number of prisoners who were still being held in such a situation for several years under the former CCP. In short, the cumulative effect of these conditions and restrictions could well be considered, for many inmates, as a form of inhuman and degrading treatment.

127. In the light of the above remarks, **the CPT recommends that, whilst implementing the recommendations already made in paragraphs 99 to 102, the Ukrainian authorities take further action to:**

- **redouble their efforts in the SIZOs visited to meet the objective of offering at least 4 m² of living space per inmate in multi-occupancy cells and of placing no more than one inmate in cells measuring 6 m² (not counting the area taken up by the in-cell toilets),¹³⁵ in particular by distributing prisoners more evenly amongst the available accommodation, reducing intended capacity levels in the cells in compliance with national standards and reviewing the official capacities of the establishments in question accordingly;**
- **seriously consider the building of a new SIZO in Odessa whilst pursuing their attempts to improve the state of repair of the cells in the accommodation buildings;**
- **withdraw from service, at Simferopol SIZO, the semi-basement cells located in block I and initiate as soon as possible extensive renovation and reconstruction of the establishment;**
- **pursue their refurbishment/reconstruction programmes in older accommodation buildings of Kyiv and Dnipropetrovsk SIZOs;**
- **improve access to natural light and ventilation in the cells concerned at Prison No. 3 in Krivyi Rih, in particular on the establishment's first floor, and review the design of the windows so as to allow inmates to see outside their cells;**
- **ensure, when implementing refurbishment/(re)construction programmes, that in-cell toilets/sanitary annexes are fully partitioned (i.e. up to the ceiling);**

¹³⁴ See, in this connection, paragraph 98.

¹³⁵ In this connection, it should be reminded that any single cells measuring less than 6 m² should be either enlarged or withdrawn from service.

- consider the possibility of increasing the frequency of prisoners' access to a shower in the establishments visited, as well as in any other penitentiary establishments, taking into consideration Rule 19.4 of the European Prison Rules;¹³⁶
- ensure that prisoners have the possibility of genuine physical exertion every day; this will require enlarging the exercise yards. Whenever possible, the current yards located on the roofs of the accommodation blocks should be replaced by outdoor exercise facilities located at ground level;
- review the regime for remand prisoners taking into account the remarks made in paragraph 102. In this connection, steps should be taken to ensure that, when designing and constructing new SIZOs/accommodation blocks for remand prisoners, provision is made for proper outdoor exercise at ground level, association with prisoners from other cells, work, education and other meaningful activities. As regards juveniles, the objective of activity programmes should be to ensure that they spend at least eight hours a day outside their cells, as provided for by the European Rules for juvenile offenders subject to sanctions or measures;¹³⁷
- amend the current legislation to ensure that remand prisoners are as a rule entitled to receive visits, make/receive phone calls and send/receive letters. Any restriction/prohibition placed on them as regards visits, phone calls or correspondence must be specifically substantiated by the needs of the investigation, always require the approval of a judicial authority, and be applied for a specified period of time, with reasons stated.¹³⁸ In the meantime, investigators and judges should be reminded that the starting point for considering requests for visits and for sending letters must be the presumption of innocence and the principle that remand prisoners should be subject to no more restrictions than are strictly necessary for the interests of justice and that, unless there are clearly defined reasons for not allowing visits/correspondence or for imposing certain restrictions (e.g. organisation of visits through a partition) for a specified period in an individual case, remand prisoners should be authorised to receive at least three visits of up to four hours a month, and send/receive letters, as provided for by the law.

The CPT also invites the Ukrainian authorities to verify the insulation and the proper operation of the heating system in the new accommodation building for women at Kyiv SIZO.

¹³⁶ Rule 19.4 of the Recommendation Rec (2006) 2 of the Committee of Ministers of the Council of Europe on the European Prison Rules, adopted on 11 January 2006, states: "Adequate facilities shall be provided so that every prisoner may have a bath or shower, at a temperature suitable to the climate, if possible daily but at least twice a week (or more frequently if necessary) in the interest of general hygiene."

¹³⁷ See Rule 80.1. of the Recommendation of the Committee of Ministers of the Council of Europe [CM/Rec \(2008\) 11](#) adopted on 5 November 2008.

¹³⁸ See, in this connection, Rule 99 of the European Prison Rules.

4. Sentenced prisoners held in special conditions of high security or control at Closed-Type Prison No. 3 in Krivyi Rih

128. At the time of the visit, Prison No. 3 in Krivyi Rih was accommodating 28 inmates subjected to a strict cellular regime on account of the gravity of their sentences (the so-called “*tyurma*” regime). Further, as the delegation was informed by the establishment’s Director, it was envisaged that Prison No. 3 would soon begin accommodating prisoners segregated because of their negative attitude in a so-called maximum security unit (“SMRB”),¹³⁹ with a capacity of 30 places; however, no such inmates were (yet) present in the prison during the delegation’s visit.

129. Concerning the placement and review procedures for the above-mentioned categories of prisoner, there had been no noteworthy changes since the 2009 periodic and the 2012 *ad hoc* visits; reference is thus made to the description of the procedures in question set out in the reports concerning those visits.¹⁴⁰ In particular, it remained the case that the margin of manoeuvre of the penitentiary authorities was unduly restricted by law. Several categories of inmate were automatically held in conditions of high security and placed on segregation for a prolonged period following a court sentence, on the sole basis of their crimes.

The CPT must once again recall its position of principle that decisions concerning the security level to be applied to a given prisoner as well as the measure of segregation for preventative purposes should not be pronounced – or imposed at the discretion of the court – as part of the sentence. The decision whether or not to impose a particular security level or whether segregation for preventative purposes is necessary should lie with the penitentiary authorities, on the basis of an individual risk assessment, and should not be part of the catalogue of criminal sanctions. **The Committee calls upon the Ukrainian authorities to amend the relevant legal provisions accordingly.**

Further, the information gathered by the delegation during the visit¹⁴¹ suggested that the procedure for the placement on “*tyurma*” regime (and for its possible renewal) continued to display several important lacunas; in particular, there was no systematic oral hearing (specifically on the subject of the placement) before the imposition of the measure, and the prisoners concerned were not informed in a sufficiently detailed manner of the reasons behind the decision,¹⁴² which negatively influenced the exercise of their right to appeal¹⁴³. **The CPT recommends that steps be taken to remedy these deficiencies, if necessary through amending the relevant procedural provisions.**

¹³⁹ “Сектор максимального рівня безпеки” in Ukrainian.

¹⁴⁰ See paragraphs 95 and 96 of the report on the 2009 visit ([CPT/Inf\(2011\)29](#)), as well as paragraph 55 of the report on the 2012 visit ([CPT/Inf\(2013\)23](#)).

¹⁴¹ Based on interviews with prisoners on “*tyurma*” regime, conversations with the management and staff of Prison No. 3 in Krivyi Rih, and consultation of the relevant documentation.

¹⁴² Naturally, the CPT understands that there might be reasonable justification for withholding from the prisoner specific details related to security.

¹⁴³ On a positive note, prisoners were provided with a written copy of the relevant decision, which also contained information on the means available to them to challenge the decision before a court.

130. The CPT's delegation noted that efforts were being made at Prison No. 3 in Krivyi Rih to offer prisoners held in special conditions of high security or control acceptable material conditions of detention.

The “*tyurma*” unit (with an official capacity of 80), located on the 4th floor of the main accommodation block, had been recently refurbished. The cells were generally adequately equipped (with bunk beds with full bedding, a table, benches and central heating) and clean. However, the in-cell sanitary annexes were only partially screened and access to natural light, artificial lighting and ventilation were a problem in some of the cells. More importantly, the intended occupancy levels in the cells were too high.¹⁴⁴

The SMRB cells were located on the – likewise recently refurbished – 5th floor of the main accommodation block.¹⁴⁵ Conditions in these cells were comparable with those in the “*tyurma*” unit, but the cells were furnished in a manner offering much more (and generally adequate) living space per prisoner.¹⁴⁶

The CPT encourages the Ukrainian authorities to pursue their efforts to improve material conditions in the “*tyurma*” and SMRB units of Prison No. 3 in Krivyi Rih, paying particular attention to access to natural light, artificial lighting and ventilation. In-cell sanitary annexes should all be equipped with a full partition (i.e. up to the ceiling). Further, steps must be taken to reduce the intended occupancy levels in the “*tyurma*” cells, following the example of the SMRB cells.

Prisoners had access to a clean and recently renovated shower facility, albeit only once per week (see, in this connection, the relevant recommendation made in paragraph 127).

131. Turning to the regime of activities, the CPT is concerned to note that, similar to the situation observed during the 2009 periodic visit,¹⁴⁷ prisoners held in the “*tyurma*” unit were locked up in their cells for 23 hours a day,¹⁴⁸ save for one hour of outdoor exercise taken in small and oppressive yards.¹⁴⁹ With the exception of the possibility (offered to just a few of the inmates) to follow distance-learning courses, their only occupation consisted of reading books/magazines, watching TV or playing board games inside their cells.

¹⁴⁴ E.g. four beds in a cell measuring some 10 m²; eight beds in a cell measuring approximately 20 m²; 22 beds in a cell measuring some 55 m².

¹⁴⁵ The other half of the 5th floor was occupied by the unit for prisoners sentenced to life imprisonment, see paragraphs 133 to 139.

¹⁴⁶ E.g. cells measuring some 10 m² were equipped with two beds each; those measuring some 20 m² contained four or five beds each; and the 48 m² cells had eight beds each.

¹⁴⁷ See paragraph 98 of the report on the 2009 visit (CPT/Inf (2011) 29).

¹⁴⁸ The delegation was informed that this would be the case for any prisoners to be placed in the SMRB unit in the future.

¹⁴⁹ Located on the roof of the main accommodation building and covered with additional roofing, severely restricting the view of the sky.

As already stressed in the past, the Committee considers that the paucity of the above-described regime of activities is not a suitable way to respond to problematic behaviour in prison, to allow safe progress towards release and to reduce the risk of re-offending after release. It is crucial that the prisoners concerned are provided with tailored activity programmes and enjoy a relatively relaxed regime within the confines of their detention units.

The CPT reiterates its recommendation that a programme of purposeful activities of a varied nature (including work, education, association and targeted rehabilitation programmes) be offered to prisoners held in special conditions of high security or control. This programme should be drawn up and reviewed on the basis of an individualised needs/risk assessment by a multi-disciplinary team (involving, for example, a qualified psychologist and an educator), in consultation with the inmates concerned.

In this context, the delegation was informed by the Director of Prison No. 3 in Krivyi Rih that there were plans to provide prisoners on “*tyurma*” regime with some work opportunities (i.e. sealing paper bags inside their cells) as soon as the current refurbishment work was completed. **The Committee would like to receive more details of these plans and of their implementation.**

Reference is also made here to the recommendations in paragraph 127 as regards the exercise yards.

132. Regarding contact with the outside world, it remained the case that prisoners held in special conditions of high security or control had the same entitlements as the mainstream prison population,¹⁵⁰ which is positive.

That said, the short-term visiting facilities at Prison No. 3 in Krivyi Rih were inadequate (small booths – insufficient in number – allowing no physical contact between inmates and visitors). **The CPT recommends that the Ukrainian authorities modify the facilities for short-term visits at Prison No. 3 in order to enable prisoners to receive visits under reasonably open conditions. Open visiting arrangements should be the rule and closed ones the exception, such exceptions being based on well-founded and reasoned decisions following individual assessment of the potential risk posed by a particular prisoner. Further, the capacity of the short-term visiting facilities should be increased.**

As for access to a telephone, several inmates from the “*tyurma*” unit complained about long waiting times (one to two weeks), apparently due to the insufficient number of available payphones. **The Committee invites the Ukrainian authorities to remedy this problem.**

¹⁵⁰ I.e. one short-term visit per month and four long-term visits per year, as well as unlimited access to the telephone and correspondence.

5. Prisoners facing/sentenced to life imprisonment

133. All penitentiary establishments visited in 2013 were holding a number of prisoners facing/sentenced to life imprisonment. There were 33 inmates falling under this category at Kyiv SIZO, seven at Dnipropetrovsk, 15 in Odessa and nine at Simferopol, as well as 28 at Prison No. 3 in Krivyi Rih.

134. The material conditions in the cells were generally acceptable in the establishments visited.

That said, cells were often too small for their intended occupancy. For instance, at Kyiv SIZO, cells of some 9 m² were intended for up to three inmates. **The CPT considers that, in view of their size, it would be far preferable to use such cells for single occupancy, on the assumption that the prisoners concerned can interact with each other.**

Further, prisoners could generally not see outside their cells as opaque shutters were attached to windows and/or windows were fitted with frosted glass.

135. The Committee is very concerned by the lack of progress in respect of virtually all the other aspects of the situation of this category of inmate. They continued to be confined to their cells for at least 23 hours a day without being offered any programmes of activities worthy of the name. The situation was aggravated at Dnipropetrovsk, where the prisoners in question were held in conditions akin to solitary confinement.

136. Prisoners facing/sentenced to life imprisonment all remained subjected to grossly excessive security arrangements. They were systematically handcuffed whenever they were taken outside their cells, accompanied by escort staff and a member of the dog-support unit and a guard dog, which was generally unmuzzled. They were as a rule kept in handcuffs during medical examinations, which routinely took place in the presence of escort staff.

It is also of concern to note that, whilst in their cells, these inmates continued to be systematically placed under constant video-surveillance. Naturally, the CPT fully understands that the installation of CCTV cameras may be an important additional means to ensure security in common detention areas (corridors, sports rooms, etc.), special cells (e.g. special observation cells, disciplinary cells) and exercise yards. This is, however, a significant intrusion into the privacy of prisoners when such cameras are installed in their own cells, in particular when the inmates remain there for prolonged periods. Accordingly, the Committee reiterates that it is opposed to the routine installation of CCTV cameras in cells and considers that the resources devoted to such schemes can more usefully be deployed by having staff interact with the prisoners concerned. More generally, reference should be made to paragraph 18 of Recommendation Rec (2003) 23 of the Committee of Ministers of the Council of Europe on the management by prison administrations of life sentence and other long-term prisoners, which makes it clear that technical means cannot be a substitute for dynamic security.¹⁵¹

¹⁵¹ Paragraph 18.b. of the Committee of Ministers' [Recommendation](#), adopted on 9 October 2003, reads as follows: "Where technical devices, such as alarms and CCTV, are used, these should always be an adjunct to dynamic security methods."

