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## **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 8 to 21 December 2017**

The Ukrainian Government has requested the publication of this report.

Strasbourg, 6 September 2018

*In accordance with Article 11, paragraph 3, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, certain names have been deleted.*

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## EXECUTIVE SUMMARY

The main objective of the CPT's seventh periodic visit to Ukraine was to review the measures taken by the Ukrainian authorities in response to the recommendations made by the Committee after its previous visits. In particular, attention was paid to the treatment and conditions of detention of persons in police custody and prisoners. The delegation also examined the treatment, conditions and legal safeguards offered to psychiatric patients, residents of social care institutions ("Internats"), as well as immigration detainees.

### **Law enforcement establishments (National Police, State Border Guard Service, Security Service of Ukraine)**

As had been the case during the CPT's previous visit to Ukraine in 2016, the majority of persons who were, or recently had been, in police custody indicated that the police had treated them correctly. Further, no allegations of physical ill-treatment were received in respect of officers of the State Security Service of Ukraine (SSU) or of police officers performing custodial tasks in temporary holding facilities (ITTs).

However, the delegation received a considerable number of recent and credible allegations from detained persons regarding the excessive use of force during apprehension by the police (mostly plainclothes operational officers, more rarely uniformed patrol police officers), as well as allegations of physical ill-treatment after being brought under control, mainly consisting of kicks, punches and truncheon blows, as well as too tight and prolonged handcuffing.

Such allegations were heard more frequently in Kyiv than in other regions visited, and it was also mostly in the capital that the delegation received allegations regarding physical ill-treatment by operational officers during initial questioning, with the aim of obtaining additional information or extracting a confession; outside Kyiv, such allegations were received relatively rarely, the least frequently in Chernivtsi and Ivano-Frankivsk regions.

Overall, the delegation gained the impression that, compared to the findings of the 2016 visit, the severity of the ill-treatment alleged had diminished. However, the frequency of allegations remained at a worrying level, especially in Kyiv.

Unfortunately, the unacceptable practice of unrecorded detentions had not been fully eliminated, despite specific recommendations to this effect repeatedly made by the Committee after previous visits. In addition, persons concerned were allegedly subjected to informal questioning without benefiting from the safeguards provided for by law.

The CPT was concerned about the performance of *ex officio* lawyers provided by the Centres of Free Legal Aid, and recommended that the Ukrainian authorities ensure that *ex officio* lawyers perform their functions in a timely, diligent and professional manner.

As for the role to be played by health-care staff in the prevention of ill-treatment, the Committee concluded that much remains to be done in this area, especially regarding the lack of systematic medical examinations upon admission into an ITT and the lack of confidentiality of such examinations.

In all the ITTs visited, as well as in the SSU Temporary Detention Facility in Kyiv, material conditions of detention were generally satisfactory for detention periods of up to 72 hours (the statutory maximum police custody period) but not for longer stays.

The delegation also visited two temporary detention places (TDPs) of the State Border Service, in Chernivtsi and Lviv. Both establishments, usually holding detained foreign nationals for periods of up to 72 hours (exceptionally up to six days) offered detention conditions of a high standard. However, the CPT was concerned about the fact that detained foreign nationals were generally not enabled to meet their lawyers in private prior to interviews and court hearings.

### **Penitentiary establishments**

The delegation carried out a follow-up visit to Kyiv Pre-Trial Detention centre (Kyiv SIZO) and first-time visits to Chernivtsi Penitentiary Institution No. 33, Ivano-Frankivsk Penitentiary Institution No. 12, Lviv Penitentiary Institution No. 19, Lychakivska Prison No. 30 in Lviv and Kremenchuk Juvenile Colony.

One of the purposes of the visit was to assess the progress in the implementation of various measures to reform the prison system, including legislative, structural and infrastructural changes. Although the Committee fully acknowledged the overall difficulties and challenges facing Ukraine, it called upon the Ukrainian authorities to take urgent and concrete steps to address the dramatic situation observed in at least some of the penitentiary establishments visited.

The delegation received no direct and recent allegations of ill-treatment by staff at any of the penitentiary establishments visited. That said, inter-prisoner violence was a problem in all the establishments except in Kremenchuk; much of this might be the result of very low prison staff complements. The CPT called upon the Ukrainian authorities to take urgent steps to increase both custodial staff levels and presence at the establishments visited. Further, more needs to be done to ensure that staff are trained and motivated to be proactive and prevent inter-prisoner violence. The concept of dynamic security should be the reference to develop constructive relations between staff and all the prisoners, as well as to avoid any tacit agreement between inmate “leaders” and members of prison staff. This will also require improving staff working conditions and increasing salaries, which are presently very low and which expose prison officers to the temptation of corruption.

The most striking feature of all of the establishments visited (except the colony for juveniles in Kremenchuk) were the generally poor or even appalling material conditions, in particular in Kyiv and Lviv. The situation at Kyiv SIZO had worsened since the Committee’s November 2016 visit, because it was now overcrowded (even according to the national norm of 2.5 m<sup>2</sup> of living space per remand prisoner, which was still unchanged despite the CPT’s long-standing recommendation) and the detention blocks had further deteriorated. In short, conditions at Kyiv SIZO could easily be considered inhuman and degrading. The situation was also extremely difficult at Lychakivska Prison in Lviv, with prisoner accommodation areas being overcrowded, very dilapidated and dirty. Conditions were somewhat better at Chernivtsi Penitentiary Institution and Ivano-Frankivsk Penitentiary Institution, although both establishments required extensive renovation and, in the former establishment, the leaking roof quickly ruined any positive effects of refurbishment carried out in the cells.

The Committee is seriously concerned by the fact that remand prisoners are still generally not offered any out-of-cell activities other than outdoor exercise for one hour per day in small, oppressive and dilapidated yards. The regime of remand prisoners based on the concept of “isolation” has not changed either. The only positive exception concerned juveniles on remand, who were offered some out-of-cell activities (sports, education classes) in Lviv and Ivano-Frankivsk (but not in Chernivtsi).

On a positive note, the delegation was, overall, positively impressed by the material conditions and activities offered to sentenced juveniles at Kremenchuk Educational Colony. One issue of concern is the fact that the Ukrainian law still permits the placement of juveniles in disciplinary solitary confinement (for up to 5 days); the CPT recommended that this legal provision be abolished.

The situation of life-sentenced prisoners has remained basically unchanged, as the relevant legislation has not been amended despite the Committee’s long-standing recommendations. Lifers continued to spend up to 23 hours per day in small cells, were offered hardly any organised activities and association, and had no realistic prospect for conditional release.

The CPT also regrets the absence of improvement in the inadequate visiting entitlement for all categories of inmates, and especially the fact that remand prisoners continue to face excessive restrictions in access to visits and a general ban on telephone calls.

Turning to health-care services, several areas of concern are raised by the Committee, such as the lack of medical confidentiality, the poor quality of recording of injuries and the lack of systematic reporting to competent investigative/prosecution authorities.

Although a very basic level of health care provision was ensured in all penitentiary establishments visited, access to specialists, including gynaecological and psychiatric care, was deficient. For legal, license-related reasons, the few psychiatrists working in prisons were not allowed to prescribe any psychotropic medication. More generally, the shortage of all kinds of medication was evident in the establishments visited, with an over-reliance on prisoners and their families to provide most of the medicines. The Committee was also concerned about inadequate psychological assistance for prisoners.

Furthermore, material conditions in prison health-care facilities were very poor and unhygienic. All the premises were dark, cold, cramped, with damaged and dirty walls and furniture.

### **Psychiatric establishments**

The CPT's delegation visited three psychiatric establishments under the authority of the Ministry of Health: Kyiv Municipal Psychiatric Hospital No. 3 (in the village of Hlevakha), Dnipro High-Security Psychiatric Hospital and Poltava Regional Psychiatric Hospital.

The delegation heard hardly any credible allegation of recent physical ill-treatment of patients by staff. However, the delegation received several allegations of verbal abuse by medical staff and “controllers” (security staff employed by the Ministry of Justice).

As regards living conditions, the general state of cleanliness in the establishments visited was satisfactory. However, the majority of patients were accommodated in seriously overcrowded large-capacity dormitories, there was a real lack of personalised environments and no dedicated spaces for psycho-social and rehabilitation activities.

Many interviewed patients complained about the quality of the food and the lack of its variety. In Poltava, they also complained about the food's insufficient quantity.

At Dnipro High-Security Psychiatric Hospital, outdoor exercise was offered twice a day. By contrast, access to outdoor exercise for patients was inadequate in the two other establishments visited. Most patients, especially those on general psychiatric wards, had had no access to outdoor exercise for several months in a row.

Following an immediate observation on this subject made by the delegation at the end of the visit (pursuant to Article 8, paragraph 5, of the Convention), the CPT was informed that steps have been taken in the psychiatric hospitals visited to ensure patients' daily access to outdoor exercise, regardless of the security level. The Committee welcomes this.

Turning to treatment, it was mainly based on pharmacotherapy. Psycho-social rehabilitative activities were missing and there was little evidence of a multi-disciplinary team approach. As a result of the paucity of activities, the majority of patients spent most of the time lying in their beds or walking in the corridors. The CPT recommended that serious efforts be made in all the psychiatric establishments visited to develop a range of therapeutic options and involve patients in rehabilitative psycho-social activities. The Committee also reiterated its recommendation that an individual written treatment plan be drawn up for each patient. Patients should be involved in the drafting of their individual treatment plans and be informed of their progress.

There was no evidence of excessive use of mechanical restraint at any of the hospitals visited. However, the recording and monitoring of the use of restraints should be improved, with all instances being systematically recorded in a detailed, standardised form. Furthermore, patients should never be restrained in the view of other patients.

Concerning safeguards in the context of the placement and review of the measure of compulsory hospitalisation/treatment in a psychiatric establishment, the delegation noted that a 6-monthly treatment review by the hospitals' medical commissions was in place. The CPT also noted that new legislation, in force as from 10 June 2018, introduced important new safeguards for forensic patients, such as obligatory participation in court hearings, a right for the patient or his/her defence counsel/representative to appeal the court decision, and the right to apply for an alternative psychiatric examination. The new legislation also expressly provides for the patient's right to refuse psychiatric treatment, except when such treatment is prescribed by law.

Only a few of the "civil" patients hospitalised in the establishments visited were *de jure* involuntary (i.e. according to the civil involuntary hospitalisation procedure). All others had signed a consent form at the time of their hospitalisation or shortly thereafter. That said, a considerable number of formally "voluntary" patients told the delegation that they did not wish to remain in the hospitals where all wards were locked and they were not permitted to leave. These patients were therefore *de facto* deprived of their liberty without recourse to the proper legal safeguards that formal involuntary hospitalisation should provide. The Committee recommended that effective steps be taken to ensure that the provisions of the Act on Psychiatric Care are fully implemented in practice. The CPT also recommended that the legal status of all patients currently considered as "voluntary" be urgently reviewed by an independent external authority.

Several patients complained about the lack of effective legal assistance when it was provided for free by *ex officio* lawyers during involuntary placement proceedings, whether of a civil or criminal nature.



As it had been the case on previous visits, the guardianship system for patients deprived of their legal capacity was lacking independence and impartiality, hospital Directors or treating doctors being appointed as guardians for several patients. The Committee called upon the Ukrainian authorities to find alternative solutions.

Concerning contact with the outside world, visits were allowed without any restrictions in the three psychiatric hospitals. However, access to a telephone was not guaranteed to all patients.

### **Social care establishments**

The delegation did not receive any credible allegations of physical ill-treatment of residents by staff at Kyiv Svyatoshynskiy Psychoneurological Institution (“Internat”). However, it did receive a number of allegations that some orderlies were at times verbally abusive.

Living conditions at Kyiv “Internat” were broadly satisfactory. The establishment was generally clean and there was ongoing refurbishment. However, there was a lack of a personalised environment in the residents’ rooms and no dayroom facilities on the wards where residents lived. Access to outdoor exercise was sometimes not offered when weather conditions were not good and, due to a lack of proper infrastructure, it was not always granted for residents with reduced mobility. The CPT made recommendations to address these shortcomings.

As during the Committee’s previous visit (in 2009), the number of staff in direct contact with residents was clearly insufficient.

Regarding treatment, residents’ medical records appeared adequate and properly kept. However, due to legal restrictions, medical doctors, including psychiatrists, employed by the establishment could not prescribe appropriate treatment to residents. This appeared to be a waste of resources and an underuse of the medical skills of doctors. Additionally, treatment was mainly based on pharmacotherapy. The CPT recommended an increase in the offer of psycho-social and rehabilitative activities for the residents and, more generally, the development of a de-institutionalisation policy.

As concerns means of restraint (including seclusion), it appeared that they were not applied in the establishment. However, there seemed to be no clear legal framework and no policy concerning the use of means of restraint.