137. Contact with the outside world, in particular visiting entitlements, remained unduly restricted. The inmates concerned were still not entitled to long visits and their three-monthly short visits could only take place in booths through a glass partition.

138. As regards systematic segregation of prisoners facing/sentenced to a life sentence, the CPT's delegation was informed that, following a recent legislative amendment,¹⁵² life-sentenced prisoners should not be segregated from other inmates once they have served 20 years of their sentence. However, the Committee regrets that the rule remains that inmates facing/sentenced to life imprisonment must be systematically segregated. The law still offers too little margin of manoeuvre to the penitentiary authorities.

139. The CPT must insist once more on the need to put into place a comprehensive and ongoing risk and needs assessment for each and every prisoner facing/sentenced to life imprisonment from the very outset of their detention in penitentiary establishments. For all inmates falling under this category to be held in the above conditions is clearly unacceptable and, as regards in particular prisoners facing life imprisonment at Dnipropetrovsk SIZO, could well amount to inhuman and degrading treatment.

The CPT calls upon the Ukrainian authorities to review once more the legislation and practice as regards prisoners facing/sentenced to life imprisonment, in the light of the above remarks and of the recommendations made by the Committee in its previous visit reports.¹⁵³

140. More generally, it should be mentioned that life-sentenced prisoners are entitled to conditional release only after their life sentence has been commuted by presidential pardon to a fixed-term sentence of no less than 25 years.¹⁵⁴ The CPT must recall the basic principle that, in order to reduce the harmful effects of imprisonment and to promote the resettlement of prisoners under conditions that seek to guarantee safety of the outside community, the law should make conditional release available to all sentenced prisoners, including life-sentence prisoners.¹⁵⁵ **The Committee would like to receive the remarks of the Ukrainian authorities on this matter.**

¹⁵² See Section 150 (2) of the Criminal Executive Code, as amended by Law No. 435-VII of 5 September 2013.

¹⁵³ See, in particular, paragraphs 89 to 93 of the report on the 2009 visit (document [CPT/Inf \(2011\) 29](#)) and paragraphs 45 to 54 of the report on the 2012 visit (document [CPT/Inf \(2013\) 23](#)). See also the recommendation made in paragraph 102 as regards programmes of activities.

¹⁵⁴ See in particular Section 87 of the Criminal Code.

¹⁵⁵ See Recommendation Rec (2003) 22 of the Committee of Ministers on conditional release (parole) of 24 September 2003. See, in this connection, the judgement of 9 July 2013 of the Grand Chamber of the European Court of Human Rights in the case of *Vinter and others v. United Kingdom*.

6. Health care

a. introduction

141. In the course of the 2013 periodic visit, the CPT's delegation was informed by senior officials from the Ministry of Justice that, due to the significant recent decrease in the prison population,¹⁵⁶ inmates' access to health-care services had significantly improved. Further, thanks to better co-operation with the Ministry of Health ensured by means of a Joint Order issued by the Ministers of Health and Justice in February 2012,¹⁵⁷ it had become easier to secure prisoners' access to external medical specialists and hospitalisation in establishments under the responsibility of the Ministry of Health. Recent amendments in the Internal Rules on SIZOs made clear that prisoners have the right to receive specialist treatment (in addition to that provided free of charge by the penitentiary health-care services) at their own cost.

The delegation was also informed of plans to reorganise the prison health-care system so as to reinforce its autonomy vis-à-vis the penitentiary administration and increase guarantees of professional independence of prison health-care staff.¹⁵⁸ In addition, two draft agreements with the Ministry of Health were being prepared in order to reinforce the latter Ministry's role in supervising standards of care and ensuring adequate professional training for prison health-care personnel.

142. In the light of its delegation's findings during the 2013 visit, the CPT can only welcome these steps. Indeed, the provision of health care to inmates in Ukraine remains problematic, mainly due to the shortage of staff, facilities and resources. During the visit, the Committee's delegation again heard numerous complaints from prisoners in all the establishments visited concerning delays in access to doctors (in particular specialists), lack of medication, and the inadequate quality of care.

The Committee calls upon the Ukrainian authorities to step up their efforts to ensure optimal health-care services for prisoners; in this context, a greater involvement of the Ministry of Health will no doubt contribute to the implementation of the general principle of the equivalence of health care with that in the outside community. The CPT wishes to be kept informed of the progress in the implementation of the various plans and measures referred to above.

¹⁵⁶ See paragraph 98.

¹⁵⁷ Order No. 239/5/104, dated 10 February 2012.

¹⁵⁸ The reform would reportedly consist of setting up a centralised prison health-care service, administratively independent from the State Penitentiary Service.

b. staff and facilities

143. The health-care service of Kyiv SIZO comprised, in theory, 42 full-time posts (18 uniformed and 24 civilian); however, 12.5 of those posts were officially vacant (including four for uniformed and 8.5 for civilian personnel).¹⁵⁹ In practice, the task of caring for the health needs of 2,618 inmates (including several dozens of patients in the medical unit) that the establishment was accommodating at the time of the delegation's visit rested on the shoulders of 12 doctors¹⁶⁰ (who, however, jointly occupied the equivalent of 8.6 full-time posts) and 11 feldshers, working on the equivalent of four full-time posts. There was also a nurse, an X-ray technician, a laboratory technician, a pharmaceutical technician and two "disinfectors".

Dnipropetrovsk SIZO (with a population of 1,777 at the time of the visit) employed 32 members of health-care staff, including at least two full-time general practitioners, a full-time gynaecologist and a full-time dentist,¹⁶¹ as well as a number of feldshers and technicians.¹⁶²

Health-care staff worked from 8 a.m. to 4 or 5 p.m. every weekday, with one of the doctors always staying on until 7 p.m. On weekends and holidays, one doctor and one feldsher were present between 8 a.m. and 7 p.m. Further, one feldsher was on duty in the SIZO at night (ensuring 24-hour health-care cover).

The health-care staff complement of Odessa SIZO¹⁶³ consisted of 13 doctors¹⁶⁴, seven full-time feldshers, three full-time nurses and three full-time technicians (an X-ray technician and two "disinfectors"); four posts were vacant¹⁶⁵. All health-care staff worked from 8 a.m. to 5 p.m. from Monday to Friday, except for six of the feldshers who worked in 24-hour shifts (weekends and holidays included).

¹⁵⁹ In particular, the posts of gynaecologist and psychiatrist were vacant. See also paragraph 162.

¹⁶⁰ Including the Head Doctor (a TB specialist by training); one full-time and one part-time (50%) specialist in internal medicine; a surgeon; an infectious diseases specialist; one full-time and one part-time (50%) TB specialist; one radiologist; one laboratory specialist; two part-time specialists (a neurologist and an endocrinologist), both working on a 25% basis; as well as one full-time dentist and another one employed on a 10% basis. In addition, two full-time doctors (a specialist in internal medicine and a dermato-venerologist) were on long-term (maternity) leave.

¹⁶¹ That said, the register of dental consultations contained no entries between 17 August 2010 and 11 July 2013, and it was clear that even after the latter date dental services were not available every working day.

¹⁶² In the absence of the Head Doctor (on leave), the general practitioner with whom the delegation's doctor spoke was not in a position to provide more detailed information about the health-care staffing complement at Dnipropetrovsk SIZO.

¹⁶³ As already mentioned, Odessa SIZO was holding 1,231 inmates at the time of the visit (including approximately 70 patients in the establishment's medical unit).

¹⁶⁴ Including 11 working full time (two general practitioners; two specialists in infectious diseases; one surgeon; two TB specialists; one dentist; one radiologist; one pharmacist and one laboratory specialist) and two on a part-time basis (50%), i.e. a psychiatrist and a drug addiction specialist – "narcologist").

¹⁶⁵ I.e. the posts of Head Doctor, general practitioner and two feldshers.

As for Simferopol SIZO (population 1,161 at the time of the visit), the health-care service was staffed with six full-time doctors,¹⁶⁶ two half-time specialists (a dentist¹⁶⁷ and a psychiatrist), and several feldshers/nurses.¹⁶⁸ One medical doctor and one feldsher were present in the establishment around the clock.

The health-care service of Prison No. 3 in Krivyi Rih¹⁶⁹ employed eight doctors¹⁷⁰ occupying the equivalent of 7.25 full-time posts; in addition, two doctors' posts were vacant at the time of the visit: those of gynaecologist and endocrinologist.¹⁷¹ Further, there were four full-time feldshers, one full-time and one part-time (50%) nurse,¹⁷² two technicians (laboratory and X-ray) and a "disinfector". The doctors worked from 8 a.m. to 5 p.m. on weekdays (there was no doctor on weekends and holidays), but 24/7 cover was ensured by the feldshers (with one of them always present in the establishment).

144. To sum up, the health-care staffing resources in the penitentiary establishments visited were generally not sufficient to adequately meet the needs of their respective prisoner populations, especially as regards the number of feldshers and nurses. This situation very much contributed to delays in access to health care and to numerous complaints from prisoners concerning its quality.¹⁷³ Further, several vacancies (in particular, as regards medical specialists) additionally restricted prisoners' access to certain treatments.

The CPT recommends that the Ukrainian authorities take active steps to remedy this situation, in particular by:

- **filling, as a matter of priority, all the vacant doctors' posts at Kyiv and Odessa SIZOs, as well as at Prison No. 3 in Krivyi Rih; and**
- **significantly reinforcing the health-care staff teams with additional feldshers and/or nurses, in particular at Kyiv and Odessa SIZOs as well as at Prison No. 3 in Krivyi Rih.**

Regarding the difficulty in recruiting health-care professionals to work in prisons, the CPT's delegation was informed at the outset of the visit that this was, at least to a large extent, due to unattractive salaries in the prison system,¹⁷⁴ as compared with those in the outside community and, in particular, to the relatively poor working conditions and the challenging nature of the job as compared with that in outside hospitals. **The Committee invites the Ukrainian authorities to strive to render employment in penitentiary health-care services more attractive, including financially.**

¹⁶⁶ The Head Doctor (a specialist in health-care administration); two general practitioners; a TB specialist; a dermato-venerologist and a radiologist.

¹⁶⁷ Present three times per week.

¹⁶⁸ The delegation was not in a position to receive information on the exact number of feldshers/nurses working in the establishment.

¹⁶⁹ With 593 inmates present on the first day of the delegation's visit.

¹⁷⁰ Including six working full time (Head Doctor, general practitioner, dermato-venerologist, psychiatrist, dentist and pharmacist), as well as a part-time (50%) radiologist and a TB specialist employed on a 75% basis.

¹⁷¹ An external consultant gynaecologist visited the establishment once a month, and a consultant endocrinologist could be invited in case of need.

¹⁷² However, the full-time nurse was on maternity leave and the part-time (50%) nurse assisted the TB specialist exclusively.

¹⁷³ See paragraph 142.

¹⁷⁴ Reportedly, monthly salaries ranged from 2,000 UAH for a nurse to 3,200 UAH for a medical specialist.

145. In several of the establishments visited, the CPT's delegation heard allegations that (save in life-threatening emergencies) prisoners were offered access to specialist care only when they or their families paid for such treatment. **The Committee would like to receive the remarks of the Ukrainian authorities on these allegations.**

146. As regards the facilities and equipment of the health-care services in the establishments visited, these could be considered on the whole acceptable at Prison No. 3 in Kriviy Rih¹⁷⁵ and at Dnipropetrovsk SIZO¹⁷⁶.

Unfortunately, the same could not be said of the other establishments visited, where the health-care units were located in old and dilapidated buildings/premises, which were poorly ventilated and heated. The delegation was particularly struck by the conditions in the in-patient unit at Odessa SIZO:¹⁷⁷ despite ongoing maintenance efforts, the structural faults of the building (lack of ground insulation, poorly designed water supply and sewage system, inefficient ventilation) rendered all efforts to provide acceptable conditions futile.

As for the equipment, it was very basic but in working order at the Kyiv and Simferopol SIZOs, though in the former establishment the delegation was concerned to observe traces of a recent fire (reportedly the result of faulty wiring) in the room used to develop X-ray film.

The CPT recommends that continuous efforts be made to improve the premises and equipment of health-care services of the penitentiary establishments visited, in the light of the above remarks.

147. Concerning, in particular, Odessa SIZO, the Head Doctor informed the delegation of the existence of a project to build a new health-care facility for the establishment. The relevant blueprints had apparently been prepared in 2012 and approved by the regional prison administration in the beginning of 2013; however, the start of construction was reportedly being delayed by lack of available funds. **The Committee would like to receive more details of these plans and their implementation.**

148. Specific mention should be made here of the dental equipment/treatment in the penitentiary establishments visited. While most of these had recently been provided with modern dental chairs, the delegation noted that other essential equipment (including for sterilisation) was often incomplete, obsolete and in a poor state of repair.¹⁷⁸ This was, *inter alia*, the case at the Kyiv and Simferopol SIZOs.

¹⁷⁵ Where the premises of the health-care unit were spacious, bright and in a good state of repair. The most important medical equipment (e.g. X-ray machine, EEG, glucometer, etc.), although old, was in a working order. The establishment also possessed a medical laboratory where basic analyses could be performed (sputum, urine, blood sugar and blood count).

¹⁷⁶ The premises and the equipment were comparable with those described above as regards Prison No. 3 – but in addition there was a modern and well-equipped room for gynaecological examinations.