As for legal safeguards, the current legislation still does not enable legally incompetent residents to apply to a court with a view to terminating their placement. The Committee recommended that the law be amended accordingly; in addition, the need for continued placement of legally incompetent persons should be automatically reviewed by a court at regular intervals.

Some residents deprived of their legal capacity were placed under the establishment’s guardianship. As with the psychiatric patients, the CPT called upon the Ukrainian authorities to search for alternative solutions which would better guarantee the independence and impartiality of guardians.

## I. INTRODUCTION

### A. The visit, the report and follow-up

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 8 to 21 December 2017. The visit formed part of the CPT’s programme of periodic visits for 2017 and was the Committee’s seventh periodic visit to Ukraine.<sup>1</sup>

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

- George Tugushi, Head of delegation
- Marzena Ksel, 1st Vice-President of the CPT
- Djordje Alempijević
- Alexander Minchev
- Vytautas Raškauskas
- Ivona Todorovska.

They were supported by Borys Wódz (Head of Division) and Natacha De Roeck of the CPT's Secretariat, and assisted by:

- Michael Kellett, former Detective Chief Inspector in the Lancashire Constabulary, United Kingdom (expert)
- Andres Lehtmets, Head of the Centre of Psychiatry, West Tallinn Central Hospital, Estonia (expert)
- Denys Danylenko (interpreter)
- Vadim Kastelli (interpreter)
- Dmytro Kopylov (interpreter)
- Larysa Sych (interpreter).

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<sup>1</sup> In addition, the CPT has so far carried out seven ad hoc visits to Ukraine. The reports on all previous Committee’s visits and related Government responses are available on the CPT’s website: <https://www.coe.int/en/web/cpt/ukraine>.

3. The list of law enforcement, penitentiary, psychiatric and social care establishments visited by the CPT's delegation can be found in Appendix I.

4. The report on the visit was adopted by the CPT at its 96<sup>th</sup> meeting, held from 2 to 6 July 2018, and transmitted to the Ukrainian authorities on 27 July 2018. The various recommendations, comments and requests for information made by the CPT are set out in bold type in the present report. The CPT requests the Ukrainian authorities to provide within six months a response containing a full account of action taken by them to implement the Committee's recommendations and replies to the comments and requests for information formulated in this report.

#### **B. Consultations held by the delegation and co-operation encountered**

5. In the course of the visit, the delegation had consultations with Denys Chernyshov, Deputy Minister of Justice, Tetyana Kovalchuk, Deputy Minister of Internal Affairs, Oleksandra Churkina, Deputy Minister of Social Policy, as well as with senior officials from the Ministries of Justice, Internal Affairs, Health and Social Policy, the Security Service of Ukraine and the Prosecutor General's Office.

In addition, talks were held with the Parliament Commissioner for Human Rights (Ombudsperson) Valeriia Lutkovska and the Head of the National Preventive Mechanism (NPM) Department Kateryna Chumak. The delegation also met representatives of non-governmental and international organisations active in areas of concern to the CPT.

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

6. The CPT wishes to express its appreciation of the efficient assistance provided to its delegation before, during and after the visit, by the Liaison Officer appointed by the Ukrainian authorities, Oleh Korchovyi from the Ministry of Justice.

7. The CPT's delegation received generally very good co-operation in the establishments visited, including those for which the visit had not been notified in advance. In particular, the delegation had, in almost all cases, rapid access to premises it wished to visit, was able to meet in private with persons with whom it wanted to speak and was provided with access to the information it required. Further, the delegation was provided with the necessary documentation and additional requests for information made during the visit were promptly met. This is indeed positive and demonstrates that information about the Committee's visit and the CPT's mandate has generally been circulated to the establishments concerned.

8. One exception to the above-mentioned positive assessment of the level of co-operation between the Committee and the Ukrainian authorities concerns the situation encountered by the delegation at Svyatoshynskiy Psychoneurological Institution (“Internat”) for women in Kyiv, visited on 11 and 12 December 2017 (after the visit had been notified in advance).

Although the delegation enjoyed rapid access to the establishment, it appeared that at least some staff members, including from the management, were not properly informed about the mandate of the CPT. In particular, staff did not seem to know about the fact that the delegation was empowered to have confidential interviews with residents, without any staff presence and supervision, and without any interruption by the staff. It was also obvious that some residents had received instructions from the staff on how to speak with the delegation.

The issue was raised with the Director during the debriefing in the establishment. The CPT very much hopes that similar situations will not occur in the course of the Committee’s future visits to Ukraine.

9. Furthermore, the delegation must recall once again that the principle of co-operation between Parties to the Convention and the CPT is not limited to steps taken to facilitate the task of a visiting delegation. It also requires that decisive action be taken to improve the situation in the light of the Committee’s recommendations.

In this respect, the CPT is very concerned to note that, after its 7<sup>th</sup> periodic visit to Ukraine (and 14 visits altogether), little or no action has been taken to implement several of its long-standing recommendations concerning in particular the prison system, especially as regards material conditions, the legal norm of living space for remand prisoners, the regime for remand prisoners and restrictions on their contact with the outside world, the legislation and regime applied to life-sentenced prisoners, the visiting entitlement for prisoners, and the health-care provision in prisons.

The CPT must stress that if no progress is made to implement its recommendations, the Committee might have to consider having recourse to Article 10, paragraph 2, of the Convention.<sup>2</sup> However, the CPT hopes that decisive action by the Ukrainian authorities to implement its recommendations will render such a step unnecessary.

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<sup>2</sup> "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."

**C. Immediate observations pursuant to Article 8, paragraph 5, of the Convention**

10. At the end of the visit, the CPT's delegation met senior Government officials in order to acquaint them with the main facts found during the visit. On that occasion, the delegation made two immediate observations, in pursuance of Article 8, paragraph 5, of the Convention, on certain particularly urgent matters.

11. The **first immediate observation** concerned the generally poor or even appalling material conditions in all of the penitentiary establishments visited (except for the Educational Colony for Juveniles in Kremenchuk).<sup>3</sup> In particular, the situation at Kyiv SIZO had worsened since the CPT's November 2016 visit, because it was now severely overcrowded and the detention blocks had further deteriorated. In short, conditions at Kyiv SIZO could easily be considered as inhuman and degrading.<sup>4</sup> In the light of these findings, the Ukrainian authorities were requested to provide, **within three months**, a detailed action plan, comprising precise deadlines and financial allocations, to address the situation at Kyiv SIZO. On the same occasion, the Ukrainian authorities were requested to provide information on other precise steps being taken to remedy the situation of the prison service and to reform prison health-care services.

12. The **second immediate observation** concerned the situation observed at Kyiv Municipal Psychiatric Hospital No. 3 (in Hlevakha) and Poltava Regional Psychiatric Hospital, where patients' access to outdoor exercise was inadequate; indeed, most patients, especially those in the general psychiatric wards, had had no access to outdoor exercise for several months in a row.<sup>5</sup> The Ukrainian authorities were requested to inform the CPT, **within three months**, of steps taken to offer daily access to outdoor exercise to all patients of psychiatric establishments.

13. The above-mentioned immediate observations were subsequently confirmed in a letter of 9 January 2018 from the President of the CPT.

By letter dated 5 April 2018, the Ukrainian authorities informed the Committee of the measures taken. Those measures will be assessed later in the report.

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<sup>3</sup> See paragraph 69 below.

<sup>4</sup> See paragraphs 62 and 63 below.

<sup>5</sup> See paragraph 131 below.

#### **D. National Preventive Mechanism**

14. As already mentioned in paragraph 5 above, at the outset of the visit the delegation met the Ombudsperson, Ms Valeriia Lutkovska,<sup>6</sup> and the Head of the National Preventive Mechanism (NPM) Department of her Office, Ms Kateryna Chumak.

The delegation was informed that the current funding for NPM activities was just about sufficient to cover the operational expenses related with NPM visits to places of deprivation of liberty.<sup>7</sup> However, due to a legal *lacuna* no funds were available for the remuneration of 203 monitors who were not employees of the Ombudsman's Office, i.e. those coming from the civil society (NGOs) and media.<sup>8</sup> Therefore, these NGO and media monitors were obliged to seek donor assistance to reimburse their costs and obtain some remuneration for their NPM-related activities.

Further, as regards the core NPM staff, at the time of the visit 13 out of the total of 32 posts were vacant, mainly because of unattractive salaries (reportedly, much lower than the allowances that some of the NGOs paid to their monitors). Two additional core staff members were supposed to be recruited soon but the staffing situation would nevertheless remain difficult and Ms Lutkovska expected more core staff members to leave in the near future and seek better paid jobs elsewhere.

In this context, the CPT again refers to Article 18 (3) of the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and paragraph 11 of the Guidelines on national preventive mechanisms adopted by the United Nations Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) in November 2010,<sup>9</sup> according to which: "The necessary resources should be provided to permit the effective operation of the NPM". **The Committee strongly encourages the Ukrainian authorities to comply with these SPT guidelines,<sup>10</sup> in particular by ensuring that the National Preventive Mechanism is allocated sufficient resources (both human and financial) to permit its effective functioning.**

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<sup>6</sup> A new Ombudsperson, Ms Liudmyla Denisova, was appointed by the Rada (Parliament) on 15 March 2018, after a long delay. Ms Lutkovska's formal term of office had ended in April 2017 but she continued to perform her duties pending the appointment of her successor.

<sup>7</sup> There had been approximately 1,500 such visits throughout the country since the setting up of the NPM in October 2012.

<sup>8</sup> Ms Lutkovska expressed the view that journalists – who had all been trained in monitoring work – contributed to increased transparency of NPM activities.

<sup>9</sup> UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), Document CAT/OP/12/5 of 9 December 2010.

<sup>10</sup> As well as recommendations made by the SPT after its 2016 visit to Ukraine, see in particular paragraph 18 of document CAT/OP/UKR/3.

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

### A. Law enforcement agencies

#### 1. Preliminary remarks

15. The CPT's delegation visited twelve police establishments, mainly temporary holding facilities (ITTs) in all the regions and towns visited,<sup>11</sup> and spoke with numerous remand prisoners in penitentiary establishments who had recently been in police custody. The delegation's focus was on ill-treatment, legal safeguards and conditions of detention in police establishments.

The delegation also carried out a follow-up visit to the Security Service of Ukraine (SSU) Temporary Detention Facility in Kyiv.<sup>12</sup>

Last but not least, the delegation visited two temporary detention places (TDPs) of the State Border Service, in Chernivtsi and Lviv.<sup>13</sup>

16. At the outset of the visit, the delegation was informed by senior officials of the Ministry of Internal Affairs of progress in police reform.<sup>14</sup> Among other things, the Ministry had adopted a new development strategy until 2020 and was in the process of drafting the relevant action plan. The delegation was also told about the ongoing pilot project in 10 districts (partially financed by an external donor) to do away with the old Soviet-type system of operational officers and investigators, and have fully-trained "police detectives" instead, following the example of the recently set up National Anti-Corruption Bureau of Ukraine (NABU).<sup>15</sup>

Given the fact that most of the police ill-treatment allegations received by the CPT in the past – and also some received on this visit<sup>16</sup> – have referred to the activities of operational officers, the Committee cannot but welcome this new system which may have the potential of improving the treatment of persons in police custody, provided of course the new detectives are properly trained along the lines advocated by the CPT for a long time. **The Committee encourages the Ukrainian authorities to pursue their efforts in this area and, in so doing, take due account of the CPT's long-standing recommendations contained *inter alia* in paragraphs 20 and 32 of the report on the 2011 ad hoc visit<sup>17</sup> and paragraphs 48 and 59 of the report on the 2013 periodic visit.<sup>18</sup>**

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<sup>11</sup> See the full list in Appendix I and in the newsflash on the visit, <https://www.coe.int/en/web/cpt/-/council-of-europe-anti-torture-committee-visits-ukrai-1>. The few district police divisions visited had, as a rule, no, operational cells. See also paragraph 50 below.

<sup>12</sup> Visited several times in the past, most recently in 2016. See, in particular, paragraphs 14 and 34 of the report on that visit (<https://rm.coe.int/pdf/1680727930>), as well as paragraphs 20, 52 and 53 below.

<sup>13</sup> See paragraph 51 below.

<sup>14</sup> For a more broad description of that reform, see paragraph 9 of the report on the 2016 ad hoc visit, <https://rm.coe.int/pdf/1680727930>.

<sup>15</sup> NABU has been operational since the end of 2015, see <https://nabu.gov.ua/en>.

<sup>16</sup> See paragraph 22 below.

<sup>17</sup> <https://rm.coe.int/1680698448>.

<sup>18</sup> <https://rm.coe.int/1680698465>.