¹⁷⁷ With the capacity of 70 places and comprising two wards: a TB ward with 33 beds on the ground level (see also paragraph 159) and an internal diseases ward on the upper floor with 37 beds (which was accommodating 32 patients at the time of the visit, including some with psychiatric disorders).

¹⁷⁸ One positive exception was observed at Dnipropetrovsk SIZO, where the dental surgery was clean, in a good state of repair and equipped not only with a modern dental chair but also numerous (clean and new) instruments and a recently-built sterilisation machine.

In this context, it was hardly surprising that the dental treatment offered to prisoners was generally limited to emergencies (in particular extractions); other forms of (conservative) dental treatment (e.g. fillings) were usually not available, or prisoners were expected to pay for such treatments.

The CPT recommends that steps be taken to improve the access to and the standard of dental care in the penitentiary establishments visited (and in particular at the Kyiv and Simferopol SIZOs); inmates in all the establishments should have access to more than just emergency dental treatment.

149. At Dnipropetrovsk SIZO and at Prison No. 3 in Kriviy Rih, the delegation noted that some of the medical examination rooms were fitted with barred areas, which could be used to separate prisoners from health-care staff during various medical procedures (consultations, examinations, tests – including taking blood samples – administering injections and applying intravenous infusions). The above-mentioned areas were, in particular, systematically used in respect of certain categories of prisoners (those sentenced to life imprisonment or awaiting such a sentence, prisoners held in special conditions of high security or control, etc.).

The CPT has already stressed in the past that such an approach could be considered as degrading for both prisoners and the health-care staff concerned. The Committee recognises that special security measures might be called for in specific cases; however, the systematic placing of prisoners in barred areas when undergoing certain medical procedures (such as referred to above) is clearly unjustified. **The CPT calls upon the Ukrainian authorities to put an end to this practice.**

150. Regarding the medication for prisoners, the delegation inspected the pharmacies in the penitentiary establishments visited and noted that all of them were stocked with the necessary basic medication, which was available to the inmates free of charge.¹⁷⁹

That said, it became clear that a lot of the medication, in particular newer-generation and/or foreign-produced drugs prescribed by specialists, had to be purchased by prisoners and/or their families.¹⁸⁰ **The CPT recommends that the Ukrainian authorities strive to ensure that all the medication needed by the penitentiary establishments is supplied by the State in sufficient quantity.**

¹⁷⁹ The annual budget for medication in the SIZOs (excluding TB drugs and anti-retroviral medication) varied from 100,000 UAH (in Kyiv and Odessa) to 120,000 UAH (in Simferopol).

¹⁸⁰ This was a lawful procedure, officialised, *inter alia*, by Order No. 239/5/104 referred to in footnote 157.

151. In all the establishments visited, the delegation observed that the various medical records and other medical documentation were generally poorly kept, with very succinct, missing and/or incoherent information; this was particularly the case at Simferopol SIZO.¹⁸¹ **The CPT recommends that steps be taken to improve the quality of medical records and other medical documentation in all the penitentiary establishments visited, and in particular in Simferopol SIZO.**¹⁸²

The delegation also observed that the confidentiality of medical consultations and of the medical documentation was not always respected; for example, feldshers at Dnipropetrovsk SIZO routinely discussed health-related issues with inmates in the presence of custodial staff.¹⁸³ Further, at Prison No. 3 in Krivyi Rih, medical records and other documentation (as well as the medication) were routinely handled by prisoner orderlies. **The Committee recommends that steps be taken in all the penitentiary establishments visited (and, in particular, at Dnipropetrovsk SIZO and at Prison No. 3 in Krivyi Rih) to ensure that the confidentiality of medical consultations and of medical documentation is always duly respected.**

As regards, more specifically, the role of prisoner orderlies at Prison No. 3, the CPT is of the view that the tasks of health-care staff should not be delegated to prisoners, but should be performed by suitable personnel. **The Committee recommends that the Ukrainian authorities put an end to the practice of using prisoners in health-care units as medical orderlies.**

- c. the role of prison health-care services in the prevention of ill-treatment and in the documenting and reporting of injuries observed on admission or after a violent episode in prison¹⁸⁴

152. The CPT has repeatedly stressed in the past¹⁸⁵ that health-care staff working in penitentiary establishments can make an important contribution to the prevention of ill-treatment prior to and during imprisonment, notably through a thorough examination of prisoners, methodical recording of injuries and the provision of information to the relevant authorities.

As already mentioned in the report on the 2012 ad hoc visit,¹⁸⁶ instructions issued by the Minister of Justice in 2012¹⁸⁷ oblige prison health-care staff, whenever an inmate displays injuries upon examination, to draw up a report containing a detailed description of the injuries in question, including their size and location; the prisoner should be given a copy of the report. In addition, the fact that injuries have been observed should be communicated to the competent prosecutor in writing within 24 hours and should be recorded in a special register.

¹⁸¹ Where the delegation's doctor found numerous examples of a very superficial and negligent keeping of medical records (e.g. a complete lack of description of injuries and health complaints – or just a mention “no complaints” – in respect of prisoners who obviously suffered from serious medical conditions and had visible infected wounds).

¹⁸² See also the recommendation in paragraph 154.

¹⁸³ See also paragraph 153.

¹⁸⁴ See also paragraphs 60 to 64.

¹⁸⁵ Most recently in the report on its 2012 ad hoc visit, see paragraphs 28-30 of the report on the 2012 visit ([CPT/Inf \(2013\) 23](#)).

¹⁸⁶ See paragraph 28 of the above-mentioned report.

¹⁸⁷ Order No. 710/5/343 of 10 May 2012.

153. Unfortunately, the observations made by the CPT's delegation during the 2013 periodic visit suggested that the practice in penitentiary establishments visited remained far from the requirements of the above-mentioned Order (and from the Committee's long-standing recommendations).

First, the confidentiality of medical examinations and medical documentation (in the context of screening for injuries) was still generally not respected: such examinations systematically took place in the presence of non-medical custodial staff and – usually – of the escorting law enforcement officials (in the case of prisoners brought/returned from law enforcement establishments).

As for the documentation, the delegation again noted that sensitive data contained in that documentation (including any possible statements by inmates as to the origin of their injuries) was accessible to staff with no health-care duties.

Second, injuries observed on newly-arrived prisoners (or inside penitentiary establishments, after any type of violent episode) were still not systematically recorded.¹⁸⁸

¹⁸⁸ E.g. at Simferopol SIZO, there were only three entries in the register of traumatic injuries observed on arrival, over a period of almost 18 months. A similar register at Dnipropetrovsk SIZO contained no entries in the period between 29 August and 14 October 2013. At Prison No. 3 in Krivyi Rih, the delegation observed several visible injuries on prisoners, which were fully consistent with the allegations of ill-treatment (see paragraph 113) and apparently not “detected” during the daily morning rounds by health-care staff (and, consequently, not recorded anywhere). In one such case (of an inmate who alleged having been repeatedly punched and kicked by fellow inmates on 13 October 2013), the delegation's doctor (expert in forensic medicine) described the following injuries after having examined the prisoner concerned on 18 October 2013: “In the right fronto-parieto-temporal region, a violet greenish hematoma measuring approximately 20 x 18 mm, and the scalp tissue tender on pressure. On the external angle of the right eye opening, involving the outer third of the upper eyelid and eyebrow, extending temporally, and slightly to the right of the zygomatic region, a hematoma measuring approximately 40 x 28 mm, centrally violet greenish in colour (and yellowish towards the periphery). Over the left shoulder and brachial region, on the anterior aspect of the left brachial region, in its middle part, a hematoma (irregular in shape, violet greenish centrally and yellowish towards the periphery) measuring approximately 40 x 40 mm. In the lateral part of the right lumbar region, a hematoma (irregular in shape, violet greenish centrally and yellowish towards the periphery) measuring approximately 70 x 80 mm. On the lateral abdominal wall, on left side, a circular pale yellowish hematoma, approximately 30 mm in diameter. On the upper part of left gluteal region, extending towards left hip, over larger area, a violet greenish hematoma with yellowish, blurred border approximately 150 x 60 mm in size. In the region of lateral malleolus of the left lower leg, several small violet and pale hematomas, measuring up to 1,3 cm in diameter. Soft tissues of lateral malleolar region swollen and tender. On the lateral aspect of the left heel, extending towards toes of left foot, a violet hematoma measuring approximately 60 x 23 mm. Multiple abrasions on the anterior aspect of the left knee, and on the anterior aspect of the left lower leg in its upper and lower thirds”. These multiple visible injuries were consistent with the inmate's allegation of deliberate infliction of blows several days prior to the examination by the delegation's doctor.

Third, whenever already recorded, the descriptions of injuries were often very superficial,¹⁸⁹ on occasion inaccurate or even deliberately misleading.¹⁹⁰ As a rule, no mention was made of explanations by prisoners of the circumstances in which their injuries had been sustained,¹⁹¹ and health-care professionals did not attempt to make any form of observations as to the consistency between statements made by detained persons and medical findings. This was the case even when statements made were manifestly inconsistent with the injuries observed (e.g. an affirmation made by the detained persons that injuries were “old” when in fact they were evidently fresh). In short, the medical records seen in the penitentiary establishments visited (which at times included hospital injury forms) were to a great extent unreliable and insufficient for forensic purposes.

154. As concerns, more specifically, the procedure of medical examination on admission to a penitentiary establishment (whether for the first time or upon return from a law enforcement agency), the delegation found that health-care staff frequently examined prisoners at the very moment of their *handover* to a penitentiary establishment and even questioned them about the origins of their injuries in the presence of law enforcement officials (some of whom were said to have been involved in the alleged ill-treatment and/or instructed the detained persons on what they should say about their injuries during the handover procedure). Unsurprisingly, a number of prisoners who had initially claimed that the multiple injuries they bore – and which were clearly indicative of ill-treatment – were sustained during fights, “sports training” or were the result of an accident “before apprehension”, told the delegation that they had been frightened to reveal the true origin of their injuries in the presence of law enforcement officials.

The CPT considers it important to make a clear distinction between, on the one hand, the administrative procedures followed when detained persons are handed over to the custody of a penitentiary establishment and, on the other hand, the thorough medical examinations which should follow. Reference is made, in this connection, to the remarks in paragraph 61.

155. In the light of the observations set out in paragraphs 113, 152 and 153, the CPT cannot but reiterate its view that the current attitude of the prison health-care staff in Ukraine is contributing to the perpetuation of the phenomenon of ill-treatment of persons held by law enforcement agencies and (to an even larger extent) of inmates in penitentiary establishments.

¹⁸⁹ The references found in registers of medical examinations on admission and in other medical documentation (including prisoners’ individual medical files) were frequently limited to just one word, e.g. “bruises”, “hematoma”, “abrasion”, usually accompanied only by a brief mention of the location of injuries (e.g. “on the left arm”, “right leg”, “back”, etc.) but without any further significant details such as colour(s), dimensions, pattern, etc.

¹⁹⁰ E.g. suggesting that the injuries had been sustained “prior to arrest”, had resulted from an “accident” or had been self-inflicted, while it was clear (from not only the explanations given by the prisoners concerned but also from the records drawn up earlier in an ITT) that they had in all likelihood resulted from ill-treatment by law enforcement officials, custodial staff or a violent act committed by another detained person/prisoner.

¹⁹¹ This was *inter alia* the case at Dnipropetrovsk SIZO, where the columns in the register of traumatic injuries observed on arrival, in respect of the circumstances and the name of the perpetrator, were systematically left empty.

The Committee once again calls upon the Ukrainian authorities to take effective and urgent steps to ensure that:¹⁹²

- **all medical examinations of prisoners (whether on arrival at a penitentiary establishment or subsequently, following a violent episode inside the prison) are conducted out of the hearing and – unless the health-care professional concerned requests otherwise in a particular case – out of the sight of law enforcement and non-medical custodial officers;**
- **the records drawn up following medical examinations of prisoners contain: (i) a full account of statements made by the persons concerned which are relevant to the medical examination (including their description of their state of health and any allegations of ill-treatment), (ii) a full account of objective medical findings based on a thorough examination (including appropriate screening for injuries), and (iii) the health-care professional's observations, in the light of (i) and (ii), indicating the consistency between any allegations made and the objective medical findings;**
- **special training is offered to health-care professionals working in penitentiary establishments: in addition to developing the necessary competence in the documentation and interpretation of injuries, this training should cover the technique of interviewing persons who may have been ill-treated;**
- **health-care staff may inform custodial officers on a need-to-know basis about the state of health of a detained person; however, the information provided should be limited to that necessary to prevent a serious risk for the detained person or other persons, unless the detained person consents to additional information being given.**

Further, the CPT calls upon the Ukrainian authorities to adopt further instructions to ensure that:

- **health-care professionals are as a rule¹⁹³ not directly involved in the administrative procedure of handover of custody of detained persons to a penitentiary establishment;**
- **persons found to display injuries on their admission are not questioned by anyone about the origin of those injuries during the above-mentioned handover procedure;**
- **any record made, and any photographs taken, of injuries during the handover-of-custody procedures are forwarded without delay to the penitentiary establishment's health-care service;**

¹⁹² See also paragraphs 71 to 84 of the 23rd [General Report](#) on the CPT's activities.

¹⁹³ Naturally, a health-care staff member should be consulted immediately whenever a newly-arrived prisoner requires urgent medical assistance or if there are doubts as to whether the state of health of the inmate concerned is compatible with admission to a penitentiary establishment.

- **all persons admitted to a penitentiary establishment are properly interviewed and thoroughly examined by qualified health-care staff as soon as possible, and no later than 24 hours after their admission; the same approach should be adopted each time a prisoner returns to a penitentiary establishment after having been taken back to the custody of a law enforcement agency for investigative purposes (even for a short period of time).**

The Committee must also stress that, whenever a prisoner presents injuries indicative of ill-treatment or makes allegations of ill-treatment to health-care staff, he or she must be promptly seen by a doctor with recognised forensic training.

156. At Prison No. 3 in Kriviyi Rih, the delegation observed that taking photographs of injuries was part of the standard procedure of examination of newly-arrived prisoners.¹⁹⁴

In general, the CPT is of the view that the above-mentioned practice is positive and should be extended to all penitentiary establishments in Ukraine. That said, the delegation noted several problems with the quality of the procedure at Prison No. 3 (photographs taken were not focused and did not include anatomical landmarks that would enable the identification of the regions shown on them; in addition, they lacked case numbers and/or any other identifiers such as the date and time when they had been taken). Further – and perhaps even more importantly – no such procedure was applied in respect of injuries sustained by prisoners inside the establishment, after admission.

The Committee recommends that the above-mentioned procedure be improved and extended in the light of the above remarks, and made applicable throughout the Ukrainian prison system. Reference is also made to the relevant recommendation in paragraph 154.

157. As regards reporting procedures, the delegation's findings during the 2013 visit suggest that the provisions of the above-mentioned Order No. 710/5/343 were frequently not complied with in the establishments visited, in that recorded injuries were either not reported to the competent prosecutor¹⁹⁵ or reported with a significant delay.¹⁹⁶ Further, whether the prosecutor was notified depended very much on statements made by the prisoner. In at least some penitentiary establishments visited, records describing injuries which were clearly indicative of ill-treatment had not been notified as the inmates concerned said they had been sustained "before apprehension". Furthermore, as a rule, the competent prosecutor would not be notified of injuries sustained by prisoners inside the penitentiary establishment, following their admission.¹⁹⁷

¹⁹⁴ And, whenever they were actually taken, the photographs were printed out and the printouts enclosed with the reports to the prosecutor's office.

¹⁹⁵ For example, only approximately 10% of the injuries recorded in the relevant documentation at Simferopol SIZO had been reported to the prosecutor (or, at least, the fact of them having been reported was noted). At Dnipropetrovsk SIZO, the column in the register of traumatic injuries observed upon arrival, concerning the date and time of forwarding the information to the prosecutor, was systematically left blank.

¹⁹⁶ E.g. up to a month at Simferopol SIZO.

¹⁹⁷ In such cases, the practice was to inform (if at all) the territorially competent organ of Internal Affairs.

The CPT recommends that a “fast-track” procedure be introduced in the health-care services of all penitentiary establishments for the systematic and direct communication to a competent prosecutor (SBI official) of reports on injuries whenever those injuries are consistent with allegations of ill-treatment made by a prisoner or, even in the absence of allegations, are indicative of ill-treatment; this communication should be made regardless of the wishes of the inmate concerned. Prisoners and, upon request, their lawyers should be entitled to receive a copy of the report at the same time. Further, health-care services should not make communications of this type to the Internal Affairs structures.

Further, the health-care staff must advise prisoners of the existence of the reporting obligation, explaining that the writing of such a report falls within the framework of a system for preventing ill-treatment and that the forwarding of the report to the competent prosecutor is not a substitute for the lodging of a complaint in a proper form.

It would also be advisable for the health-care staff concerned to receive, at regular intervals, feedback on the measures taken by the prosecutor following the forwarding of their reports. This could help to sensitise them to specific points in relation to which their documenting and reporting skills can be improved and, more generally, will serve as a reminder of the importance of this particular aspect of their work.

158. As already mentioned in the paragraph above, the CPT’s delegation noted that – in those cases where injuries were observed on prisoners and recorded/described in the relevant documentation –¹⁹⁸ the administration of those establishments (and, more precisely, the staff of their operational divisions) would communicate this information¹⁹⁹ to the territorially competent organ of Internal Affairs. Such a practice was, *inter alia*, observed at Kyiv SIZO, where notification was usually performed by telephone;²⁰⁰ a typical follow-up to such a notification would be for the duty operative officer from the territorially competent Internal Affairs establishment²⁰¹ to arrive at the SIZO and take a written statement from the prisoner concerned, and collect medical certificates and any other relevant available documentation.

At the same time it transpired that, on occasion, operational staff of the SIZO would carry out their own informal preliminary inquiries into lesions detected and the circumstances in which they had been sustained, prior to any notification being made.

Both above-mentioned practices appear at variance with the compulsory reporting procedure²⁰² and the legal requirement, set out in the new CCP,²⁰³ to automatically register the fact of initiating a criminal procedure in the Unified Register of Pre-Trial Investigations.

Referring also to the recommendation already set out in paragraph 154, the CPT recommends that the Ukrainian authorities ensure that the reporting procedures and practices with respect to opening criminal investigations into injuries observed on prisoners are brought into conformity with the relevant laws and regulations.

¹⁹⁸ Which, as referred to in paragraph 153, was not always the case in practice.

¹⁹⁹ Again, not in each and every case, as was found by the delegation, see paragraph 157.

²⁰⁰ It should be added that the operational staff of Kyiv SIZO applied the same procedure whenever a newly-arrived prisoner declared that his/her injury resulted from facts preceding his/her apprehension (see also paragraph 157).

²⁰¹ In the case of Kyiv SIZO, the Shevchenkovskiy Internal Affairs Directorate.

²⁰² Provided for by the above-mentioned Order No. 710/5/343.

²⁰³ Sections 214 and 216.

d. transmissible diseases

159. Prisoners suffering from tuberculosis were accommodated in all the penitentiary establishments visited.²⁰⁴

Both the TB screening procedures (including systematic X-rays carried out prior to or upon admission and repeated subsequently at regular intervals, as well as laboratory sputum tests if required) and treatment appeared to be on the whole adequate, in line with the DOTS and DOTS+ protocols. In particular, the CPT's delegation noted an improvement at Kyiv SIZO, where second-line anti-TB medication was now available. Necessary medicines were also provided in the other establishments, in part thanks to assistance from the Global Fund.²⁰⁵

In all the penitentiary establishments, prisoners with the active form of tuberculosis were accommodated separately from other inmates. As for the living conditions in the TB units, the unit at Kyiv SIZO is of particular concern to the CPT: it was dilapidated, dark and poorly ventilated, and the walls in some of the cells which were dirty and affected by mould. The cells' equipment left much to be desired: worn-out beds, dirty bedding, (only) partially screened in-cell toilets. Conditions were also poor in the unit's shower facility. **The CPT recommends that steps be taken to improve the conditions at the TB unit of Kyiv SIZO, in the light of the above remarks.**

160. Each of the establishments visited was also holding a number of HIV-positive prisoners,²⁰⁶ who were not segregated on the grounds of their medical condition. HIV tests were offered on a confidential and voluntary basis,²⁰⁷ and anti-retroviral treatment was available²⁰⁸ (likewise partially financed by donations from the Global Fund).

161. The CPT is concerned by the lack of systematic screening and treatment for blood-borne viral hepatitis in the Ukrainian prison system. The delegation was informed that, currently, there was no National Programme for detecting and treating hepatitis in Ukraine (and no national standard for treatment), and that penitentiary establishments were not provided with any specific hepatitis medication. **The Committee recommends that measures be taken to remedy this regrettable state of affairs.**

²⁰⁴ There were 43 such prisoners at Kyiv SIZO (including nine with the multi-resistant form of TB), 44 at Dnipropetrovsk SIZO (with both the active and non-active forms of TB), 33 at Odessa SIZO, 22 at Simferopol SIZO and 70 at Prison No. 3 in Kriviy Rih (including 12 with the active form of tuberculosis).

²⁰⁵ For example, Dnipropetrovsk SIZO had recently received a donation of anti-TB medication worth 51,594 UAH.

²⁰⁶ E.g. 17 HIV+ inmates (out of whom a few had clinical AIDS) at Dnipropetrovsk SIZO; 44 HIV+ inmates (out of whom 19 had developed AIDS) at Simferopol SIZO; 19 HIV+ and 15 AIDS patients at Prison No. 3 in Kriviy Rih.

²⁰⁷ At Kyiv SIZO, 1,343 HIV tests had been performed between 1 January and 1 September 2013, with 165 cases of HIV+ diagnosed. At Odessa SIZO, out of the approximately 1,200 tests for HIV performed in the first nine months of 2013, some 80 had turned out to be positive (it is noteworthy that about 20% of inmates had refused to be tested).

²⁰⁸ For example, 48 inmates were on anti-retroviral therapy at Kyiv SIZO at the time of the visit, as well as 25 at Odessa SIZO, 41 at Simferopol SIZO and nine at Prison No. 3 in Kriviy Rih.

e. psychiatric and psychological care

162. As already mentioned in paragraph 143, the full-time post of psychiatrist at Kyiv SIZO was vacant at the time of the 2013 periodic visit. The establishment's Head Doctor acknowledged that this situation was difficult to manage; pending the recruitment of a psychiatrist, the SIZO had arranged for monthly consultations by a visiting specialist from the Prison Hospital (located in the vicinity of Kyiv), who could assist the establishment's health-care team in providing assistance to inmates suffering from chronic mental disorders. For emergencies, a (civilian) psychiatric ambulance would be called. Similar to the situation observed during the 2009 periodic visit,²⁰⁹ the establishment had no licence allowing the use of psychiatric medication, which left prisoners suffering from mental disorders without appropriate pharmacotherapy, sometimes for months on end.

The fact that this unacceptable situation has not been remedied since 2009, despite the CPT's recommendation made in the report on the 2009 visit, is of concern to the Committee.

The situation as regards psychiatric assistance was not much better in the other SIZOs visited; for example, the Odessa and Simferopol SIZOs could only count on the presence of a part-time (50%) psychiatrist each (which was clearly insufficient given the size and characteristics of their respective prisoner populations); that said, the psychiatrists in those two SIZOs were at least allowed to prescribe psychotropic medication.

The CPT recommends that the Ukrainian authorities take urgent steps to improve the provision of psychiatric care to prisoners in all the penitentiary establishments visited; in particular, the vacant post of psychiatrist at Kyiv SIZO should be filled as a matter of priority, and efforts should be made to increase the times of presence of psychiatrists at the Odessa and Simferopol SIZOs.

The Committee also recommends that urgent steps be taken to ensure that prisoners with mental disorders are entitled to the full range of appropriate psychiatric medication in all the establishments, including Kyiv SIZO.

Further, the CPT recommends that efforts be made to enlarge the range of therapeutic options available to prisoners suffering from psychiatric conditions (i.e. beyond pharmacotherapy). Where necessary, the prisoners concerned should be promptly transferred to an appropriate hospital facility.

163. All the penitentiary establishments visited employed a number of psychologists. However, as had been the case in the past, the psychologists' workload appeared to be dominated by tasks related to testing and assessment, with little time left for counselling or therapy.

Consequently, the CPT recommends that the Ukrainian authorities step up their efforts to develop the provision of psychological care to prisoners, in particular with respect to juveniles and prisoners serving long – including life – sentences, as well as sentenced prisoners held in special conditions of high security or control.

²⁰⁹ See paragraph 138 of the report on the 2009 visit (document [CPT/Inf \(2011\) 29](#)).

164. There was a significant number of prisoners with drug-related problems in the penitentiary establishments visited.²¹⁰ However, as had been the case during the CPT's previous visits to Ukraine,²¹¹ little action (other than traditional prison security and the possibility – for a very limited number of prisoners – to continue methadone substitution treatment initiated prior to imprisonment²¹²) was being taken to tackle this situation (in the form of, for example, prevention and the provision of psycho-social and educational assistance to the prisoners concerned). Further, none of the establishments visited had put in place any harm reduction measures (such as the provision of bleach and information on how to sterilise needles or needle-exchange programmes).

The CPT wishes to stress that the management of drug-addicted prisoners must be varied – combining detoxification, psychological support, socio-educational programmes, rehabilitation and substitution programmes – and linked to a real prevention policy. This policy should highlight the risks of HIV or blood-borne viral hepatitis infection through drug use and address methods of transmission and means of protection. It goes without saying that health-care staff must play a key role in drawing up, implementing and monitoring the programmes concerned and co-operate closely with the other (psycho-socio-educational) staff involved.²¹³

The Committee recommends that the Ukrainian authorities develop a comprehensive and coherent prison drug strategy, including the provision of assistance to inmates with drug-related problems. Specific training on this subject should be organised for the penitentiary health-care staff.

7. Other issues

a. staffing

165. In the course of the visit, the CPT's delegation was informed that, according to the Ukrainian legislation,²¹⁴ the staff complement should represent 33% of the prison population and that efforts were being made to observe this standard at national level (the staff complement represented 32% of the total prison population in Ukraine at the time of the 2013 visit).

The situation was quite different in the establishments visited. By way of illustration, in Kyiv SIZO, the number of posts only represented 20% of the prison population at the time of the visit, whereas the number of staff actually working in the establishment consisted of 18% of the prison population, taking account of the numerous vacancies (in the regime and security department in particular). At Odessa SIZO, the staff complement represented in theory 28% of the prison population and, at the time of the visit, only 24% of the prison population.

²¹⁰ For example, the delegation was informed by the Director of Dnipropetrovsk SIZO that approximately 20% of the establishment's prisoners had such problems.

²¹¹ See, for instance, paragraph 140 of the report on the 2009 visit (document [CPT/Inf \(2011\) 29](#)).

²¹² It was not possible to initiate such substitution treatment inside the penitentiary establishments. Moreover, the delegation was told at Prison No. 3 in Krivyi Rih that even those prisoners who had started their methadone therapy before arriving at the establishment would not be authorised to continue it once inside the prison.

²¹³ See also United Nations [Policy Brief](#) "HIV prevention, treatment and care in prisons and other closed settings: a comprehensive package of intervention", June 2013.

²¹⁴ See Section 2 of the Law on Prison Staff Complement No. 1526-III of 2 March 2000, as amended on 14 April 2009.

As was the case in the past, the delegation noted that there was often a very small number of custodial staff in the detention areas at any given time in all establishments visited. By way of illustration, at Odessa SIZO, there were approximately two staff members on duty at any given time in block I for 272 prisoners at the time of the visit.