17. The legal framework governing deprivation of liberty by law enforcement agencies has remained largely unchanged since the 2016 ad hoc visit. According to the Code of Criminal Procedure (CCP),<sup>19</sup> *criminal suspects* may be held in the custody of the police or other law enforcement agencies such as the SSU (before being seen by a judge) for a maximum of 72 hours; *persons remanded in custody* are in principle transferred to a remand prison (SIZO) but may be held, for logistical reasons, in an ITT for up to 10 days.<sup>20</sup> Under certain circumstances, a person remanded in custody or serving a prison sentence may be held – for as long as necessary – in a law enforcement establishment as a protective measure.<sup>21</sup>

The CPT must stress once again that, as a matter of principle, persons remanded in custody (and *a fortiori* sentenced prisoners) should not be held in law enforcement establishments.<sup>22</sup> Such facilities are not designed for lengthy stays. Moreover, prolonged detention on the premises of law enforcement agencies increases the risk of intimidation and ill-treatment. **The CPT reiterates its recommendation that the Ukrainian authorities take the necessary steps to ensure that persons remanded in custody are always promptly transferred to a SIZO.**

18. Persons suspected of having committed an *administrative offence* may be deprived of their liberty by the police for up to three hours (in order to draw up a protocol) or for up to three days (when this is considered necessary to establish the identity of the person concerned or to clarify the circumstances of breaches of law); if found guilty the persons may be sentenced by a judge to up to 15 days of administrative detention in an ITT.<sup>23</sup>

**The Committee wishes to stress once again that ITTs are not suitable for prolonged detention and should not be used to hold persons (for whatever reason, including administrative detention) for longer than a few days (see also paragraph 49 below).**

19. The delegation once again came across a number of cases in which remand prisoners had been returned from a remand prison (SIZO) to police detention facilities for the purpose of investigative work.<sup>24</sup> In some cases, the persons concerned had been transferred back and forth multiple times between a SIZO and an ITT.

**The CPT reiterates its recommendation that the Ukrainian authorities take steps – including at the legislative level – to ensure that the return of remand (and sentenced) prisoners to detention facilities of law enforcement agencies is sought and authorised only very exceptionally, exclusively by a judge or a prosecutor, for specific reasons and for the shortest possible time.**

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<sup>19</sup> Section 211.

<sup>20</sup> Senior officials of the Ministry of Internal Affairs met by the delegation at the outset of the visit acknowledged that, in practice, persons remanded in custody could sometimes remain in ITTs for more than 10 days, reportedly due to logistical difficulties.

<sup>21</sup> See Section 19 (1) of the Act on the Safety of Persons involved in Criminal Proceedings.

<sup>22</sup> See also Rule 10.2 of the European Prison Rules.

<sup>23</sup> See Sections 32 and 263 of the Code of Administrative Offences. See also paragraph 49 below.

<sup>24</sup> It is also noteworthy that official statistics presented to the delegation at the outset of the visit demonstrated that remand prisoners continued to represent a significant proportion of persons held in ITT's: in 2017 (until 1 December), ITT's had accommodated some 14,000 criminal suspects, approximately 7,700 administrative detainees and some 7,400 remand prisoners.



20. As regards the deprivation of liberty of persons by the SSU, the delegation was informed that the SSU Temporary Detention Facility in Kyiv continued to be the only operational establishment of this kind in the country. As previously, it was used to accommodate criminal suspects (up to 72 hours) but also remand prisoners under investigation by the SSU, for prolonged periods (up to 3 years). In this context, it is noteworthy that recent amendments to the Acts on Pre-Trial Detention and on the SSU have legalised the use of the facility to hold remand prisoners. On this subject, see the Committee's comments in paragraph 53 below.

21. Regarding the provisions governing the detention of foreign nationals detained pursuant to aliens legislation in the temporary detention places (TDPs) of the State Border Service, see paragraphs 46 and 47 below.

## **2. Ill-treatment**

22. As had been the case during the CPT's previous visit to Ukraine in November 2016,<sup>25</sup> the majority of interviewed persons who were, or had recently been, in police custody indicated that the police had treated them correctly. Further, no allegations of physical ill-treatment were received in respect of officers of the State Border Service, the State Security Service of Ukraine (SSU) or of police officers performing custodial tasks in the ITTs.

However, the delegation received a considerable number of recent and credible allegations from detained persons regarding the excessive use of force during apprehension by the police (mostly plainclothes operational officers, more rarely uniformed patrol police officers), as well as allegations of physical ill-treatment after being brought under control, mainly consisting of kicks, punches and truncheon blows, as well as too tight and prolonged handcuffing.

Such allegations were heard more frequently in Kyiv than in other regions visited, and it was also mostly in the capital that the delegation received allegations regarding physical ill-treatment by operational officers during initial questioning, with the aim of obtaining additional information or extracting a confession; outside Kyiv, such allegations were received relatively rarely, the least frequently in Chernivtsi and Ivano-Frankivsk regions.

In some cases, the delegation gathered medical evidence (including injuries directly observed by the delegation's doctors) consistent with the allegations made, and medical evidence was also found in the relevant documentation in ITTs and penitentiary establishments visited.<sup>26</sup>

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<sup>25</sup> See paragraph 15 of CPT/Inf (2017) 15, <https://rm.coe.int/pdf/1680727930>.

<sup>26</sup> Despite the generally poor quality of such documentation, see paragraph 33 below.

23. In a number of instances, the interviewed persons who alleged ill-treatment had made complaints to competent authorities and authorised the CPT to mention their names in the context of ongoing dialogue with the Ukrainian authorities (including in the present report). By way of illustration, the following cases may be cited:

- Mr I. B., interviewed at Kyiv Pre-Trial Detention Centre (Kyiv SIZO) on 9 December 2017, alleged having been physically ill-treated (punched and kicked, including on his head) by the police shortly after his apprehension on 1 December 2017. He had allegedly sustained a concussion and several other injuries and had to spend a week at a municipal hospital before he could be admitted to the SIZO. He made an official complaint to the prosecutor's office.
- Mr S. T., interviewed at Kyiv SIZO on 9 December 2017, alleged having been repeatedly punched, kicked and struck with truncheons by several operational officers from Svyatoshynskiy District Police Division during questioning in the night from 15 to 16 November 2017, reportedly in order to force him to confess. He still bore visible injuries upon his arrival at the SIZO a week after his arrest (the prison doctor recorded a "laceration under left eye") and complained to the delegation about pain in his left ear. He made a formal complaint to the prison's doctor and operational staff, who transmitted it further to the prosecutor.
- Mr V. N., interviewed at Zhovkva ITT on 14 December 2017, alleged having been subjected to physical ill-treatment (consisting of multiple punches and kicks after having been violently thrown on the floor) by apprehending operational officers (who were allegedly drunk) from Shevchenkivskiy District Police Division in Lviv on 30 October 2017. As a result, he had reportedly sustained several injuries including a fractured rib. He had reportedly been first taken to a municipal hospital in Lviv (for an X-ray and emergency treatment) and then to Pustomyty ITT where his injuries were recorded by a called-in ambulance doctor (the entry, which the delegation saw, was dated 2 November 2017 and mentioned a "sub-dermal haematoma on the left joint" and a "bruise of the chest"). His lawyer sent an official complaint to the prosecutor's office.
- Mr S. D., interviewed at Chernivtsi Penitentiary Institution No. 33 (Chernivtsi SIZO) on 16 December 2017, alleged having been subjected to physical ill-treatment (kicks and punches) during interview by operational officers at Pershotravnevy District Police Division in Chernivtsi in the night from 1 to 2 September 2017. His injuries (bruises and haematomas) were described both at the ITT and the SIZO, and he made an official complaint to the prosecutor's office on 15 September 2017, reportedly with no feedback so far.

**The CPT wishes to be informed about the outcome of investigations carried out into the above-mentioned complaints. This should include information about the concrete investigative steps taken<sup>27</sup> and copies of all procedural decisions and forensic medical reports (together with relevant appendices such as photographs, body diagrams, etc.) drawn up in the context of these cases.**

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<sup>27</sup> E.g. whether and when exactly the complainants were interviewed, whether and when exactly any third parties who could shed light on the veracity of the complaints were questioned, etc.

24. When visiting Kyiv ITT, the delegation was informed of a recent death of a detained person, Mr Oleg Netredko, aged 47. He was reportedly found by custodial officers at 4 a.m. on 15 June 2017 and, according to the incident register, the ambulance doctor established his death at 4.18 a.m.

The Director of the ITT told the delegation that Mr Netredko, who had been accommodated in a cell with two fellow detainees, had hanged himself using his bed sheet tied to the toilet partition. Reportedly, custodial officers had earlier looked into the cell and thought that he was sitting and watching television. A criminal case concerning his death had been opened by the Shevchenkivskyi District Prosecutor's Office in Kyiv, and the Main Department of National Police had carried out an internal inquiry. **The Committee would like to be informed about the outcome of the criminal investigation (including information about the concrete investigative steps taken and copies of all procedural decisions and forensic medical report) and receive a copy of the internal inquiry report.**

25. At the outset of the visit, the delegation was informed by the Ukrainian authorities of the steps taken to combat ill-treatment by law enforcement officers, in the light of the recommendations made in the reports on the CPT's previous visits.

Among others, a new Human Rights Monitoring Department had recently (June 2017) been set up at the Ministry of Internal Affairs, tasked with internal monitoring of police and State Border Guard establishments. The Department was also allowed to receive individual complaints, analyse them and direct them further to relevant agencies. The analytical work of the Department was meant to result in proposals to the Ministry leadership on how to improve the treatment of persons deprived of their liberty by the police and State Border Guard. At the time of the visit, the Department was still at an early organisational build-up stage, with only 12 staff and its activities limited to Kyiv area. At a later stage, it was also planned to open a special hotline for persons who would wish to contact the Department by telephone. **The Committee welcomes this positive initiative and would like to receive updated information on the activities of the Human Rights Monitoring Department, including statistical and analytical information on the complaints it has received in the course of 2018.**

The delegation was also informed about the ongoing pilot project (in Dnipro and Kherson) consisting of recruiting specially trained "human rights inspectors" to work in ITTs, whose task was to ensure that persons detained by the police are treated in accordance with the law and benefit from all the rights foreseen in the relevant legislation; this also included verifying the due and expedient recording of custody and the speedy notification of the relevant Centres of Free Legal Aid. Given the persistence of serious problems in both areas (see paragraphs 29, 37 and 45 below), **the CPT cannot but encourage the Ukrainian authorities to extend this mechanism to the whole country as soon as possible.**

Another plan mentioned to the delegation at the Ministry of Internal Affairs was to expand the use of body cams by police officers, not only patrol police but also staff working in ITTs. **The Committee would like to receive further information on this plan and its implementation.**

26. The delegation was also provided with statistical information concerning the proceedings vis-à-vis police officers following complaints of ill-treatment and other forms of misconduct.

In particular, the Ministry of Internal Affairs' Internal Security Department had received in 2017 (until 1 December) approximately 2,000 complaints of violations of human rights by police officers. 125 criminal proceedings had been initiated including 83 concerning infliction of bodily injuries, 16 concerning unjustified initiation of criminal proceedings, 7 concerning illegal detention and 3 concerning torture. In the same period, the prosecutor's office had decided to start investigation into 43 cases including 22 concerning infliction of bodily injuries and 6 concerning torture.

27. The CPT wishes to thank the Ukrainian authorities for the above-mentioned statistical data. However, in order to obtain a more full and updated picture of the situation, **the Committee would like to receive the following information, in respect of 2018:**

- **the number of complaints of ill-treatment made against law enforcement officers (police, State Border Guard and SSU) and the number of criminal and disciplinary proceedings which have been instituted as a result;**
- **an account of criminal and disciplinary sanctions imposed following such complaints.**

Further, **the CPT wishes to receive information on the outcome of criminal proceedings referred to in paragraph 26 above, as well as any disciplinary proceedings initiated in 2017.**

28. Overall, the delegation gained the impression that, compared to the findings of the 2016 visit, the severity of the ill-treatment alleged had diminished. However, the frequency of allegations remained at a worrying level, especially in Kyiv. This is a source of serious concern to the CPT and demonstrates the need for the Ukrainian authorities to step up their efforts in this area.

**The Committee once again calls upon the Ukrainian authorities to pursue a policy of "zero tolerance" of ill-treatment of persons detained by the police and other law enforcement agencies. Law enforcement officers throughout the country should receive a firm message that all forms of ill-treatment (including verbal abuse) of persons deprived of their liberty are unlawful and will be punished accordingly.**

**It should also be reiterated to law enforcement officers that no more force than is strictly necessary is to be used when carrying out an apprehension and that, once apprehended persons have been brought under control, there can be no justification for striking them.**

29. The persistence of the practice of unrecorded detentions<sup>28</sup> is an issue of grave concern to the CPT because it entails a higher risk of ill-treatment. It is noteworthy that several of the allegations of physical ill-treatment heard by the delegation referred to this initial period of unrecorded police custody.

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<sup>28</sup> Partially acknowledged by senior officials of the Ministry of Internal Affairs with whom the delegation met, in particular as concerns the lack of recording of the presence in police establishments of persons "invited" for "informal talks" following a telephone call or a verbal message ordering them to come to the police.

In different regions, the delegation once again received a number of allegations from detained persons that they had been held in local police stations in the offices of operational police officers, on a stool or chair, whilst being handcuffed to fixed objects and without being offered anything to eat or drink, for periods ranging from a few hours to three days. Some complaints were also heard about difficulties in having access to a toilet.

In addition, persons concerned were allegedly subjected to informal questioning without benefiting from the safeguards provided for by law.<sup>29</sup> Their presence on police premises was formalised only after the end of such informal questioning, when police officers considered to have collected enough evidence to be able to draw up the detention protocol.<sup>30</sup>

**The Committee once again calls upon the Ukrainian authorities to take decisive and energetic action to ensure that whenever a person is taken or summoned to a police establishment, for whatever reason (including for interviews with operational officers), 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 police premises.<sup>31</sup> All police officers should receive appropriate training in this respect.**

**Further, the CPT calls upon the Ukrainian authorities to take immediate measures to ensure that offices are not used as a substitute for proper detention facilities (see also paragraph 50 below).**

30. The Committee has followed with great interest, from the very moment when the institution was first mentioned in the new CCP adopted in 2012,<sup>32</sup> the process of setting up the State Bureau of Investigation (SBI) which will be tasked *inter alia* with the carrying out of criminal investigations into possible cases of ill-treatment by law enforcement officials. At the time of the 2017 visit, the SBI Head and his two Deputies had just been appointed but the Bureau was still not operational, having no proper budget, premises and staff. Meanwhile, no new investigations into allegations of ill-treatment by law enforcement officials were being initiated (only those initiated before the appointment of the SBI Head were continued) because the Prosecutor General's Office considered that it had lost the power to do so since the SBI was now formally in existence. Needless to say, such interpretation led to the situation of (at least perceived) impunity for law enforcement officials whose conduct was the subject of complaints received after the appointment date.

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<sup>29</sup> See also paragraphs 36, 37, 42, 44 and 45 below.

<sup>30</sup> According to some of the delegation's interlocutors, both law enforcement officers and NGO representatives, this practice could to some extent be explained by what appeared to be an erroneous interpretation of the CCP, confusing an initial suspicion with a charge: law enforcement officers (in almost all cases police officers) apparently considered that official detention was only possible once enough elements had been collected to formally charge the person. Pending that, the person would be held and interviewed without this fact being recorded anywhere.

<sup>31</sup> See also paragraphs 44 and 45 below.

<sup>32</sup> See e.g. paragraphs 23 to 25 of the report on the 2013 periodic visit (CPT/Inf (2014) 15), <https://rm.coe.int/1680698465>.

Such a state of affairs should not be allowed to continue. **The CPT calls upon the Ukrainian authorities to step up their efforts to ensure, without further delay, that the SBI is fully operational. In this context, reference is made to the recommendations in paragraph 25 of the report on the 2013 visit.**<sup>33</sup>

31. Even after the SBI becomes operational, investigating possible cases of ill-treatment by law enforcement officials will require properly trained prosecutors, since it will remain their role to bring cases to court. In this context, some of the delegation's interlocutors (mostly from the NGO community) were concerned that the Prosecutor General's Office (PGO) was reportedly not well prepared for the task, in particular as there was no special division at the PGO to deal with such cases and no specially trained prosecutors. Concern was also expressed that cases duly investigated by the SBI might be closed by prosecutors or fail at the stage of court proceedings. One proposal the delegation heard was to confer the task of prosecuting such cases to prosecutors from the PGO's General Inspectorate, set up a year ago and currently performing more of an internal monitoring function but staffed with specialised prosecutors.

**The Committee would welcome the Ukrainian authorities' observations on this subject. More generally, the CPT reiterates its recommendation that the Prosecutor General remind all relevant prosecutors to take the necessary measures to ensure that allegations of ill-treatment by law enforcement officials are always investigated in a prompt, expeditious and thorough manner.**

32. In previous reports, the Committee has repeatedly stressed the important role judges may play in the prevention of ill-treatment by law enforcement officials, by taking resolute action when any information indicative of ill-treatment emerges, regardless of whether the person concerned displays visible injuries, and by promptly transmitting relevant information to the competent prosecutor.

In this context, the CPT is very concerned by the fact that its delegation once again heard a number of detained persons claim that they had complained about police ill-treatment to the judge before whom they had been brought after apprehension, but that the latter had ignored their complaint, despite the fact that they displayed visible injuries.

**The Committee calls upon the Ukrainian authorities to ensure that a firm message be delivered by the High Council of Justice to judges reminding them of their legal obligations under Section 206 of the CCP.**<sup>34</sup>

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<sup>33</sup> Particular emphasis should be placed on the institutional independence of the 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.

<sup>34</sup> 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.

33. The role to be played by health-care staff (and, in particular, medical doctors) in the prevention of ill-treatment has been repeatedly emphasised by the CPT in the past.

Information gathered in the course of the 2017 visit suggests that much remains to be done in this area. First of all, despite the legal requirement, not all persons were medically examined in a health-care facility prior to their admission to an ITT.<sup>35</sup> Further, it remained the case that law enforcement officials were systematically present during medical examinations and were often given access to medical records.

In addition, the quality of those records (especially as concerns the recording of injuries observed on detained persons) was mostly poor, with the description of injuries being scant<sup>36</sup> and on occasion inaccurate or even missing.<sup>37</sup> As previously, health-care professionals made no attempts to assess the consistency between statements made by detained persons and medical findings.

34. The present state of affairs is regrettable as it severely undermines the positive impact which medical examinations may have for the prevention of ill-treatment. **The CPT calls upon the Ukrainian authorities to take effective steps to ensure that the requirement of detained persons to undergo a medical examination prior to their placement in an ITT is effectively implemented in practice.**

Further, **the Committee once again calls upon the Ukrainian authorities to ensure that:**

- **all medical examinations of persons detained by law enforcement officials 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 police officers;**
- **medical data are no longer accessible to non-medical staff.**

**Law enforcement officers should only have access to such medical information strictly on a need-to-know basis, with any information provided being limited to that necessary to prevent a serious risk for the detained person or other persons. There is no justification for giving staff having no health-care duties access to information concerning the diagnoses made or statements concerning the cause of injuries.**

As regards the procedures for the recording and reporting injuries observed on detained persons, **reference is made to the comments and recommendations in paragraph 88, which apply *mutatis mutandis* to civil health-care facilities.**

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<sup>35</sup> This was especially the case at Kyiv ITT, where approximately 70% of persons present at the time of the visit had not been medically examined prior to admission. The problem appeared less serious in the other ITTs visited.

<sup>36</sup> Limited to mentioning the type of injury (e.g. “bruise”, “haematoma”, “scratch”, “swelling”) but with no further detail as to the precise location, size, colour, etc.

<sup>37</sup> Especially as compared with the descriptions concerning the same person subsequently made by prison doctors, upon admission to SIZO.

### 3. Safeguards against ill-treatment

35. As regards the fundamental safeguards against ill-treatment advocated by the CPT – namely the right to notify one's detention to a third party, the right of access to a lawyer and to a doctor, and the right to be informed of the above-mentioned rights – information gathered during the visit suggests that persons deprived of their liberty by SSU officers usually benefited from all the above-mentioned rights. However, as regards the police, the Committee very much regrets the absence of any real progress in their application since the CPT's previous visits. This was also acknowledged by senior officials of the Ministry of Internal Affairs, who told the delegation that the Ministry frequently received complaints concerning, in particular, detained persons' access to a lawyer (including *ex officio* lawyer) and access to a doctor.<sup>38</sup>

36. With respect to the right of notification of custody, the situation appeared to be more or less the same as the one described in the report on the 2016 ad hoc visit.<sup>39</sup> Most of the detained persons interviewed by the delegation indicated that their detention had been notified to a family member. However, once again, many allegations were received that, contrary to the relevant legislation, notification of custody had been delayed by police officers for several hours (e.g. until the person confessed) and in some cases until the arrival to the ITT, the first court hearing or even the arrival to a remand prison (SIZO). In addition, several detained persons claimed that they did not know whether their relatives had actually been informed of their detention.

**The Committee once again calls upon the Ukrainian authorities to take the necessary measures to ensure that all detained persons effectively benefit from the right of notification of custody as from the outset of their deprivation of liberty. Further, steps should be taken to ensure that detained persons are provided with feedback on whether it has been possible to notify a close relative or another third party of the fact of their detention.**

37. Regarding access to a lawyer, allegations were again received from detained persons that they had been subjected to informal questioning by operational police officers (often until they confessed to a criminal offence) without the presence of a lawyer.<sup>40</sup>

Further, several complaints were heard of serious delays in access to a lawyer, persons concerned reportedly having met their *ex officio* lawyer for the first time in court, at the ITT or even only at the remand prison (SIZO). In this context, the delegation was informed at the outset of the visit about the Ministry of Internal Affairs' ongoing reflection on ways in which timely notification of the Centres of Free Legal Aid (CFLA) might be ensured. One of the possibilities being studied was to employ civilian staff (independent from the police) in police emergency call centres ("102 Centres") and instructing them to immediately and automatically notify the CFLA whenever they receive information on any person's apprehension.

This interesting idea certainly merits serious consideration; **the CPT would like to be informed whether any decisions have been taken accordingly.**

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<sup>38</sup> See paragraphs 37 and 40 below.

<sup>39</sup> See paragraph 28 of CPT/Inf (2017) 15, <https://rm.coe.int/pdf/1680727930>.

<sup>40</sup> See paragraph 29 above and paragraph 45 below.



More generally, **the Committee calls upon the Ukrainian authorities to step up their efforts to ensure that detained persons effectively benefit from the right of access to a lawyer from the very outset of a person's deprivation of liberty. Other than in exceptional circumstances when the matter is urgent, police officers should delay the beginning of the questioning until the arrival of the lawyer.**

38. The delegation received some allegations that detained persons had been prevented from having conversations with their lawyer in private. **The CPT reiterates its recommendation that the confidentiality of all client-lawyer consultations be ensured in all police establishments in Ukraine.**

39. Numerous complaints were again received regarding the performance of *ex officio* lawyers provided by the CFLAs. Detained persons mainly complained about the perceived lack of motivation from *ex officio* lawyers to handle cases properly. In a number of cases, the role of the lawyer was said to be limited to counter-signing the statement given by the detained person. A few of the detained persons alleged that *ex officio* lawyers had requested undue payments for their services, making it clear to their clients that they would not defend them otherwise.

**The CPT calls upon the Ukrainian authorities to take effective steps, in consultation with the Co-ordinating Centre for the Provision of Legal Aid and the Bar Association, to ensure that *ex officio* lawyers appointed to represent persons in police custody perform their functions in a timely, diligent and professional manner.**

40. The delegation received hardly any complaints from detained persons regarding access to a doctor during police custody. At the request of the person concerned or at the initiative of law enforcement officials, emergency doctors were usually called or the person was transferred to a health-care facility.

As concerns the medical examination prior to placement in an ITT, and the recording and reporting injuries, reference is made to the comments and recommendations in paragraphs 34 above and paragraph 88 below.

41. In the reports on its previous visits, the CPT emphasised the importance of the role to be played by forensic doctors in the investigation of cases possibly involving ill-treatment by law enforcement officials; it also stressed that no barriers should be placed between persons who allege ill-treatment and doctors who can provide forensic reports having legal force.

Regrettably, it remains the case that the carrying out of forensic examinations is impossible without authorisation from an investigating or judicial authority. The inevitable outcome is that persons alleging ill-treatment will frequently be prevented from obtaining any evidence to support their claims. **The CPT reiterates its recommendation that persons who are, or have been, detained, or their lawyers, be formally entitled to directly obtain an examination by a recognised forensic medical expert and to be issued with a certificate which has legal value in court.**<sup>41</sup>

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<sup>41</sup> Naturally, the recommendation in paragraph 34 concerning the need to ensure confidentiality of medical examinations applies *a fortiori* to forensic medical examinations.

42. As was the case during previous visits, many persons detained by police officers claimed that they had received information on their rights only verbally and this not at the outset of their deprivation of liberty but only several hours after their arrival at a police establishment (often in the context of the first formal questioning by a police investigator and, in a number of cases, after informal questioning by an operational officer).<sup>42</sup> Further, a number of allegations were heard that no information at all on the rights of detained persons had been provided by police officers to persons in police custody.