In addition, the 24-hour shift pattern in place in a number of establishments visited not only negatively affected professional standards, but also resulted in the further reduction of staff actually present in the detention areas (e.g. with breaks every two hours).

The CPT must recall that an insufficient staff-inmate ratio, low numbers of custodial staff in detention areas and/or specific arrangements for the presence and deployment of staff members in these areas which limit the possibilities for direct contact with prisoners, increase the risk of violence and intimidation between prisoners and of tension between staff and prisoners, preclude the emergence of dynamic security and can undermine the development of suitable out-of-cell activity programmes for prisoners. **The Committee recommends that, taking due account of the recommendations made in paragraphs 102, 108 and 167, the Ukrainian authorities conduct an in-depth analysis of the number and/or deployment of custodial staff in detention areas of SIZOs and of closed-type prisons and, if necessary, revise the relevant regulations accordingly.** In this context, consideration should be given to putting an end to the 24-hour shift pattern for custodial staff.

166. The delegation again observed in the penitentiary establishments visited that members of staff working in direct contact with prisoners were openly carrying “special means” (i.e. handcuffs, rubber batons, tear gas canisters). **The CPT reiterates that if it is considered necessary for custodial staff working within detention areas to carry handcuffs and, in particular, rubber batons, they should be hidden from view. Further, tear gas canisters should not be part of the custodial staff’s standard equipment and should not be used in a confined area.**

167. As was the case in the past,²¹⁵ the delegation observed that staff-inmate interaction in the penitentiary establishments visited in 2013 was most often limited to the strict minimum.²¹⁶

At Prison No. 3 in Krivyi Rih, the approach of staff could only be described as extremely militaristic. Custodial staff (“controllers”) only spoke to prisoners to issue orders; inmates were obliged to collectively greet the staff each time a cell door opened, stand to attention when in direct contact with staff and report in a subaltern way. This approach was strongly supported by the establishment’s management, which expressly considered that military-like discipline was “good for the establishment and for the inmates”. As already mentioned in paragraph 113, the means chosen by at least some of the staff to enforce this “order and discipline” were totally unacceptable to the CPT.

²¹⁵ See, for example, paragraph 22 of the report on the 2012 ad hoc visit ([CPT/Inf\(2013\)23](#)).

²¹⁶ See also, in this connection, Section I.2. of the Internal Rules on SIZOs.

As was stressed in the past, the general approach to staff-inmate interaction, not only at Prison No. 3, but also throughout the Ukrainian prison system, should be fundamentally altered. **The Committee reiterates its long-standing recommendation that the Ukrainian authorities reform the existing professional training of all penitentiary staff (throughout the penitentiary system, including at Prison No. 3 in Kriviy Rih) with a view to fostering a new relationship with prisoners and moving towards a dynamic rather than a purely static approach to security and order.**²¹⁷ If necessary, the appropriate regulations should be amended.

Particular measures must be taken to develop specialised training for staff working with certain categories of prisoner (e.g. remand prisoners, life-sentenced prisoners, inmates held in conditions of high security or enhanced control, women, juveniles).

b. disciplinary solitary confinement in SIZOs/Closed-Type Prisons

168. According to the Ukrainian legislation, a remand prisoner may be subjected to disciplinary solitary confinement for up to ten days (five days in the case of juveniles)²¹⁸ and a sentenced prisoner for up to 15 days (10 days in the case of juveniles).²¹⁹ In the Committee's view, **it would be preferable to reduce the maximum possible period of disciplinary solitary confinement for juvenile prisoners to three days.**²²⁰

In the course of the 2013 visit, the delegation noted that acts of self-harm were almost systematically considered as disciplinary offences and punished accordingly (at Prison No. 3 in Kriviy Rih in particular). Such acts often reflect the distress that the prisoners concerned might be experiencing or problems of a psychological or psychiatric nature, and should be approached from a therapeutic rather than a punitive standpoint. Further, the disciplinary confinement of the prisoners concerned is likely to exacerbate their distress or psychological/psychiatric problems.

169. The examination of disciplinary records generally did not reveal excessive resort to disciplinary confinement.

That said, at Odessa SIZO, the delegation noted that there had been an increase in disciplinary proceedings against prisoners since the beginning of the year 2013 at the same time as the inmate population had significantly reduced following the entry into force of the new CCP. It also noted that there had been a few cases of repeated placements of remand prisoners in disciplinary cells for consecutive periods of disciplinary confinement of up to some 45 days on end.²²¹ Further, the disciplinary records and files were not always reliable (e.g. mistakes, information missing or only at the disposal of penitentiary operational officers).

²¹⁷ See also paragraph 108.

²¹⁸ See Section 15 of the Pre-Trial Detention Act and Section VIII.7.1 of the Internal Rules on SIZOs.

²¹⁹ See Sections 132 and 145 of the Criminal Executive Code.

²²⁰ See paragraph 26 of the [18th General Report](#) on the CPT's activities.

²²¹ See, in this respect, paragraph 109.

170. As regards the procedure, the Ukrainian authorities missed an opportunity to reinforce safeguards against abuse when adopting new Internal Rules on SIZOs in 2013.²²² The delegation heard similar allegations to those it had received in the past, in particular in relation to information on rights and possibilities to contest the decisions on the measure before an independent authority. The CPT is also concerned about consistent allegations received at Odessa SIZO, according to which prisoners had been placed in disciplinary confinement on the basis of fabricated charges and without an opportunity to defend themselves.

171. The CPT's previous recommendations on the role of health-care staff in the disciplinary proceedings have yet to be taken into account. By way of illustration, Section VIII.7.5 of the Internal Rules on SIZOs states that "a prisoner can be placed in a disciplinary cell after examination by a member of the health-care staff, who gives a written opinion on whether the prisoner's state of health is sufficiently good for placement in such a cell". The CPT's delegation was informed during the visit that there will be no such requirement in the future Internal Rules on the Establishments for the Execution of Sentences, which were under discussion at the time of the visit. At the same time, the health-care professional will be required to put an end to disciplinary confinement if medical reasons impede his stay in disciplinary confinement. In the CPT's view, the latter approach should be followed in all penitentiary establishments.

172. The material conditions in the disciplinary cells varied from one establishment to another, and even from one accommodation block to another. The best conditions were seen in the disciplinary cells of the new block for women in Kyiv SIZO. Measuring some 10 m², these cells were well lit, clean, in an excellent state of repair and suitably equipped. In contrast, the disciplinary cells seen at Odessa SIZO (measuring some 7 m²) were dark, humid, poorly equipped and in an advanced state of dilapidation; the delegation was pleased to learn that they had been withdrawn from service shortly before the visit and were to be entirely refurbished.

173. Prisoners held in disciplinary confinement were entitled to one hour of daily outdoor exercise per day. However, they were allegedly not allowed access to books/magazines. Further, any phone contacts or visits with relatives were prohibited for adult prisoners (apart from access to their lawyers).²²³

²²² See paragraph 47 of the report on the 2009 visit (document [CPT/Inf \(2011\) 29](#)).

²²³ See also Section VIII.7.9. of the Internal Rules on SIZOs.

174. The CPT calls upon the Ukrainian authorities to:

- take appropriate steps throughout the penitentiary system to review the approach being followed vis-à-vis prisoners who have harmed themselves, in the light of remarks made in paragraph 168 ;
- revise the procedure for placement in disciplinary solitary confinement in SIZOs and Closed-Type Prisons in order to ensure that the prisoners concerned (i) are promptly informed in writing of the charges against them, (ii) have the right to legal assistance, (iii) are given reasonable time to prepare their defence, (iv) have the right to call witnesses on their own behalf and to cross-examine evidence given against them, and (v) are provided with a copy of the decision which contains the reasons for placement and information on the means available to them to challenge the decision before an independent authority;
- ensure, including through regulatory measures, that, in the case of a prisoner who is being subjected to successive sanctions of disciplinary confinement totalling in excess of 15/10 days, there should be an appropriate interruption in the disciplinary confinement regime at the 15/10-day point;
- pay extra vigilance at Odessa SIZO to the observance of the disciplinary procedures and recording standards;
- pursue their action to revise the provisions on the role of health-care staff in disciplinary proceedings in order to ensure that they are no longer required to give an opinion as to whether a sentenced or remand prisoner is fit for disciplinary confinement (or any other type of confinement imposed against the inmate's wishes) and ensure that health-care services are proactive in respect of inmates held in such conditions;²²⁴
- permit access to a reasonable range of reading material in the disciplinary cells;
- ensure that the measure of disciplinary confinement does not include a total prohibition on family contacts during the enforcement of the measure and that any restrictions on family contact as a form of punishment are used only where the offence relates to such contacts.²²⁵

The CPT would also like to be informed of progress made in the refurbishment of the disciplinary cells at Odessa SIZO.

²²⁴ Reference should be made, in this connection, to paragraphs 62 and 63 of the [21st General Report](#) on the CPT's activities.

²²⁵ See Rule 60.4. of the European Prison Rules.

APPENDIX I

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

Co-operation received

recommendations

- the Ukrainian authorities must make it clear to all penitentiary staff that: i) the principle of co-operation enshrined in the Convention establishing the CPT encompasses the obligation to provide accurate information to visiting delegations and ii) any attempt to prevent inmates from having private interviews with delegations or to find out what inmates tell visiting delegations during private interviews is in blatant contradiction with Article 8, paragraph 3, of the Convention and would lead to severe sanctions (paragraph 8);
- the Ukrainian authorities to: i) take effective measures to prevent any intimidation of inmates prior to/during future visits; ii) consider making any type of sanction, intimidation, reprisal and other prejudice against any person deprived of his or her liberty for seeking to communicate or having communicated with the CPT (or any other body active in preventing and combating torture and other forms of ill-treatment) a specific criminal offence; iii) review, in the light of the remarks made in paragraphs 11 and 12, the manner in which inquiries into possible sanctions, reprisals and other action of this kind against inmates interviewed by CPT delegations are carried out and conduct further inquiries accordingly at Correctional Colonies No. 25 in Kharkiv and No. 81 in Stryzhavka as well as in Prison No. 3 in Krivyi Rih, in close co-operation with members of the national preventive mechanism and representatives of the civil society with recognised experience in dealing with the rights of prisoners (paragraph 13).

requests for information

- every two months throughout 2014, the results of future inquiries into possible sanctions against (former) prisoners held in the above-mentioned penitentiary establishments during the 2012 and 2013 visits, together with a detailed account of concrete steps taken to obtain these results (paragraph 13).

The setting-up of a State Bureau of Investigation

comments

- the Ukrainian authorities are encouraged to step up their efforts, in the context of the future establishment of the State Bureau of Investigation (SBI), to ensure the prompt and full implementation of its previous recommendation in the report on its 2012 visit, namely: as a first step, to set up without delay a national specialised team, whose role is to carry out investigations throughout the country into cases involving alleged ill-treatment inflicted by public officials, and to provide it with its own support staff for the operational conduct of

the investigations; as a second step, to examine the feasibility, in the medium term, of completely separating such a team from the Prosecution Service so as to establish a genuine independent specialised agency for investigations of this type (paragraph 25);

- particular emphasis should be placed on the institutional independence of the future SBI and the existence of transparent procedures in order to enhance public confidence (paragraph 25);
- direct, confidential, access to the SBI for persons who are/were deprived of their liberty and allege abuses by public officials should be secured (paragraph 25).

Persons held by Internal Affairs officials

Preliminary remarks

recommendations

- senior Internal Affairs officials, investigative judges, prosecutors and courts to be particularly vigilant as to the possible exploitation by Internal Affairs staff of the provisions on interviews of witnesses to circumvent the legal time-limits and safeguards in respect of the custody of criminal suspects (paragraph 28);
- action to be taken to stamp out practices amounting to an abuse of the provisions on protective measures referred to in paragraph 29 (paragraph 29);
- any further interviews of remand prisoners by Internal Affairs or other law enforcement officials which may be necessary should as far as possible to be carried out in a penitentiary establishment. The return of remand prisoners to Internal Affairs or other law enforcement establishments should be sought only when there is absolutely no other alternative and for the shortest time possible, and be subject to express authorisation by a judge (paragraph 29).

comments

- the Ukrainian authorities are encouraged to strive to ensure that all those involved (Internal Affairs operational officers and investigators, forensic doctors, investigative judges, public prosecutors, etc.) have a good grasp of both the precise wording and the object underlying the provisions of the new Code of Criminal Procedure (CCP) governing their work (paragraph 26);
- Temporary Detention Isolators (ITTs) are not suitable for prolonged detention and should not be used to hold persons for longer than a few days (paragraph 29).

requests for information

- details on any progress made in the examination of possible reforms of Internal Affairs structures (paragraph 26).

Action to combat torture and other forms of ill-treatment

recommendations

- the Ministry of Internal Affairs to develop further, detailed, instructions from the most senior level reminding all staff, in particular operational officers, investigators, members of special forces, patrol service staff, escort officers and custodial staff working in ITTs of their obligations in relation to the treatment of persons in their custody. These instructions must be guided *inter alia* by the general principles enshrined in the European Code of Police Ethics. In particular, it should be made clear to all Internal Affairs officials that:
 - i) they will be held accountable for having inflicted, instigated or tolerated any act of torture or other form of ill-treatment, irrespective of the circumstances and including when the ill-treatment is ordered by a superior. Every Internal Affairs official should have a clear understanding that deliberate physical ill-treatment of detained persons, whatever its severity, is a criminal offence.