**The CPT calls upon the Ukrainian authorities to take the necessary measures to ensure that all persons detained by police officers – for whatever reason – are fully informed of their rights as from the very outset of their deprivation of liberty (that is, from the moment when they are obliged to remain with the police). This should be ensured by the provision of clear oral information at the very outset, and supplemented at the earliest opportunity (that is, immediately upon the arrival of the persons concerned at a police establishment) by the provision of an information sheet on the rights of detained persons, in a language they understand. The persons concerned should be asked to sign a statement attesting that they have been informed of their rights and that they have been allowed to keep a copy of the information sheet.**

As regards persons “invited” to come to the police establishment for “informal talks” (see paragraph 29 above), **the Committee recommends that they be expressly informed that if they so wish, they may be accompanied by a lawyer.**

43. As regards juveniles, the delegation gained the impression that the legal requirements to systematically notify the parents and to appoint and ensure the presence of a lawyer during police questioning were generally respected.<sup>43</sup>

That said, several allegations were once again received from juveniles that they had been subjected to informal questioning by operational police officers before the arrival of the lawyer.

**The CPT reiterates its recommendation that the Ukrainian authorities take 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 reiterates its recommendation 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.**

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<sup>42</sup> See paragraphs 29 above and 45 below.

<sup>43</sup> See Sections 52 (2) and 213 (4) of the CCP.

44. The CPT has stressed in the past 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.

From the moment at which a detained person was *formally* apprehended/arrested (see paragraph 29 above), the various apprehension, arrest and investigation records tended to be generally well kept in the police establishments visited. The delegation has also noted with interest that the practice of using the new comprehensive computerised detention custody record system (ARMOR) had gradually been extended, although it was still not applied throughout the whole country and did not cover all the relevant data (some of the records still remaining on paper). **The CPT recommends that efforts be stepped up to introduce ARMOR in all police establishments in Ukraine.** The positive experience of the use of ARMOR at Dnipro ITT should be the reference in this respect.

45. As already stated in paragraphs 29 and 44 above, the major substantive issue of concern in relation to custody records was the lack of them in respect of persons being questioned by operational officers prior to a decision to apprehend them under Section 208 of the CCP.<sup>44</sup> Most of these persons were never placed in cells at district police stations but were taken straight to ITTs – via hospital and sometimes the prosecutor's office – with no custody record being opened until they arrived at the ITT. They may have been *de facto*, if not *de jure*, in custody for several hours (or even days) before they arrived at the ITT and were only then able to exercise the full range of rights.

In this context, **reference is made to the comments and recommendation in paragraph 29 above, concerning the phenomenon of unrecorded detentions. The ARMOR must be modified so as to include these initial periods of police custody.**

46. Concerning the safeguards for foreign nationals detained in TDPs of the State Border Service (SBS), the delegation was able to ascertain that they were informed of their rights<sup>45</sup> and visited by lawyers<sup>46</sup> and (if they so wished) by diplomatic and consular representatives. Foreign nationals interviewed by the delegation in the TDPs visited also confirmed having been provided with interpretation during initial interviews by SBS officers and during court hearings.

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<sup>44</sup> And, in some cases, persons interviewed by investigators after the decision.

<sup>45</sup> The delegation saw information in several languages (including Arabic, Farsi, English and Russian) on house rules and about asylum process and procedure for application posted on the walls in corridors of the TDPs visited.

<sup>46</sup> In this context, reference should be made to recent amendments to Administrative Violations Code (new Section 261) which grant access to *ex officio* legal assistance also to persons detained pursuant to aliens legislation.

However, it would appear that detained foreign nationals were generally not enabled to meet their lawyers in private prior to interviews and court hearings, and the interpreters usually tended to translate only some of the relevant information (e.g. the expected length of stay in the TDP) but generally failed to translate information concerning the appeal procedure and avenues of complaint.<sup>47</sup> It is noteworthy that foreign nationals only received copies of court decisions in Ukrainian. **The Committee recommends that steps be taken to ensure that foreign nationals detained in TDPs have the right to speak in private with their lawyers prior to interviews and court hearings. Further, it would be desirable for foreign nationals to receive a written translation in a language they understand of decisions regarding their detention/removal, as well as written and oral information on the modalities and deadlines for appealing against such decisions.**

47. Foreign nationals detained in TDPs had the right to contact their families, either using their own mobile phones or (in justified cases, at staff's discretion) a free of charge telephone card provided by the establishment. That said, new technologies such as VoIP (Voice over Internet Protocol) were not available to them.

**The CPT recommends that the Ukrainian authorities allow foreign nationals detained in TDPs to use the VoIP technologies on a free-of-charge basis to communicate with the outside world.**

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

48. In all the police ITTs visited, material conditions were generally satisfactory for detention periods of up to 72 hours (the statutory maximum police custody period).<sup>48</sup> The only issue of real concern was that, as previously, toilets in multi-occupancy cells in all police establishments (including those recently refurbished) were only partially partitioned. **The Committee recommends that the above-mentioned deficiency be eliminated in the course of the ongoing ITT renovation programme.**<sup>49</sup>

49. As already mentioned,<sup>50</sup> persons remanded in custody and administrative detainees could still be held for prolonged periods in ITTs. In this context, the CPT wishes to stress once again that conditions of detention in ITTs are not suitable for such stays, first of all because of the nearly total absence of any activities (including access to radio, TV and board games).<sup>51</sup> It is also noteworthy that persons detained in ITTs have, as a rule, no right to receive visits and make telephone calls, which is an issue of concern in case of detention period exceeding a few days.

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<sup>47</sup> Some detained foreign nationals stated that SBS staff had attempted to dissuade them from appealing, saying that it would be useless.

<sup>48</sup> See paragraph 17 above.

<sup>49</sup> At the outset of the visit, the delegation was informed by senior officials from the Ministry of Internal Affairs that many ITTs had been closed in recent years because of substandard material conditions (the total number went down from 380 in 2015 to 150 in the end of 2017). At the time of the 2017 visit, 27 ITTs were closed temporarily and undergoing refurbishment. Further, two completely new ITTs had been brought into service since the beginning of 2017, in Sarny and Severodonetsk.

<sup>50</sup> See paragraphs 18 and 19 above.

<sup>51</sup> Some books and newspapers were available, most of them brought by detainees' families.

Regarding the practice of returning remand prisoners to law enforcement facilities, **reference is made to the recommendation in paragraph 19 above.** As regards administrative detainees, **the Committee reiterates its long-standing recommendation that steps be taken to ensure that they are accommodated in establishments specifically designed for this category of persons deprived of their liberty. The CPT also reiterates its recommendation that measures be taken to ensure, for as long as these two categories of detainees continue to be held in ITTs, that they are offered some activities and enabled to receive visits and make telephone calls.**

Further, the Committee wishes to stress that there is a general trend (observed by the CPT in several countries) of either shortening the maximum term of administrative detention in police establishments or abolishing that type of sanction altogether. **The Committee would welcome observations of the Ukrainian authorities on this subject.**

50. Information gathered by the delegation in the course of the 2017 visit<sup>52</sup> suggests that persons “invited” for “informal talks” continued to be sometimes held in police divisions,<sup>53</sup> in offices of operational police officers, for periods of hours, including overnight (sleeping on stools or chairs and sometimes handcuffed to objects such as radiators or to the furniture) and occasionally for up to three days, usually without being offered anything to eat<sup>54</sup> and with only limited access to drinking water and a toilet. **The CPT calls upon the Ukrainian authorities to take immediate measures to stop this practice. Urgent steps are also required to ensure that all persons in police custody have ready access to drinking water and a toilet at all times and are offered food at appropriate times, including at least one full meal (i.e. something more substantial than a sandwich) every day.**

51. The delegation also visited two temporary detention places (TDPs) of the State Border Service, in Chernivtsi and Lviv.<sup>55</sup> Both establishments, usually holding detained foreign nationals for periods of up to 72 hours (exceptionally up to six days) offered detention conditions of a high standard: clean and well-equipped rooms with fully partitioned toilets and lockable space for private belongings, unrestricted access to communal showers and access to exercise yards for at least an hour per day.

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<sup>52</sup> See also paragraph 29 above.

<sup>53</sup> Which, as already mentioned in paragraph 15 above, generally had no operational cells or – if any – only holding cells in which persons were not supposed to be held for more than 3 hours.

<sup>54</sup> Unless relatives brought some food.

<sup>55</sup> TDPs are used to accommodate, for a maximum of 10 days (including the initial 72 hours during which the SBS must establish the person’s identity and, if there is a suspicion of violation of aliens legislation, bring the person to the administrative judge who must authorise continuation of detention), foreign nationals who have attempted to enter the country without proper documentation, committed certain categories of offences, resided in Ukraine irregularly, have been readmitted into the country under readmission agreements, and pose a threat to public security or public order. The purpose of detention is to prepare forced expulsion outside the territory of Ukraine, await the adoption of decision on recognition as refugee or as person in need of complementary protection in Ukraine (for those who violate the border regime and other relevant legislation), or secure the handover of the person pursuant to an international readmission agreement. If the detention of a foreign national needs to be extended beyond 10 days, he/she is transferred to a temporary accommodation centre (PTP) run by the Ministry of Internal Affairs, where foreign nationals can be accommodated for up to 18 months. It is noteworthy that unaccompanied minors are never detained in TDPs.

In Lviv, foreign nationals had access (between 7 a.m. and 10 p.m.) to a common area with a TV set and sofas; however, this was not the case in Chernivtsi. **The CPT recommends that steps be taken to offer such access to foreign nationals detained at the TDP in Chernivtsi and, as applicable, other TDPs in Ukraine.** More generally, **the Committee invites the Ukrainian authorities to make efforts to provide some means of distraction, e.g. access to reading matter in different languages and to the Internet<sup>56</sup> in both TDPs of the State Border Service visited.**

52. Material conditions have improved at the SSU Temporary Detention Facility in Kyiv due to ongoing repairs and repainting of the cells carried out in the beginning of 2017. The conditions could now be considered as generally satisfactory; the only issues of concern were still only partially screened in-cell toilets and access to a shower limited to once per week.<sup>57</sup> **The CPT recommends that these deficiencies be eliminated, especially as concerns access to a shower which should be granted at least twice a week.<sup>58</sup>**

53. However, the Committee remains of the view that, due to infrastructural constraints (such as the lack of any space for association and out-of-cell activities, small and inadequate exercise yards, etc.) and the absence of any organised activities, the SSU Temporary Detention Facility should never be used for prolonged detention periods (and preferably not in excess of 72 hours).<sup>59</sup> The recent change of its legal status<sup>60</sup> has not turned the Facility into a proper remand prison. **The CPT recommends that efforts be made to significantly shorten the detention periods at the SSU Temporary Detention Facility, in the light of the above remarks. If it is necessary to continue a person's detention on remand, he/she should be transferred to a proper remand prison.**

More generally, the Committee is of the view that operating the Facility as a remand prison could raise the issue of conformity with the European Prison Rules (in particular Rule 10.2),<sup>61</sup> also because of the fact that persons accommodated there are under the custody of the agency that investigates their possible offences. For these reasons, the CPT considers it necessary – for as long as the establishment continues to operate as a pre-trial detention facility – to transfer the responsibility for the SSU Temporary Detention Facility to the Ministry of Justice. **The Committee recommends that steps be taken accordingly.**

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<sup>56</sup> See also paragraph 47 above.

<sup>57</sup> A few cells, used mostly to accommodate female inmates, were equipped with showers.

<sup>58</sup> See also paragraph 70 below.

<sup>59</sup> Some of the persons interviewed by the delegation had been there for much longer, up to 3 years.

<sup>60</sup> See paragraph 20 above.

<sup>61</sup> “In principle, persons who have been remanded in custody by a judicial authority and persons who are deprived of their liberty following conviction should only be detained in prisons, that is, in institutions reserved for detainees of these two categories.”

## **B. Prison system**

### **1. Preliminary remarks**

54. The delegation carried out a follow-up visit to Kyiv Pre-Trial Detention Centre (hereafter Kyiv SIZO);<sup>62</sup> further, first-time visits were carried out to Chernivtsi Penitentiary Institution No. 33 (hereafter Chernivtsi SIZO), Ivano-Frankivsk Penitentiary Institution No. 12 (hereafter Ivano-Frankivsk SIZO), Lviv Penitentiary Institution No. 19 (hereafter Lviv SIZO), Lychakivska Prison No. 30 in Lviv (hereafter Colony No. 30) and Kremenchuk Educational Colony for Juveniles (hereafter Kremenchuk Juvenile Colony).

A general description of Kyiv SIZO can be found in the reports on previous visits.<sup>63</sup> At the time of the 2017 visit, the establishment was accommodating 2,371 inmates (including 144 women on remand, 13 juveniles on remand, 708 male sentenced prisoners awaiting transfer to a colony, 20 life-sentenced prisoners and 57 sentenced working inmates, the remainder being adult men on remand) and had the official capacity of 2,474. However, this capacity included the former women's block which was out of service due to fire damage; in fact, the establishment had 2,200 operational places which meant that it was officially overcrowded.<sup>64</sup>

Chernivtsi SIZO is an old Austrian-built prison, a listed monument located in centre of town. It was opened in 1819, partly damaged during WW2 and extensively refurbished in the 1950s (when electricity, sewage and central heating were installed). With the official capacity of 304, the establishment was accommodating 198 inmates living in a single detention block (with two floors); this number included 11 women on remand, four juveniles on remand, 13 sentenced workers and two women serving administrative arrest. The remaining inmates were adult male remand prisoners.

Ivano-Frankivsk SIZO, brought into service in 1918, is located in the centre of town on a relatively small area adjoining to the city's police headquarters, the prosecutor's office and the court. The establishment has the official capacity of 401 and was accommodating 380 prisoners including 17 women on remand, seven juveniles on remand, 23 life-sentenced prisoners and 11 sentenced working inmates; the remainder of the prison's population was composed of adult male remand prisoners.

Lviv SIZO, located in the city centre and with the official capacity of 900, occupies a former monastery built in the 17<sup>th</sup> century and transformed into a prison in 1784. A listed monument composed of two 3-storey detention blocks and several adjoining buildings (administration, health-care unit, kitchen, etc.), it was accommodating 821 prisoners (including 54 on remand under investigation, 374 on remand with pending court proceedings, 171 sentenced but awaiting the outcome of appeal proceedings, 30 women on remand, six juveniles on remand, 30 male sentenced prisoner workers, 24 life-sentenced prisoners, 29 prisoners in transit, 12 foreign prisoners awaiting extradition and 96 sick prisoners in the prison hospital).<sup>65</sup>

<sup>62</sup> Previously visited by the CPT in 2009, 2013, 2014 and 2016.

<sup>63</sup> See paragraphs 100 to 105 of the report on the 2009 periodic visit (CPT/Inf (2011) 29, <https://rm.coe.int/1680698430>), paragraphs 120 to 124 of the report on the 2013 periodic visit (CPT/Inf (2014) 15, <https://rm.coe.int/1680698465>), and paragraphs 63, 65 and 67 of the report on the 2016 ad hoc visit (CPT/Inf (2017) 15, <https://rm.coe.int/pdf/1680727930>).

<sup>64</sup> It should be stressed that (as was the case with the other SIZOs), the official capacity was still calculated according to the norm of 2.5 m<sup>2</sup> per prisoner, see paragraph 57 below.

<sup>65</sup> The hospital was a separate establishment located next door (with 130 beds) but under the same management,

Colony No. 30, a medium-security establishment for adult male recidivists, is located in an industrial suburb of Lviv and occupies an extensive area with adjoining production facilities. Purpose-built in 1945, it had the capacity of 880<sup>66</sup> (including 5 places in a remand unit and another 5 in the not-yet-operational unit for administrative detainees) and was accommodating 774 prisoners living in 5 blocks (the 6<sup>th</sup> block – referred to as Block No. 5 – was closed and undergoing reconstruction into cell-type accommodation, see paragraph 66 below)<sup>67</sup> which were temporarily overcrowded pending the completion of the aforementioned works.

Kremenchuk Juvenile Colony was purpose built in the late 1950s and had the official capacity of 309 (according to the norm of 4 m<sup>2</sup> of living space per inmate). At the time of the visit, the establishment was accommodating 56 sentenced juveniles.<sup>68</sup>

55. At the outset of the visit, the delegation was informed by senior officials from the Ministry of Justice about the progress of prison reform which *inter alia* included the drafting of new legislation (e.g. the new draft Penitentiary Service Act which would define anew the mission of the Service and put more stress on the objective of prisoner rehabilitation, draft new house rules for SIZOs and colonies, draft legislation facilitating early release and setting up probation service) and preparation of a document called “Passport for reforms” containing the aims of further reforms of the prison system.

Unfortunately, most of these measures were still at an early stage of adoption and/or implementation and the aforementioned draft legislation was under consideration by the Rada with no clear indication as to when it would be adopted. Meanwhile, since the repeal of the “Savchenko Act” in May 2017,<sup>69</sup> the prison population had reportedly started growing again – especially in SIZOs, some of which were again overcrowded even as compared with the official norm of living space per prisoner (e.g. in Kyiv, see paragraph 54 above). The Ministry of Justice tried to take measures to tackle this trend e.g. by planning to open new remand units in some of the colonies with spare accommodation.

The situation was rendered even more difficult by the fact that – despite very poor, sometimes indeed appalling (see paragraph 62 below) conditions of detention in prisons – the Ministry had close to no budget for refurbishment and repairs, forcing the establishments’ Directors to seek funds by themselves, from private sponsors, municipalities and charities, and even from inmates’ (and their families’) own resources. The 2018 budget of the prison service was actually lower than in 2017, despite the population increase and ongoing deterioration of material conditions.<sup>70</sup> Furthermore, implementation of the plans regarding prison estate (described in paragraph 38 of the report on the 2016 ad hoc visit)<sup>71</sup> had hardly progressed.

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see paragraph 94 below.

<sup>66</sup> Calculated according to the 4 m<sup>2</sup> norm.

<sup>67</sup> According to the Director, the overall capacity would be reduced by 75 places once the reconstructed block entered into service.

<sup>68</sup> Some of them had already turned 18 but were allowed to stay until the age of 22 (unless released earlier) on grounds of good behaviour.

<sup>69</sup> See more details about this law in paragraph 36 of the report on the 2016 ad hoc visit (CPT/Inf (2017) 15), <https://rm.coe.int/pdf/1680727930>.

<sup>70</sup> The Deputy Minister of Justice in charge of prison system, Mr Denys Chernyshov, told the delegation that the current budget covered only 44% of the service’s needs.

<sup>71</sup> CPT/Inf (2017) 15, <https://rm.coe.int/pdf/1680727930>.



56. The CPT wishes to stress that it is fully aware of the overall difficulties and challenges facing Ukraine. However, given the dramatic situation in at least some of the penitentiary establishments visited,<sup>72</sup> the Committee is of the view that real action is urgently required to bring about a positive change for the prison system.

In the light of the fact found during this visit, and especially as concerns Kyiv SIZO which was the subject of an immediate observation (see paragraph 11 above), **the CPT calls upon the Ukrainian authorities to attach the highest priority to the implementation of all the measures mentioned in paragraph 55 above. This will necessitate putting in place a proper inter-agency co-ordination (including the Ministry of Finance) and a realistic action plan with precise deadlines and allocated budget.**

**The Committee also urges the Ukrainian authorities to pursue their efforts to reduce prisoner population, in particular by making more use of the available alternatives to remand detention.**

57. Regarding the situation of remand prisoners, the CPT regrets that the inadequate norm of living space per inmate in SIZOs (2.5 m<sup>2</sup>) is still in force. Further, there has still been no change to the regime for remand prisoners based on the concept of “isolation”, with no association between cells and nothing even remotely resembling a programme of meaningful out-of-cell activities.<sup>73</sup> **The Committee calls upon the Ukrainian authorities to take decisive steps to revise the legislation and regime for remand prisoners, taking into account the above remarks and the Committee’s long-standing recommendations.**<sup>74</sup>

## 2. Ill-treatment

58. The delegation received no direct and recent allegations of ill-treatment by staff at any of the penitentiary establishments visited, and relations between inmates and staff appeared generally free from any considerable tension.<sup>75</sup>

However, a few allegations of verbal abuse vis-à-vis juveniles were heard at Chernivtsi SIZO. On another occasion, adult inmates had reportedly been verbally abused by inebriated custodial officers. The latter issue was the subject of a complaint by prisoners to the NPM whose representatives were apparently planning to visit the establishment shortly after the CPT’s visit. **The Committee would like to be informed of the outcome of this visit.** More generally, **custodial staff at Chernivtsi SIZO should be reminded that verbally abusing prisoners is unlawful and will be punished.**

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<sup>72</sup> See paragraphs 62 to 67 below.

<sup>73</sup> See paragraph 71 below.

<sup>74</sup> See e.g. recommendations in paragraphs 100, 102 and 127 of the report on the 2013 periodic visit (CPT/Inf (2014) 15), <https://rm.coe.int/1680698465>. See also document CPT/Inf (2015) 44 “Living space per prisoner in prison establishments: CPT standards” (<https://rm.coe.int/16806cc449>), paragraphs 52 to 71 of the CPT’s 26<sup>th</sup> General Report (CPT/Inf (2017) 5, <https://rm.coe.int/168070af7a>) and the judgment of the European Court of Human Rights in *Muršić v. Croatia* (20 October 2016; application no. 7334/13).

<sup>75</sup> It could be added that “special means” were used very rarely in the establishments visited (e.g. approximately once a month at Chernivtsi and Lviv SIZOs and not a single time in the course of 2017 at Colony No. 30) and if used, then almost exclusively in the form of physical force (holding) or applying handcuffs during escorts outside detention areas.

59. By contrast with the above, inter-prisoner violence was a problem acknowledged by the Directors of all the establishments visited, especially at Kyiv SIZO.<sup>76</sup> This was hardly surprising given that the accommodation was mostly based on large-capacity cells<sup>77</sup> or dormitories<sup>78</sup> (see also paragraphs 62 to 67 below) and the staff, which was generally in insufficient numbers (see paragraph 97 below) relied on the informal prisoner hierarchy<sup>79</sup> to help them control the situation; this was especially conspicuous at Kyiv SIZO and, to a lesser degree, at Ivano-Frankivsk and Lviv SIZOs and Colony No. 30.

In this regard, the CPT must reiterate its view that 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 other inmates, and members of prison staff anxious to preserve the appearance of order in the establishment. Further, the Committee considers unacceptable any partial relinquishment of the responsibility for order and security, which properly falls within the ambit of custodial staff. It exposes weaker prisoners to the risk of being exploited by their fellow inmates. It is also contrary to the European Prison Rules, according to which no prisoner should be employed, in the service of the institution, in any disciplinary capacity.<sup>80</sup> The development of constructive relations between staff and all the prisoners, based on the notion of dynamic security,<sup>81</sup> is a crucial factor in the effort to combat inter-prisoner intimidation and violence.

The Committee also wishes to emphasise once again that the prison authorities must act in a proactive manner to prevent violence by inmates against other inmates. Addressing the phenomenon of inter-prisoner violence and intimidation requires that prison staff be sufficient in numbers (see paragraph 97 below), alert to signs of trouble and both resolved and properly trained to intervene when necessary. Both initial and on-going training programmes for staff of all grades must address the issue of managing inter-prisoner violence.

Furthermore, the management and staff of all the penitentiary establishments should be instructed to exercise constant vigilance and use all appropriate means at their disposal to prevent and combat inter-prisoner violence and intimidation. This should include implementation of an individualised risk and needs assessment of prisoners, on-going monitoring of prisoner behaviour (including the identification of likely perpetrators and victims), proper reporting of confirmed and suspected cases of inter-prisoner intimidation/violence and thorough investigation of all incidents.

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<sup>76</sup> The delegation also noted in the incident journal at Lviv SIZO several recent cases of inmates who had sustained injuries – reportedly “accidentally” – but which were of the nature (e.g. periorbital haematomas) suggesting possible inter-prisoner violence.

<sup>77</sup> Up to 25 prisoners per cell at Kyiv SIZO, up to 20 per cell at Lviv SIZO, up to 14 per cell at Ivano-Frankivsk SIZO, and up to 12 inmates per cell at Chernivtsi SIZO.

<sup>78</sup> At Colony No. 30, dormitories accommodated up to 25 prisoners each.

<sup>79</sup> Members of this hierarchy (referred to as “aktiv”) appeared to enjoy a kind of semi-official position, including at least some elements of disciplinary authority, such as reporting to staff on the conduct of fellow inmates and instructing them on how to behave.

<sup>80</sup> Rule 62.

<sup>81</sup> 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, as well as the provision of constructive activities.

**The CPT calls upon the Ukrainian authorities to implement its long-standing recommendation that the management of all penitentiary establishments make use of the means at their disposal to counter the negative impact of the informal prison hierarchy and prevent inter-prisoner intimidation and violence. No prisoner (in any penitentiary establishment in the country) should be put in a position (even *de facto*) to exercise power over other prisoners.**

**More has to be done to ensure that staff are trained and motivated to be proactive and prevent inter-prisoner violence. The management of all penitentiary establishments should also be vigilant as to possible collusion between staff and prisoner “leaders”. Regarding the staffing levels and presence, see the recommendation paragraph 98 below.**

60. At Kyiv SIZO, the delegation was informed of a serious incident of inter-prisoner violence, which had occurred in April 2017 and during which one inmate killed another. At the time of the visit, criminal investigation into the aforementioned incident was still ongoing.