Where appropriate, a public declaration should be adopted at the highest political level, namely at the level of the President of Ukraine;
 - ii) they should oppose all forms of corruption within Internal Affairs structures;
 - iii) treating persons in custody in a correct manner and reporting any information indicative of ill-treatment (and corrupt practices) by colleagues to the appropriate authorities is their duty and will be positively recognised (paragraph 48);
- “whistle-blower” protective measures to be adopted. This implies the development of a clear reporting line to a distinct authority outside of the directorate or agency concerned as well as a framework for the legal protection of individuals who disclose information on ill-treatment and other malpractice (paragraph 48);
- the Ukrainian authorities to pursue their action to improve identification of Internal Affairs officials, in particular by ensuring that:
 - i) plainclothes officers effecting an apprehension clearly identify themselves or are clearly identifiable as members of an Internal Affairs agency (for example, by showing an identification card or by wearing an armband);
 - ii) subsequent identification of members of Internal Affairs special forces is always possible, through the wearing of not only a clearly distinctive insignia, but also a prominent identification number on each uniform/helmet;
 - iii) interventions by Internal Affairs special forces are videorecorded (e.g. with tactical cameras as part of the equipment of the officers concerned) (paragraph 52);
- the Ukrainian authorities to review the legal framework for the use of physical force and “special means”, in the light of the delegation’s findings, and to ensure that the circumstances in which each type of force may be used are clearly specified in the legislation and/or the relevant regulations (paragraph 54);

- Internal Affairs officials to be provided with further instructions and suitable training to ensure in particular that:
 - physical force is used only when strictly necessary and only to the extent required to attain a legitimate objective;
 - where it is deemed essential to handcuff a person, the handcuffs are under no circumstances excessively tight and are applied only for as long as is strictly necessary. Further, a detained person should never be handcuffed to fixed objects; in the event of a person in custody acting in a highly agitated or violent manner, the individual concerned should instead be kept under close supervision in an appropriate setting. In the event of agitation brought about by the state of health of a detained person, Internal Affairs officials should request medical assistance and follow the instructions of the health-care professional;
 - batons are only used when there is a risk to life or limb, and only to address that threat directly;
 - the use of stun devices is confined to situations of real and immediate danger to life or of an obvious risk of serious injury, and is subject to the principles of necessity, subsidiarity, proportionality, advance warning (where feasible) and precaution. Recourse to such devices for the sole purpose of securing compliance with an order is inadmissible. Internal Affairs officials who are entitled to use these devices must be specifically selected and suitably trained, and they should receive detailed instructions concerning their use. The legal reporting obligations should lead to close monitoring by the competent authorities of the use of stun devices. Anyone against whom an electric stun device has been used should, in all cases, be seen by a health-care professional and, where necessary, taken to hospital, and a copy of the medical certificate should be given to the person concerned (and/or to his/her lawyer, upon request) (paragraph 54);

- the Ukrainian authorities to pursue their efforts to implement the new Code of Criminal Procedure with a view to reducing reliance on confessional evidence, notably by:
 - i) combating any practices of Internal Affairs officials seeking/obtaining statements and other evidence from so-called “witnesses” who prove to be criminal suspects or from detained persons who have not been informed of their right to refuse to give evidence or answer questions;
 - ii) pursuing efforts to place more emphasis on a physical evidence-based approach in the investigation phase, notably through initial and in-service training of operational officers and investigators. In particular, training in the seizure, retention, packaging, handling and evaluation of forensic exhibits and continuity issues pertaining thereto should be further developed. At the same time, the clear message should be delivered to Internal Affairs officials that the fabrication of evidence is a serious offence and will be punished accordingly;
 - iii) removing any non-standard issue items capable of being used for inflicting ill-treatment from Internal Affairs premises where persons might be held/interviewed;

- iv) ensuring that interviews are as a rule conducted by no more than two interviewers, in rooms specifically equipped and designed for the purpose, for no more than two hours (one hour in the case of juveniles) at a time and eight hours (two hours in the case of juveniles) per day in total;
 - v) ensuring that an accurate recording is made of all interviews (including initial interviews by apprehending officers), which should be increasingly conducted with electronic recording equipment (audio- and video-recording);
 - vi) implementing a system of ongoing monitoring of interviewing standards and procedures (paragraph 59);
- the Ukrainian authorities to take further action, including through appropriate regulations and effective monitoring of their implementation, to ensure that:
- health-care professionals are as a rule not directly involved in the administrative procedure of handover of custody of detained persons to an ITT;
 - persons found to display injuries upon admission are not questioned by anyone about the origin of those injuries during the above-mentioned handover procedure;
 - any record made, and any photographs taken, of injuries during the handover-of-custody procedures are forwarded without delay to ITT health-care professionals;
 - all persons admitted to ITTs are properly interviewed and thoroughly examined by qualified health-care staff as soon as possible, and no later than 24 hours after their admission; the same approach should be adopted each time a person returns to an ITT after having been taken back to the custody of another structure for investigative or other purposes;
 - all medical examinations in ITTs (as well as in medical institutions) are conducted out of the hearing and – unless the health-care professional concerned expressly requests otherwise in a given case – out of the sight of staff not carrying out health-care duties;
 - the record drawn up following the medical examination of a detained person in an ITT contains: (i) an account of statements made by the person in question which are relevant to the medical examination (including his/her description of his/her state of health and any allegations of ill-treatment), (ii) a full account of objective medical findings based on a thorough examination (supported by a “body chart” for marking traumatic injuries); (iii) the health-care professional’s observations in the light of i) and ii), indicating the consistency between any statements made and the objective medical findings;
 - health-care staff may inform custodial officers on a need-to-know basis about the state of health of a detained person; however, the information provided should be limited to that necessary to prevent a serious risk for the detained person or other persons, unless the detained person consents to additional information being given;

- health-care professionals advise the detained persons concerned of the existence of the reporting obligation, explaining that the writing of such a report falls within the framework of a system for preventing ill-treatment and that the forwarding of the report to the relevant authority is not a substitute for the lodging of a complaint in a proper form;
 - detained persons and, upon their request, their lawyers are fully entitled to receive a copy of the medical records. When possible, photographs of injuries should be made and appended to the medical records;
 - whenever a report on injuries is notified to the Prosecution Service, a forensic medical opinion is sought without delay and the detained person is examined promptly, physically, thoroughly and in private by a forensic doctor (paragraph 64);
- special training to be offered to health-care professionals working in ITTs. In addition to developing the necessary competence in the documentation and interpretation of injuries as well as ensuring full knowledge of reporting obligations and procedures, this training should cover the technique of interviewing persons who may have been ill-treated (paragraph 64);
 - the Ukrainian authorities to make it clear to all Internal Affairs staff that any kind of threats or action to prevent a detained person from complaining to the judge will not be tolerated (paragraph 66).

comments

- the Ukrainian authorities are invited to consider reviewing the current reporting procedures, taking into account the reform of the Prosecution Service and the future setting-up of a State Bureau of Investigation (paragraph 64);
- judges should be firmly and regularly reminded, through appropriate channels, of their legal obligations under Section 206 of the CCP (paragraph 66).

requests for information

- whether the Ukrainian authorities have considered the option of placing health-care staff working in ITTs under the authority of a structure other than the Ministry of Internal Affairs (paragraph 64).

Fundamental safeguards against the ill-treatment

recommendations

- the Ukrainian authorities to take effective steps to ensure that the provisions of the new CCP (and of the Free Legal Aid Act) regarding safeguards against ill-treatment of persons deprived of their liberty by Internal Affairs officials are duly applied in practice (paragraph 68);
- the Ukrainian authorities to take decisive and energetic action to stamp out practices of unrecorded detentions. Immediate steps must be taken to ensure that whenever a person is taken or summoned to an Internal Affairs establishment, for whatever reason (including for interviews with an operational officer), his/her presence is always duly recorded. In particular, the records should specify who was brought in or summoned, by whom, upon whose order, at what time, for what reason, in which capacity (suspect, witness, etc.), to whom the person concerned was handed over and when the person left the premises of the Internal Affairs agency concerned (paragraph 71);
- the Ukrainian authorities to take urgent steps to ensure that the legal requirement of indicating the actual time of apprehension in the detention protocol is always duly observed in practice (paragraph 72);
- the Ukrainian authorities to ensure that custody registers are properly maintained, accurately record the actual times of apprehension, placement in a cell, release or transfer, and reflect all other aspects of custody (precise location where a detained person is being held; visits by a lawyer, relative, doctor or consular officer; taking out for questioning, etc.) (paragraph 72);
- effective steps to be taken to ensure that all persons detained by law enforcement agencies are fully informed of all their rights (including the rights of notification of custody, of access to a lawyer and of access to a doctor) as from the very outset of their deprivation of liberty. This should involve the provision of clear verbal information at the moment of apprehension, to be supplemented at the earliest opportunity (that is, immediately upon first entry into the premises of a law enforcement agency) by provision of a written information on rights (paragraph 74);
- the Ukrainian authorities to draw up an information sheet on rights which is more simple and easier to understand and available in an appropriate range of languages. Particular care should be taken to ensure that detained persons are actually able to understand their rights; it is incumbent on Internal Affairs officials to ascertain that this is the case. The persons concerned must be allowed to keep a copy of the information sheet (paragraph 74);
- the Ukrainian authorities to take effective measures to ensure that all detained persons effectively benefit from the right of notification of custody as from the very outset of their deprivation of liberty (paragraph 75);
- steps to be taken to ensure that detained persons are provided with feedback on whether it has been possible to notify a close relative or another person of the fact of their detention (paragraph 76);

- steps to be taken to ensure that the fact of having notified a detained person's next-of-kin of his/her custody is duly registered in every Internal Affairs establishment, in the light of the remarks made in paragraph 77 (paragraph 77);
- the Ukrainian authorities to take steps to ensure that both the law and the practice are aligned with the precept that the right of access to a lawyer should be guaranteed to all persons – including administrative detainees – as from the outset of deprivation of liberty (and not only when a detention protocol is drawn up) (paragraph 79);
- the Ukrainian authorities to remind all Internal Affairs officials (including operational staff and investigators), in a firm manner, that any attempts to make detained persons renounce their right to a lawyer are illegal (paragraph 80);
- the Ukrainian authorities to step up their efforts to ensure that the provisions of the Free Legal Aid Act are duly implemented in practice. In particular, law enforcement agencies should be reminded of their duty to immediately inform the relevant Free Legal Aid Centre of each fact of detention, as from the moment of *de facto* deprivation of liberty (or, at the very latest, as from the moment of the detained person's arrival at an Internal Affairs establishment) (paragraph 81);
- further efforts to be made (in particular, in terms of human and financial resources) to ensure that the system put in place by the Free Legal Aid Act operates effectively in all the regions of Ukraine (paragraph 81);
- the Ukrainian authorities to take appropriate action – in consultation with the Bar Association – to ensure the effectiveness of the system of legal aid throughout the criminal procedure, including at the initial stage of police custody. In this context, particular attention should be paid to the issue of confidentiality of client-lawyer consultations (paragraph 85);
- the Ukrainian authorities to amend the new CCP (and other relevant provisions) so as to make it clear that persons deprived of their liberty by law enforcement officials have a right to be examined by an independent doctor (including a doctor of one's own choice, it being understood that an examination by such a doctor may be carried out at the detained person's own expense) as from the moment of the *de facto* deprivation of liberty. A request by a detained person to see a doctor should always be granted; it is not for law enforcement officials, nor for any other authority, to filter such requests (paragraph 86);
- steps (including, if necessary, of a legislative nature) to be taken to enable detained persons who allege ill-treatment by members of law enforcement agencies to be examined at their own initiative by an independent doctor with recognised forensic training (paragraph 86);
- steps to be taken to remedy the deficiencies as regards the confidentiality of medical examinations and documents as well as with respect to the quality of the medical documentation in Internal Affairs establishments (paragraph 87);
- steps to be taken by the Ukrainian authorities to ensure that the legal obligation to provide, without delay, medical assistance to any person detained by a law enforcement agency who is in need of it, is always complied with in practice (paragraph 88);

- the Ukrainian authorities to take effective steps to ensure that detained juveniles are not questioned, do not make any statements or sign any documents related to the offence of which they are suspected without the benefit of a lawyer and, in principle, of another trusted adult being present and assisting the juvenile (paragraph 89);
- a specific information form, setting out the particular position of detained juveniles and including a reference to the presence of a lawyer/another trusted adult, to be developed and given to all such persons taken into custody. Special care should be taken to explain the information carefully to ensure comprehension (paragraph 89);
- the Ukrainian authorities to establish common criteria for the selection of “custody officers” in Internal Affairs establishments, and ensure that they receive specific training (paragraph 90).

comments

- the positive practice (observed in some of the Internal Affairs Directorates/Divisions visited) of such waivers being verified by called-in *ex officio* lawyers (and the fact of such verification being confirmed by the lawyer’s signature in the detention protocol) merits being extended to all Internal Affairs establishments where persons deprived of their liberty may be held (paragraph 80);
- the Ukrainian authorities are invited to take steps to ensure that all the relevant details related with the notification of Free Legal Aid Centres are always duly recorded in detention protocols (paragraph 83);
- it would be far preferable to confer the task of contacting the Free Legal Aid Centres and keeping the relevant registers to “custody officers” within the meaning of the new CCP (paragraph 84).

requests for information

- information, in due course, on the outcome of the initiative of the Co-ordination Centre for Free Legal Aid to suggest draft amendments to the relevant provisions of the Free Legal Aid Act and of the Cabinet of Ministers’ Decree No. 1363, so as to enable centres to assign an *ex officio* lawyer upon receiving information on a person’s detention from other sources (e.g. relatives, NGOs or the media) (paragraph 82).