**The Committee requests the Ukrainian authorities to provide the CPT, in due course, with information on the outcome of this investigation. The Committee also requests the Ukrainian authorities to be provided, on the same occasion, with a copy of the autopsy report including photographs and results of the laboratory tests performed following the death of the inmate concerned.**

61. Further, the Committee has serious misgivings about the fact that, despite the specific recommendation made in the reports on previous visits, operational staff employed in penitentiary establishments continued to obtain confessions concerning offences allegedly committed by prisoners prior to their incarceration. In a few cases, especially at Kyiv SIZO, allegations were heard that operational officers had threatened inmates (in case they refused to co-operate) with transferring them to a specific cell (referred to as “press-khata”) where they would be exposed to inter prisoner violence. If true, such practices would be totally unacceptable.

**The CPT calls upon the Ukrainian authorities to take steps, including at the legislative level, to ensure that officers of prison 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.**

### 3. Material conditions of detention

62. The most striking feature of the establishments visited (all of them except Kremenchuk Juvenile Colony, see paragraph 69 below) were the generally poor or even appalling material conditions, in particular in Kyiv and Lviv.

The situation at Kyiv SIZO had even worsened since the CPT's November 2016 visit, because, as already mentioned in paragraph 54 above, it was now overcrowded (even according to the national norm of 2.5 m<sup>2</sup> of living space per remand prisoner) and there were some cells with more inmates than beds (e.g. cells nos. 21 and 32), obliging prisoners to sleep in shifts. Despite sporadic efforts to carry out small repairs (usually using inmates' own resources), the detention blocks had further deteriorated, with cells being poorly lit, poorly ventilated, often extremely dilapidated and dirty (the most so in the "quarantine" and transit units), and with the whole infrastructure (electricity, water, sewage) close to total breakdown.<sup>82</sup>

In short, for the bulk of the prisoner population (except women and juveniles),<sup>83</sup> conditions at Kyiv SIZO could easily be considered as inhuman and degrading.

63. As already mentioned in paragraph 11 above, at the end of the visit the delegation invoked **Article 8, paragraph 5**, of the Convention and requested the Ukrainian authorities to provide the Committee, **within 3 months**, with a detailed action plan, comprising precise deadlines and financial allocations, to address the situation at Kyiv SIZO.

In their letter dated 5 April 2018, the Ukrainian authorities informed the CPT of steps taken and planned in response to the aforementioned immediate observation. This included carrying out a technical assessment, drawing up detailed reconstruction plans and preparing cost estimates for addressing all deficiencies in the material conditions at Kyiv SIZO. The Committee welcomes these plans but notes with regret that no concrete financial resources seem to have been allocated to implement these works, which are mentioned as conditional upon receipt of funds and without any precise timelines for completion.

In the light of the indeed totally unacceptable situation at Kyiv SIZO, **the CPT calls upon the Ukrainian authorities to reconstruct/refurbish Kyiv SIZO without further delay**. In this context, **steps must also be taken to ensure that every prisoner has his own bed**.

64. The material conditions at Lviv SIZO were determined to a large extent by the obsolete infrastructure of the ages-old buildings, and the situation was compounded by a total absence of budget for repairs,<sup>84</sup> resulting *inter alia* in repeated breakdowns of power and water supply.

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<sup>82</sup> The Director told the delegation that the recent fire in the old women's block (the whole roof of which had burnt off) had been caused by a short-circuit in the rundown electric installation.

<sup>83</sup> Who were accommodated in a newer block opened in 2011, where 4 m<sup>2</sup> of living space was provided per prisoner and which was maintained in a decent condition thanks to financial support of the ICRC.

<sup>84</sup> Whatever small repairs were carried out, they usually involved inmates' own resources.

Cells were generally dilapidated and so were the furniture, mattresses and bedsheets. Further, some of the cells were stuffy and humid, especially the larger ones. In many of the cells, conditions were cramped (e.g. 14 inmates sharing a cell measuring some 50 m<sup>2</sup>, including sanitary annexe; six inmates living in a cell measuring some 16 m<sup>2</sup>) and both the access to natural light and artificial lighting left much to be desired.

On the positive side, the cells were mostly clean. Conditions were somewhat better in the cells for women and juveniles (which had in-cell showers and were not overcrowded).<sup>85</sup>

65. According to the Director of Lviv SIZO, talks were ongoing with the city's Mayor's Office and with a private investor in order to close the prison and move it to a new purpose-built facility in the outskirts of town. **The Committee would like to receive more information on these plans and prospects for their implementation.**

66. The situation was also extremely difficult at Colony No. 30 in Lviv, with the bulk of prisoner population living in large-capacity overcrowded,<sup>86</sup> very dilapidated,<sup>87</sup> dark and dirty dormitories and with communal toilets and washing facilities being run down, filthy and malodorous. The Director acknowledged that the Colony's whole technical infrastructure was constantly breaking down.

The delegation noted ongoing reconstruction of Block No. 5 (aiming at turning large dormitories into smaller cells);<sup>88</sup> while this initiative by the establishment's Director deserves to be praised, the fact remains that the completion of these works is unlikely to do much to remedy unacceptable conditions in the entire prison (for the refurbishment/reconstruction of which no funds are available). Nevertheless, **the CPT would like to be informed, in due course, of the entry into service of the reconstructed Block No. 5.**

67. Material conditions were somewhat better at Chernivtsi and Ivano-Frankivsk SIZOs which were less overcrowded.<sup>89</sup>

Thanks to strenuous efforts of its Director to search for donors, prisoner accommodation at Chernivtsi SIZO was being refurbished gradually (approximately 40% of all the cells had been refurbished so far) and conditions in already refurbished cells were quite good including fully partitioned sanitary annexes and even (in some cells, mostly for women and juveniles) showers. The unrefurbished cells were dilapidated (but clean), as were collective showers. The Director told the delegation that central heating and sewage system required urgent repairs but the establishment had no budget for this, as well as to replace old and broken furniture. However, the biggest problem was the leaking roof which quickly ruined any positive effects of refurbishment carried out in the cells.

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<sup>85</sup> E.g. four female inmates in a cell measuring some 24 m<sup>2</sup>, sanitary annexe included.

<sup>86</sup> E.g. 24 inmates sharing a dormitory measuring some 80 m<sup>2</sup>, 25 inmates in a dormitory of 90 m<sup>2</sup>.

<sup>87</sup> With partially damaged roof and resulting water infiltration.

<sup>88</sup> Measuring 16 m<sup>2</sup> and supposed to accommodate four inmates each.

<sup>89</sup> E.g. cells at Chernivtsi SIZO offered between 3 and 6 m<sup>2</sup> of living space per inmate. At Ivano-Frankivsk SIZO, most inmates had between 3 and 4 m<sup>2</sup> of living space.

Evidence of recent repairs was also visible at Ivano-Frankivsk SIZO (likewise, only because the Director had managed to secure help from the municipality and some local companies),<sup>90</sup> and a few of the cells had been redecorated with the help of the inmates. However, most of the prisoner accommodation was run down (including the furniture), with cells being quite stuffy, dark and not very clean.

68. In the light of the remarks in paragraphs 62 to 67 above, **the CPT calls upon the Ukrainian authorities to urgently allocate sufficient State budget resources to Lviv, Chernivtsi and Ivano-Frankivsk SIZOs and to Colony No. 30, and to proceed without delay with refurbishment/reconstruction of these establishments so as to address the above-described deficiencies; this should include, wherever applicable, transforming large-capacity dormitories into smaller cells. Reference is also made to the recommendation in paragraph 57 above.**

69. On a more positive note, the delegation found the material conditions at Kremenchuk Juvenile Colony to be generally good, with the dormitories offering generous living space and being bright, airy and clean. That said, **the dormitories had a somewhat austere appearance** although juveniles were allowed to keep some personal items in bedside lockers. Further, **the Committee is of the view that it would be advisable to transform the dormitories into accommodation based on smaller living units**; the fact that the establishment currently operates at well below its official capacity (see paragraph 54 above) should facilitate this.

70. Most of the in-cell toilets in the prisons visited were still only partially screened. Further, as a rule, inmates had access to a shower only once a week, hygiene items (other than soap) were not provided free of charge<sup>91</sup> and, in all the establishments visited except in Kremenchuk, the delegation heard complaints from prisoners about poor quality of the food. **The CPT recommends that steps be taken to address these deficiencies. In particular, female prisoners must be provided free of charge with sanitary materials for their monthly needs.**

**As regards access to a shower, the Committee reiterates its recommendation that the frequency be increased, taking into consideration Rule 19.4 of the European Prison Rules.**<sup>92</sup>

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<sup>90</sup> Among others, the roof, electric installation, sewage and water pipes had been repaired.

<sup>91</sup> Some additional items were occasionally donated by the ICRC or charities.

<sup>92</sup> 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."

#### 4. Activities

71. The CPT's long-standing recommendation to develop a regime for remand prisoners remains, regrettably, unimplemented (see also paragraph 57 above).

As during the previous visits, the vast majority of remand prisoners spent up to 23 hours a day locked up inside their cells with no organised activities.<sup>93</sup> Inmates had access to outdoor exercise for one hour per day (two hours for women and juveniles) in small,<sup>94</sup> oppressive and dilapidated yards which were, moreover, usually located on the roofs of detention blocks<sup>95</sup> and offered nothing but sky view.

The only other distractions for remand prisoners were watching TV or listening to the radio in their cells,<sup>96</sup> reading books and newspapers, and playing board games with their cellmates.

72. The Committee acknowledges the Ukrainian authorities' efforts to offer work and education to sentenced prisoners, but it remained a fact that, at Colony No. 30, only a minority of sentenced inmates had a job<sup>97</sup> or followed any structured education<sup>98</sup> or vocational training.<sup>99</sup> Most sentenced prisoners had no purposeful activities and just passed the time in their units watching TV, listening to the radio, reading books and newspapers, or playing board games with other inmates.

During the day, prisoners had access to large, quite rundown outdoor areas adjacent to their blocks (equipped with benches and tables and planted with some trees or bushes). Further, prisoners could use small makeshift indoor and outdoor gyms in their units and in the yards.

73. The CPT wishes once again to emphasise that ensuring that sentenced prisoners are engaged in purposeful activities of a varied nature (work, preferably with vocational value; education; sport; recreation/association) is not only an essential part of rehabilitation and resocialisation, but it also contributes to the establishment of a more secure environment within prisons. Furthermore, remand prisoners should as far as possible be offered work, as well as other structured activities.

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<sup>93</sup> In the SIZOs visited, work was provided almost exclusively to the sentenced prisoner workforce (e.g. 57 inmates in Kyiv, 30 in Lviv and 11 in Ivano-Frankivsk). The only positive exception was Chernivtsi SIZO, where a (very) small number of remand prisoners (9 at the time of the visit) had obtained court authorisation to work in the workshop producing raincoats, tablecloths and toys. Further, some of the life-sentenced prisoners had a job (see paragraph 78 below).

<sup>94</sup> E.g. the yards at Lviv SIZO measured barely between 8 and 12 m<sup>2</sup>, and the ones at Ivano-Frankivsk SIZO between 16 and 20 m<sup>2</sup>.

<sup>95</sup> Except at Chernivtsi SIZO.

<sup>96</sup> If they could afford a TV or radio set, or if they received one from their relatives.

<sup>97</sup> In the metal, wood processing and souvenir workshops as well as in general colony services. Altogether, some 100 prisoners had a job (out of the total of 774).

<sup>98</sup> Approximately 100 inmates were enrolled in the general secondary school.

<sup>99</sup> Some 120 inmates attended the vocational centre training prisoners in professions such as boiler operator, air conditioning operator, carpenter, welder, turner and cook.

Efforts are also needed to develop sentence planning<sup>100</sup> and preparation for release (and prevention of reoffending).<sup>101</sup> Ultimately, the success of parole schemes depends on opportunities for prisoners to change their behaviour prior to release – at present this is only offered to a very limited extent.