Conditions of detention

recommendations

- the Ukrainian authorities to step up their efforts to provide appropriate conditions of detention to persons held in Internal Affairs Directorates/Divisions. In doing so, they should be guided by the recommendation already made by the Committee in paragraph 37 of the report on its 2009 periodic visit (paragraph 92);
- as for those Internal Affairs Directorates/Divisions which do not meet the requirements enumerated in the above-mentioned recommendation (and, in particular, those where the cells have been taken out of service), immediate action is required to ensure that (save in urgent situations where delays in carrying out investigative steps may result in the loss of traces of criminal offence or in the suspect's absconding) detained persons are not held in these establishments during the night (paragraph 92);
- the Ukrainian authorities to pursue their efforts to refurbish all ITTs, taking into account the remarks made in paragraph 94. In particular, steps should be taken in order to:
 - renovate, as a matter of priority, the ITTs in Alushta and Krivyi Rih;
 - in the context of the refurbishment programme of all ITTs, ensure that in-cell sanitary annexes are fully partitioned (i.e. up to the ceiling);
 - ensure that cells in all ITTs have adequate access to natural light and fresh air;
 - improve the level of cleanliness in the ITTs, especially in the one of Dnipropetrovsk;
 - ensure that outdoor exercise yards are sufficiently large and adequately equipped in all ITTs (and take out of service the "winter yards" at Dnipropetrovsk and Krivyi Rih ITTs) (paragraph 95);
- steps to be taken at the Special Reception Centre for persons under administrative arrest in Dnipropetrovsk to:
 - improve access to natural light in the cells;
 - provide in-cell sanitary annexes with full partitioning (up to the ceiling);
 - provide some form of activity in addition to outdoor exercise (e.g. radio/TV, additional reading matter, board games, sports, more work opportunities, etc.) (paragraph 96).

comments

- cells measuring between 6 and 7 m² should not accommodate more than one detained person overnight (paragraph 95);
- the Ukrainian authorities are invited to consider developing alternatives to deprivation of liberty for administrative offences (paragraph 96).

Persons held in penitentiary establishments

Preliminary remarks

recommendations

- the Ukrainian authorities to pursue their concerted efforts aimed at tackling the prison overcrowding phenomenon in Ukraine (paragraph 99);
- the Ukrainian authorities to review without further delay the norms fixed by legislation for living space per prisoner, ensuring that they provide for at least 4 m² per inmate in multi-occupancy cells (not counting the space taken up by in-cell toilets) in all the establishments under the authority of the State Penitentiary Service, pre-trial establishments (SIZOs) included. With regard to single-occupancy cells, any cells of this type should measure at least 6 m² (not counting the area taken up by in-cell toilets), and should preferably be larger (paragraph 100);
- the Ukrainian authorities to examine, in every SIZO/Closed-Type Prison, the actual living space per inmate in the cells at regular intervals (in addition to the average living space per prisoner in each establishment). This will make it possible to detect and combat localised overcrowding (paragraph 100);
- the Ukrainian authorities to pursue their efforts to improve the prison estate/infrastructure, in line with the Committee's standards. The recent reduction in the prison population should make it easier to address the problem (paragraph 101);
- the Ukrainian authorities to ensure that efforts aimed at reducing overcrowding and improving material conditions in both SIZOs and establishments for sentenced prisoners go hand-in-hand with the introduction of programmes of structured out-of-cell activities. The aim should be to enable prisoners to spend as many hours as possible each day outside their cells (preferably eight hours or more) and to participate in regular, purposeful and varied activities (work, education, sport, etc.) tailored to the needs of each category of prisoner (adult remand or sentenced prisoners, inmates serving life sentences, sentenced prisoners held in special conditions of high security or control, female prisoners, juveniles, etc.) (paragraph 102).

Treatment of persons in pre-trial detention or serving sentences

recommendations

- action to be taken to ensure that:
 - the methods used by operational staff at Dnipropetrovsk SIZO to obtain information from prisoners are subject to closer and more effective independent supervision. In particular, it should be made clear to them that any attempt to seek information from inmates should be strictly limited to the establishment's needs;
 - all penitentiary staff working at Dnipropetrovsk and Odessa SIZOs receive the clear message that any penitentiary official inflicting, instigating or tolerating any act of torture or other forms of ill-treatment, under any circumstances, including when ordered by a superior or when encouraged by law enforcement officials, will be held accountable. Further, staff working in these establishments should be reminded that they should at all times treat inmates with politeness and respect;
 - at Odessa SIZO, physical force, "special means" and straight-jackets are only used against prisoners in self-defence or in cases of attempted escape or active or passive *physical* resistance to a lawful order, and always as a last resort. Further, the management of Odessa SIZO and outside monitors should exercise extra vigilance to ensure that all instances of resort to force against prisoners are adequately recorded and assessed (paragraph 106);
- the management of Odessa and Simferopol SIZOs to make use of all the means at their disposal to counter the negative impact of the informal prison hierarchy and prevent inter-prisoner intimidation and violence, in the light of the remarks made in paragraph 108. The Ukrainian penitentiary authorities must also be vigilant as to possible collusion between staff and prisoner "leaders" (paragraph 108);
- the management of prisoners who have caused, or are considered likely to cause, serious harm to others or themselves to be fundamentally reviewed at Odessa SIZO, in the light of the remarks made in paragraph 109 (paragraph 109);
- the Ukrainian authorities to continue to exercise the greatest vigilance as regards the treatment of prisoners serving sentences in Correctional Colony No. 81 in Stryzhavka, in particular in the light of the findings described in paragraph 111. In this context, the practice of delegating authority to a group of prisoners and using them to keep control over the establishment's inmate population must be brought to an end (paragraph 112);
- all staff members working in Correctional Colony No. 81 in Stryzhavka, including senior officers, to continue to receive a regular message from the highest level that i) any penitentiary official committing or aiding and abetting ill-treatment will be held accountable and that ii) they should oppose all forms of corruption and shall inform superiors and other appropriate bodies of any corrupt practices within the establishment (paragraph 112);

- the Ukrainian authorities to take further specific measures to combat prisoner ill-treatment and intimidation at Closed-Type Prison No. 3 in Krivyi Rih and, in particular, to:
 - instruct the management of the establishment to exercise the greatest vigilance as regards the treatment of prisoners and to make it clear to all those concerned (at regular and frequent intervals), in particular the operational staff, that any prison official committing or aiding and abetting ill-treatment, inter-prisoner violence or intimidation will be held accountable;
 - instruct all the prison staff to actively prevent their colleagues from ill-treating prisoners (or from encouraging inter-prisoner violence) and to report, through appropriate channels, all cases of ill-treatment involving colleagues; the instruction should be accompanied by firm assurances that “whistle blowers” shall be protected from any reprisals (paragraph 116);
- the Ukrainian authorities to take steps, including at the legislative level, to ensure that officers of operational divisions no longer investigate criminal offences committed by prisoners outside the prison and no longer take statements from prisoners in relation to such offences (paragraph 117).

comments

- it is of crucial importance that the “compliance audit” in respect of Prison No. 3 in Krivyi Rih addresses the CPT’s concerns raised in paragraph 115 (paragraph 115).

requests for information

- information, in due course, on the outcome of the “compliance audit” in respect of Prison No. 3 in Krivyi Rih and, in particular, of any decisions taken subsequently (including any criminal and/or disciplinary sanctions imposed) (paragraph 116).

Remand prisoners

recommendations

- the necessary steps to be taken at Prison No. 3 in Krivyi Rih to ensure that juvenile prisoners are accommodated separately from adults, in the light of the remarks made in paragraph 118 (paragraph 118);
- whilst implementing the recommendations already made in paragraphs 99 to 102, the Ukrainian authorities to take further action to:
 - redouble their efforts in the SIZOs visited to meet the objective of offering at least 4 m² of living space per inmate in multi-occupancy cells and of placing no more than one inmate in cells measuring 6 m² (not counting the area taken up by the in-cell toilets), in particular by distributing prisoners more evenly amongst the available accommodation, reducing intended capacity levels in the cells in compliance with national standards and reviewing the official capacities of the establishments in question accordingly;
 - seriously consider the building of a new SIZO in Odessa whilst pursuing their attempts to improve the state of repair of the cells in the accommodation buildings;
 - withdraw from service, at Simferopol SIZO, the semi-basement cells located in block I and initiate as soon as possible extensive renovation and reconstruction of the establishment;
 - pursue their refurbishment/reconstruction programmes in older accommodation buildings of Kyiv and Dnipropetrovsk SIZOs;
 - improve access to natural light and ventilation in the cells concerned at Prison No. 3 in Krivyi Rih, in particular on the establishment's first floor, and review the design of the windows so as to allow inmates to see outside their cells;
 - ensure, when implementing refurbishment/(re)construction programmes, that in-cell toilets/sanitary annexes are fully partitioned (i.e. up to the ceiling);
 - consider the possibility of increasing the frequency of prisoners' access to a shower in the establishments visited, as well as in any other penitentiary establishments, taking into consideration Rule 19.4 of the European Prison Rules;
 - ensure that prisoners have the possibility of genuine physical exertion every day; this will require enlarging the exercise yards. Whenever possible, the current yards located on the roofs of the accommodation blocks should be replaced by outdoor exercise facilities located at ground level;

- review the regime for remand prisoners taking into account the remarks made in paragraph 102. In this connection, steps should be taken to ensure that, when designing and constructing new SIZOs/accommodation blocks for remand prisoners, provision is made for proper outdoor exercise at ground level, association with prisoners from other cells, work, education and other meaningful activities. As regards juveniles, the objective of activity programmes should be to ensure that they spend at least eight hours a day outside their cells, as provided for by the European Rules for juvenile offenders subject to sanctions or measures;
- amend the current legislation to ensure that remand prisoners are as a rule *entitled* to receive visits, make/receive phone calls and send/receive letters. Any restriction/prohibition placed on them as regards visits, phone calls or correspondence must be specifically substantiated by the needs of the investigation, always require the approval of a judicial authority, and be applied for a specified period of time, with reasons stated. In the meantime, investigators and judges should be reminded that the starting point for considering requests for visits and for sending letters must be the presumption of innocence and the principle that remand prisoners should be subject to no more restrictions than are strictly necessary for the interests of justice and that, unless there are clearly defined reasons for not allowing visits/correspondence or for imposing certain restrictions (e.g. organisation of visits through a partition) for a specified period in an individual case, remand prisoners should be authorised to receive at least three visits of up to four hours a month, and send/receive letters, as provided for by the law (paragraph 127).

comments

- the Ukrainian authorities are invited to verify the insulation and the proper operation of the heating system in the new accommodation building for women at Kyiv SIZO (paragraph 127).

Sentenced prisoners held in special conditions of high security or control at Closed-Type Prison No. 3 in Krivyi Rih

recommendations

- the Ukrainian authorities to amend the relevant legal provisions on the security level to be applied to a given prisoner as well as the measure of segregation for preventative purposes in accordance with the precepts referred to in paragraph 129 (paragraph 129);
- steps to be taken to remedy the deficiencies mentioned in paragraph 129, if necessary through amending the relevant procedural provisions, as regards the procedure for placement on “*tyurma*” regime (and for its possible renewal) (paragraph 129);

- a programme of purposeful activities of a varied nature (including work, education, association and targeted rehabilitation programmes) to be offered to prisoners held in special conditions of high security or control. This programme should be drawn up and reviewed on the basis of an individualised needs/risk assessment by a multi-disciplinary team (involving, for example, a qualified psychologist and an educator), in consultation with the inmates concerned (paragraph 131);
- the Ukrainian authorities to modify the facilities for short-term visits at Prison No. 3 in Krivyi Rih in order to enable prisoners to receive visits under reasonably open conditions. Open visiting arrangements should be the rule and closed ones the exception, such exceptions being based on well-founded and reasoned decisions following individual assessment of the potential risk posed by a particular prisoner. Further, the capacity of the short-term visiting facilities should be increased (paragraph 132);
- the Ukrainian authorities to remedy the problem of long-waiting times to access to a telephone (paragraph 132).

comments

- the Ukrainian authorities are encouraged to pursue their efforts to improve material conditions in the “*tyurma*” and so-called maximum security (“SMRB”) units of Prison No. 3 in Krivyi Rih, paying particular attention to access to natural light, artificial lighting and ventilation. In-cell sanitary annexes should all be equipped with a full partition (i.e. up to the ceiling). Further, steps must be taken to reduce the intended occupancy levels in the “*tyurma*” cells, following the example of the SMRB cells (paragraph 130);
- the Ukrainian authorities are invited to address the issue of long waiting times as regards access to a telephone (paragraph 132).

requests for information

- more details of the plans to provide prisoners on “*tyurma*” regime at the Prison No. 3 in Krivyi Rih with some work opportunities, as well as of their implementation (paragraph 131).

Prisoners facing/sentenced to life imprisonment

recommendations

- the Ukrainian authorities to review once more the legislation and practice as regards programmes of activities for prisoners facing/sentenced to life imprisonment, visiting entitlements and segregation, in the light of the remarks made in paragraphs 135 to 139 and of the recommendations made by the Committee in its previous visit reports (paragraph 139).

comments

- in view of their size, it would be far preferable to use cells of some 9 m² for single occupancy at Kyiv SIZO, on the assumption that the prisoners concerned can interact with each other (paragraph 139).

request for information

- the remarks of the Ukrainian authorities on the availability of conditional release to all sentenced prisoners, including life-sentenced prisoners (paragraph 140).

Health care

recommendations

- the Ukrainian authorities to step up their efforts to ensure optimal health-care services for prisoners; in this context, a greater involvement of the Ministry of Health will no doubt contribute to the implementation of the general principle of the equivalence of health care with that in the outside community (paragraph 142);
- the Ukrainian authorities to take active steps to remedy the situation as regards health-care staffing resources, in particular by:
 - filling, as a matter of priority, all the vacant doctors' posts at Kyiv and Odessa SIZOs, as well as at Prison No. 3 in Krivyi Rih; and
 - significantly reinforcing the health-care staff teams with additional feldshers and/or nurses, in particular at Kyiv and Odessa SIZOs as well as at Prison No. 3 in Krivyi Rih (paragraph 144);
- continuous efforts to be made to improve the premises and equipment of health-care services of the penitentiary establishments visited, in the light of the remarks made in paragraph 146 (paragraph 146);
- steps to be taken to improve the access to and the standard of dental care in the penitentiary establishments visited (and in particular at the Kyiv and Simferopol SIZOs); inmates in all the establishments should have access to more than just emergency dental treatment (paragraph 148);
- the Ukrainian authorities to put an end to the practice of placing of prisoners in barred areas when undergoing certain medical procedures at Dnipropetrovsk SIZO and at Prison No. 3 in Krivyi Rih (paragraph 149);
- the Ukrainian authorities to strive to ensure that all the medication needed by the penitentiary establishments is supplied by the State in sufficient quantity (paragraph 150);

- steps to be taken to improve the quality of medical records and other medical documentation in all the penitentiary establishments visited, and in particular in Simferopol SIZO (paragraph 151);
- the Ukrainian authorities to put an end to the practice of using prisoners in health-care units as medical orderlies (paragraph 151);
- steps to be taken in all the penitentiary establishments visited (and, in particular, at Dnipropetrovsk SIZO and at Prison No. 3 in Krivyi Rih) to ensure that the confidentiality of medical consultations and of medical documentation is always duly respected (paragraph 152);
- the Ukrainian authorities to take effective and urgent steps to ensure that:
 - all medical examinations of prisoners (whether on arrival at a penitentiary establishment or subsequently, following a violent episode inside the prison) are conducted out of the hearing and – unless the health-care professional concerned requests otherwise in a particular case – out of the sight of law enforcement and non-medical custodial officers;
 - the records drawn up following medical examinations of prisoners contain: (i) a full account of statements made by the persons concerned which are relevant to the medical examination (including their description of their state of health and any allegations of ill-treatment), (ii) a full account of objective medical findings based on a thorough examination (including appropriate screening for injuries), and (iii) the health-care professional's observations, in the light of (i) and (ii), indicating the consistency between any allegations made and the objective medical findings;
 - special training is offered to health-care professionals working in penitentiary establishments: in addition to developing the necessary competence in the documentation and interpretation of injuries, this training should cover the technique of interviewing persons who may have been ill-treated;
 - health-care staff may inform custodial officers on a need-to-know basis about the state of health of a detained person; however, the information provided should be limited to that necessary to prevent a serious risk for the detained person or other persons, unless the detained person consents to additional information being given (paragraph 155);
- the Ukrainian authorities to adopt further instructions to ensure that:
 - health-care professionals are as a rule not directly involved in the administrative procedure of handover of custody of detained persons to a penitentiary establishment;
 - persons found to display injuries on their admission are not questioned by anyone about the origin of those injuries during the above-mentioned handover procedure;
 - any record made, and any photographs taken, of injuries during the handover-of-custody procedures are forwarded without delay to the penitentiary establishment's health-care service;

- all persons admitted to a penitentiary establishment are properly interviewed and thoroughly examined by qualified health-care staff as soon as possible, and no later than 24 hours after their admission; the same approach should be adopted each time a prisoner returns to a penitentiary establishment after having been taken back to the custody of a law enforcement agency for investigative purposes (even for a short period of time) (paragraph 155);
- the procedure for taking photographs of injuries of newly-arrived prisoners at Prison No. 3 in Kriviy Rih to be improved and extended in the light of the remarks made in paragraph 156 (paragraph 156);
- a “fast-track” procedure to be introduced in the health-care services of all penitentiary establishments for the systematic and direct communication to a competent prosecutor (SBI official) of reports on injuries whenever those injuries are consistent with allegations of ill-treatment made by a prisoner or, even in the absence of allegations, are indicative of ill-treatment; this communication should be made regardless of the wishes of the inmate concerned. Prisoners and, upon request, their lawyers should be entitled to receive a copy of the report at the same time. Further, health-care services should not make communications of this type to the Internal Affairs structures (paragraph 157);
- the health-care staff to advise prisoners of the existence of the reporting obligation, explaining that the writing of such a report falls within the framework of a system for preventing ill-treatment and that the forwarding of the report to the competent prosecutor is not a substitute for the lodging of a complaint in a proper form (paragraph 157);
- the Ukrainian authorities to ensure that the reporting procedures and practices with respect to opening criminal investigations into injuries observed on prisoners are brought into conformity with the relevant laws and regulations (paragraph 158);
- steps to be taken to improve the conditions at the TB unit of Kyiv SIZO, in the light of the remarks made in paragraph 159 (paragraph 159);
- measures to be taken to ensure systematic screening and treatment for blood-borne viral hepatitis in the Ukrainian prison system (paragraph 161);
- the Ukrainian authorities to take urgent steps to improve the provision of psychiatric care to prisoners in all the penitentiary establishments visited; in particular, the vacant post of psychiatrist at Kyiv SIZO should be filled as a matter of priority, and efforts should be made to increase the times of presence of psychiatrists at the Odessa and Simferopol SIZOs (paragraph 162);
- urgent steps to be taken to ensure that prisoners with mental disorders are entitled to the full range of appropriate psychiatric medication in all the establishments, including Kyiv SIZO (paragraph 162);
- efforts to be made to enlarge the range of therapeutic options available to prisoners suffering from psychiatric conditions (i.e. beyond pharmacotherapy). Where necessary, the prisoners concerned should be promptly transferred to an appropriate hospital facility (paragraph 162);

- the Ukrainian authorities to step up their efforts to develop the provision of psychological care to prisoners, in particular with respect to juveniles and prisoners serving long – including life – sentences, as well as sentenced prisoners held in special conditions of high security or control (paragraph 163);
- the Ukrainian authorities to develop a comprehensive and coherent prison drug strategy, including the provision of assistance to inmates with drug-related problems. Specific training on this subject should be organised for the penitentiary health-care staff (paragraph 164).

comments

- the Ukrainian authorities are invited to strive to render employment in penitentiary health-care services more attractive, including financially (paragraph 144);
- whenever a prisoner presents injuries indicative of ill-treatment or makes allegations of ill-treatment to health-care staff, he or she must be promptly seen by a doctor with recognised forensic training (paragraph 155);
- it would be advisable for penitentiary health-care staff to receive, at regular intervals, feedback on the measures taken by the prosecutor following the forwarding of their reports on injuries (paragraph 157).

requests for information

- on the progress made in the implementation of the various plans and measures aimed at reorganising the prison health-care system (paragraph 142);
- the remarks of the Ukrainian authorities on the allegations made by prisoners according to which they were offered access to specialist care only when they or their families paid for such treatment (paragraph 145);
- more details on the plan to build a new health-care facility for Odessa SIZO and its implementation (paragraph 147).

Other issues

recommendations

- taking account of the recommendations made in paragraphs 102, 108 and 166, the Ukrainian authorities to conduct an in-depth analysis of the number and/or deployment of custodial staff in detention areas of SIZOs and of closed-type prisons and, if necessary, revise the relevant regulations accordingly (paragraph 165);
- the Ukrainian authorities to reform the existing professional training of all penitentiary staff (throughout the penitentiary system, including at Prison No. 3 in Krivyi Rih) with a view to fostering a new relationship with prisoners and moving towards a dynamic rather than a purely static approach to security and order. If necessary, the appropriate regulations should be amended (paragraph 167);
- particular measures to be taken to develop specialised training for staff working with certain categories of prisoner (e.g. remand prisoners, life-sentenced prisoners, inmates held in conditions of high security or enhanced control, women, juveniles) (paragraph 167);
- the Ukrainian authorities to:
 - take appropriate steps throughout the penitentiary system to review the approach being followed vis-à-vis prisoners who have harmed themselves, in the light of remarks made in paragraph 168;
 - revise the procedure for placement in disciplinary solitary confinement in SIZOs and Closed-Type Prisons in order to ensure that the prisoners concerned (i) are promptly informed in writing of the charges against them, (ii) have the right to legal assistance, (iii) are given reasonable time to prepare their defence, (iv) have the right to call witnesses on their own behalf and to cross-examine evidence given against them, and (v) are provided with a copy of the decision which contains the reasons for placement and information on the means available to them to challenge the decision before an independent authority;
 - ensure, including through regulatory measures, that, in the case of a prisoner who is being subjected to successive sanctions of disciplinary confinement totalling in excess of 15/10 days, there should be an appropriate interruption in the disciplinary confinement regime at the 15/10-day point;
 - pay extra vigilance at Odessa SIZO to the observance of the disciplinary procedures and recording standards;
 - pursue their action to revise the provisions on the role of health-care staff in disciplinary proceedings in order to ensure that they are no longer required to give an opinion as to whether a sentenced or remand prisoner is fit for disciplinary confinement (or any other type of confinement imposed against the inmate's wishes) and ensure that health-care services are proactive in respect of inmates held in such conditions;

- permit access to a reasonable range of reading material in the disciplinary cells;
- ensure that the measure of disciplinary confinement does not include a total prohibition on family contacts during the enforcement of the measure and that any restrictions on family contact as a form of punishment are used only where the offence relates to such contacts (paragraph 174).

comments

- consideration should be given to putting an end to the 24-hour shift pattern for custodial staff working in penitentiary establishments (paragraph 165);
- if it is considered necessary for custodial staff working within detention areas to carry handcuffs and, in particular, rubber batons, they should be hidden from view. Further, tear gas canisters should not be part of the custodial staff's standard equipment and should not be used in a confined area (paragraph 166);
- it would be preferable to reduce the maximum possible period of disciplinary solitary confinement for juvenile prisoners to three days (paragraph 168).

requests for information

- information on progress made in the refurbishment of the disciplinary cells at Odessa SIZO (paragraph 174).

APPENDIX II

**LIST OF REPRESENTATIVES OF THE NATIONAL AUTHORITIES
AND ORGANISATIONS WITH WHOM THE CPT'S DELEGATION
HELD CONSULTATIONS**

Ministry of Justice

Inna YEMELIANOVA	First Deputy Minister
Maksym RAYKO	Co-ordinator for International Co-operation, Private Office of the Minister of Justice
Svitlana KOLYSHKO	Head of the International Law and Co-operation Directorate
Ihor ARTEMENKO	Deputy Head of Co-operation with the State Penitentiary Service
Yulia TITKOVA	Specialist, Criminal Law and Procedure Section
Vitalyi TYKHONOVICH	Head of the International Co-operation Section
Pavlo KUDLAY	Deputy Head of the International Co-operation Section

State Penitentiary Service

Oleksandr LISITSKOV	Head
Serhyi SYDORENKO	First Deputy Head
Vladyslav KLYSHA	Head of the International Co-operation Section

Ministry of Internal Affairs

Serhyi BURLAKOV	Director of Public Relations
Oleksandr GONCHAROV	First Deputy Head of the General Directorate for Investigations
Maksym TSUTSKERIDZE	Deputy Director, General Directorate for Investigations
Mikheylo ANDRUN'KIV	Deputy Head of General Headquarters
Mikheylo ZHURBA	Deputy Head of General Headquarters
Evhenyi DZIUBA	Deputy Head of the Convoy Units, Special Detention Facilities and Judicial Police Department, Public Order Directorate
Bohdan LIZOGUB	Deputy Head of the Human Resources Directorate
V'yacheslav MATVIENKO	Deputy Head of the Internal Security Directorate
Serhyi TIKHONOV	Deputy Head of the Organisational and Methodological Activities, Criminal Investigation Directorate
Larysa GONCHAR	Head of Division, Directorate of Legal Affairs
Serhyi DYATLOV	Head of Division, International Relations Directorate
Nataliya BORODYCH	Head of Division, Public Relations Directorate

State Migration Service

Natalya NAUMENKO	Director of Refugee and Aliens Affairs
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General Prosecution Service

Hrihoryi SEREDA	Deputy Prosecutor General
Oleksandr PRYKHODKO	Head of the Directorate General for Legal Co-operation and European Integration
Vadym HORAN	Head of the Directorate General for the Supervision of the Observance of the Legislation in the Execution of Judicial Decisions in Criminal Matters and other Coercive Measures
Oleh KARPENKO	Deputy Head of the General Directorate for the Supervision of the Observance of the Legislation in the Execution of Judicial Decisions in Criminal Matters and other Coercive Measures
Oleh NASTASYAK	Head of the Directorate for the Supervision of the Observance of the Legislation in the Execution of Sentences
Olena POMANIUK Yevhen KOTENKO	Deputy Head of the Legal Support Directorate Head of Division, Directorate General for the Supervision of the Observance of the Legislation in the Execution of Judicial Decisions in Criminal Matters and other Coercive Measures
Anatolyi ROMANIUK	Head of Division, Directorate General for the Supervision of the Observance of the Legislation in the Execution of Judicial Decisions in Criminal Matters and other Coercive Measures
Oleksandr YEHOOROV	Head of Division, Directorate General for the Supervision of the Observance of the Legislation in the Execution of Judicial Decisions in Criminal Matters and other Coercive Measures
Valeryi ROMANOV	Deputy Head of Division, Directorate General for the Supervision of the Observance of the Legislation in the Execution of Judicial Decisions in Criminal Matters and other Coercive Measures
Maksym VOROTYNTSEV	Senior prosecutor, International Relations, European Integration and Protocol Division
Yaroslav KHMISHKOV	Head of the Criminal Investigation Directorate, Kharkiv Regional Prosecution Service
Ihor KRASNOLOBOV	Head of Division, Directorate for the Supervision of the Observance of the Legislation in the Execution of Judicial Decisions in Criminal Matters and other Coercive Measures, Kharkiv Regional Prosecution Service
Taras OVCHARUK	Head of Division, Supervision of the Observance of the Legislation in the Execution of Judicial Decisions in Criminal Matters and other Coercive Measures, Vinnytsia Regional Prosecution Service

Office of the Parliamentary Commissioner for Human Rights / National Preventive Mechanism

Valeriya LUTKOVSKA Parliamentary Commissioner for Human Rights

Yuryi BELOUSOV Head of the Department for the Development of the National Preventive Mechanism

Co-ordination Centre for Legal Aid

Vitalyi BAYEV Deputy Head

Nataliya DOROSHENKO
Miroslav LAVRINOK
Ludmila RADIONOVA

National Bar Association

Valentyn GVOZDYI
Igor KARAMAN

Regional Representation of the United Nations High Commissioner for Refugees

Oldřich Andřýsek Regional Representative

Non-Governmental Organisations

Ukrainian Helsinki Human Rights Union
Kharkiv Human Rights Group