**The CPT calls upon the Ukrainian authorities to intensify their efforts to develop the programmes of activities for both sentenced and remand prisoners, notably as regards work, educational and vocational activities.<sup>102</sup> More efforts should also be deployed to develop individual sentence plans and preparation for release.**

**The Committee also calls upon the Ukrainian authorities to take steps without further delay, in the SIZOs visited (and in all remand prisons in general), to enlarge and improve exercise yards, which should be located on ground level and offer horizontal view.**

74. The only positive exception to the aforementioned generally unsatisfactory state of affairs concerned juveniles on remand, who were offered some out-of-cell activities (sports, education classes) in Kyiv,<sup>103</sup> Lviv and Ivano-Frankivsk, but not in Chernivtsi (reportedly because of administrative delays).<sup>104</sup> **The CPT understands that it is difficult to organise activities for just a few inmates; however, efforts should be made to offer at least some schooling (possibly based on individual tuition) and physical exertion to the juveniles at Chernivtsi SIZO.<sup>105</sup>**

75. The delegation also gained a positive impression of the programme of activities available to sentenced juveniles at Kremenchuk Juvenile Colony. Inmates followed general secondary education and, at the time of the visit, six of them were also following university-level courses via e-learning.<sup>106</sup> Vocational training (carpentry) was also available, although only 16 juveniles were attending; **the Committee invites the Ukrainian authorities to make efforts to engage more inmates at Kremenchuk Juvenile Colony in vocational training.**

Each juvenile had his individual programme of activities (including physical exercise and sports activities, also with juveniles from outside the facility, e.g. football tournaments). Further, courses were provided on how to manage the period after release (how to find a job, how to continue studies, how to find legal assistance, etc.). The Colony also had a system of awards (marks to be given on the basis of the behaviour at school and in general) which played an important role in the context of early release.<sup>107</sup>

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<sup>100</sup> The delegation was informed at the outset of the visit that some initial preparatory work had begun to introduce individual risk assessment and sentence planning, but neither had yet been implemented in practice.

<sup>101</sup> At Colony No. 30, the delegation was told that social workers from Lviv municipal authorities would sometimes visit inmates whose sentences were to end soon, focusing on prisoners with no family and no place to live. However, this was not systematic and the Director said the establishment relied a lot on the help of inmates' families, religious communities and NGOs.

<sup>102</sup> Reference is also made to the CPT's 26<sup>th</sup> General Report, see paragraphs 52 to 73 of CPT/Inf (2017) 5, <https://rm.coe.int/168070af7a>.

<sup>103</sup> The classrooms at Kyiv SIZO were temporarily closed for renovation but were about to reopen shortly.

<sup>104</sup> I.e. delays in obtaining certificates from previous educational establishments.

<sup>105</sup> See also paragraphs 108 to 110 of the CPT's 24<sup>th</sup> General Report, CPT/Inf (2015) 1, <https://rm.coe.int/1680696a9c>.

<sup>106</sup> The courses were provided online and via Skype by Poltava University.

<sup>107</sup> The Director informed the delegation that, in the period between 1 January and 1 December 2017, 42% of the eligible inmates had been granted early release.



## 5. Life-sentenced prisoners

76. As already mentioned in paragraph 54 above, all the SIZOs visited (except Chernivtsi SIZO) were accommodating life-sentenced prisoners.<sup>108</sup>

77. Material conditions in the lifers' units in the three remand prisons were generally not different than in the rest of the accommodation, i.e. they varied from quite acceptable in Ivano-Frankivsk (where the lifers' cells were among those recently refurbished) to poor (in Lviv) and extremely poor (in Kyiv).<sup>109</sup> In this context, **reference is made to the recommendations in paragraph 68 above.**

78. Concerning the regime for life-sentenced prisoners, the situation has remained basically unchanged as the relevant legislation has not been amended despite the CPT's long-standing recommendations.<sup>110</sup> Lifers continued to be segregated from other prisoners and spent up to 23 hours per day<sup>111</sup> in their (usually) double or triple-occupancy cells, with little in terms of organised activities and association (with the exception of occasional work<sup>112</sup> and limited access to the gym, table tennis and the Internet – up to one hour per day – in Lviv and Ivano-Frankivsk).<sup>113</sup> The situation was particularly difficult for those of the inmates who were accommodated alone in their cells (either on their own request or on security grounds, because they were deemed to represent a danger to their fellow prisoners), whose regime *de facto* amounted to solitary confinement, for years on end.

79. The CPT remains of the view that the regime for life-sentenced prisoners in Ukraine should be fundamentally reviewed, so as to include a structured programme of constructive and preferably out-of-cell activities; social workers and psychologists should be proactive in working with life-sentenced prisoners to encourage them to take part in that programme and attempt to engage them safely with other prisoners for at least a part of each day. There is no justification to systematically segregate life-sentenced prisoners from the rest of prisoner population.

**Consequently, the CPT once again calls upon the Ukrainian authorities to develop the regime for life-sentenced prisoners, in particular by providing more communal activities (including access to work and education). Access to the Internet should be offered to life-sentenced prisoners at Kyiv SIZO.**

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<sup>108</sup> 20 in Kyiv, 24 in Lviv and 23 in Ivano-Frankivsk.

<sup>109</sup> At the latter establishment, cells for life-sentenced prisoners were overcrowded (e.g. three inmates sharing 6 m<sup>2</sup> of living space), dark, humid and dilapidated, with damaged walls and floors.

<sup>110</sup> See e.g. paragraph 139 of the report on the 2013 periodic visit (CPT/Inf (2014) 15, <https://rm.coe.int/1680698465>) and paragraph 62 of the report on 2016 ad hoc visit (CPT/Inf (2017) 15, <https://rm.coe.int/pdf/1680727930>).

<sup>111</sup> Outdoor exercise was offered for one hour per day, and took place in small and oppressive yards.

<sup>112</sup> Making pottery and sewing (inside their cells) at Lviv SIZO, sewing coats in Ivano-Frankivsk.

<sup>113</sup> In the summer, lifers accommodated at Lviv SIZO were reportedly sometimes allowed to play table tennis in the unit's corridor.

**The Committee also once again urges the Ukrainian authorities to integrate life-sentenced prisoners into the general prison population as soon as possible following their conviction (taking into account the European Prison Rules and the Committee of Ministers' Recommendation Rec (2003) 23 on the management by prison administrations of life sentence and other long-term prisoners).**

80. Furthermore, in all the establishments accommodating life-sentenced prisoners (except Ivano-Frankivsk SIZO), custodial staff continued to use unmuzzled service dogs inside the lifers' units, when escorting prisoners outside their cells including for outdoor exercise.<sup>114</sup> **The CPT once again calls upon the Ukrainian authorities to stop this dangerous and intimidating practice immediately.**

81. Further, the Committee 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 the safety of the outside community, the law should offer a realistic prospect of conditional release to all sentenced prisoners, including life-sentence prisoners.<sup>115</sup> This is still not the case at present.<sup>116</sup>

**The CPT once again calls upon the Ukrainian authorities to amend the legislation with a view to making conditional release (parole) available to all life-sentenced prisoners, subject to a review of the threat to society posed by them on the basis of an individual risk assessment. Reference is also made here to the CPT's 25<sup>th</sup> General Report.<sup>117</sup>**

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<sup>114</sup> On the positive side, no more routine handcuffing was observed at any of the lifers' units: any application of handcuffs was based on individual risk assessment and, in particular, handcuffs were never applied during medical examinations/consultations.

<sup>115</sup> See Recommendation Rec (2003) 22 of the Committee of Ministers on conditional release (parole) of 24 September 2003. See, in this connection, the judgment of 9 July 2013 of the Grand Chamber of the European Court of Human Rights in the case of *Vinter and Others v. the United Kingdom*. See also the judgment in the case of *László Magyar v. Hungary* (application no. 73593/10), issued on 20 May 2014.

<sup>116</sup> 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 20 years. Reportedly, draft amendments to reduce this requirement to 15 years had been sent to the Rada but it was unclear when the draft would be examined and adopted.

<sup>117</sup> See paragraphs 67 to 81 of CPT/Inf (2016) 10 (<https://rm.coe.int/1680696a9d>) and in particular paragraph 73.

## 6. Health-care services

82. Prison health care has been an area of long-standing concern to the CPT. Unfortunately, the delegation's findings in the course of the 2017 visit confirm that the situation remains very difficult, with generally low health-care staffing levels,<sup>118</sup> inadequate premises, equipment and medication,<sup>119</sup> serious problems with access to care (in particular specialists)<sup>120</sup> and with professional standards (including as regards medical documentation,<sup>121</sup> confidentiality<sup>122</sup> and the role of prison health-care staff in preventing ill-treatment).<sup>123</sup> Indeed, the situation observed in most of the establishments visited (with the exception of Kremenchuk Juvenile Colony) was such that it posed a considerable threat to the health and even life of prisoners.<sup>124</sup>

At the outset of the visit and, subsequently, in their letter of 5 April 2018,<sup>125</sup> the Ukrainian authorities informed the Committee of their plans and ongoing efforts to address the aforementioned shortcomings. These efforts included steps to improve the training for health-care staff working in prisons (in co-operation with several universities, specialised training for prison doctors was about to start) and plans to increase salaries for health-care professionals working in prisons.<sup>126</sup> **The CPT calls upon the Ukrainian authorities to pursue these efforts energetically and to provide the Committee with detailed information on the progress achieved.**

83. In this context, the CPT also wishes to stress that, in its view,<sup>127</sup> the provision of health care in prisons must be the State's responsibility and, given their specific health-care needs, prisoners should enjoy at least the same standards of health care as those available in the community, and should have access to necessary health-care services (examinations, treatments and medication) free of charge. This is still far from being the case in practice in Ukrainian prisons (see paragraphs 85, 87, 90 to 93, and 95 below). **The Committee recommends that these precepts be duly taken into account by the Ukrainian authorities while reforming prison health-care services.**

84. At the outset and at the end of the visit, the delegation was informed by senior officials from the Ministry of Justice about ongoing discussions with the Ministry of Health aimed at the future transfer of the responsibility for prison health-care services to that Ministry. Reportedly, there was an agreement in principle that such a transfer should take place but no concrete decisions and deadlines yet; this was apparently at least partially due to the Ministry of Health's reluctance to accept such an additional responsibility given its current difficulties in managing and reforming the general health-care services for the community at large, including the financing and human resources.

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<sup>118</sup> See paragraph 85 below.

<sup>119</sup> See paragraph 87 below.

<sup>120</sup> See paragraph 95 below.

<sup>121</sup> See paragraph 89 below.

<sup>122</sup> See paragraphs 88 and 89 below.

<sup>123</sup> See paragraphs 33 above and 88 below.

<sup>124</sup> See also paragraph 96 below.

<sup>125</sup> Responding to the immediate observation made by the delegation at the end of the visit, see paragraph 11 above.

<sup>126</sup> Thanks, in part, to the financial assistance by the Global Fund.

<sup>127</sup> As well as in the view of the United Nations, see Rule 24 (1) of the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), adopted by the UN General Assembly on 29 September 2015, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/295/06/PDF/N1529506.pdf?OpenElement>.

Meanwhile, following expert advice from the ICRC and the WHO, prison health-care services had recently been reorganised by separating them from the Criminal-Executive Service Department and setting up a new Medical Department of the Ministry of Justice, equal in rank to the prison administration. The CPT welcomes this step which is likely, if accompanied by adequate human and financial resources, to increase the independence of prison health-care staff vis-à-vis prison Directors. That said, the Committee remains of the view that it will be extremely difficult to address all the serious problems referred to in paragraph 82 above unless prison health-care services are placed under the responsibility of the Ministry of Health.<sup>128</sup> In any event, the CPT considers that a much greater participation of the Ministry of Health in this area (including as regards recruitment of health-care staff, their in-service training, evaluation of clinical practice, certification and inspection) is urgently needed to ensure optimum health care for prisoners, as well as implementation of the general principle of the equivalence of health care in prison with that in the wider community. **The Committee calls upon the Ukrainian authorities to step up their efforts to transfer the responsibility for prison health-care services to the Ministry of Health, in the light of the above remarks.**

85. As already mentioned in paragraph 82 above, health-care services of all the prisons visited in December 2017 were understaffed to varying extents (with several doctors' posts being vacant), most strikingly so at Colony No. 30. While the number of doctors was generally not dramatically low<sup>129</sup> (although this depended on speciality, see also paragraphs 90 and 95 below), there was a shortage of feldshers<sup>130</sup> and nurses<sup>131</sup> in the establishments visited. It is noteworthy that the delegation heard again numerous complaints from prisoners about delays in access to a doctor (although inmates usually did not wait long for the feldshers) and the quality of care.

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<sup>128</sup> Reference is also made to a document published in 2013 by the United Nations Office on Drugs and Crime and the WHO Regional Office for Europe, entitled "Good governance for prison health in the 21st century: a policy brief on the organization of prison health", [http://www.euro.who.int/\\_data/assets/pdf\\_file/0017/231506/Good-governance-for-prison-health-in-the-21st-century.pdf?ua=1](http://www.euro.who.int/_data/assets/pdf_file/0017/231506/Good-governance-for-prison-health-in-the-21st-century.pdf?ua=1).

<sup>129</sup> Kyiv SIZO (population 2,371) had 14 doctors occupying 9,25 posts (Head doctor, two internal medicine specialists, two dentists, a full-time psychiatrist, a full-time dermatovenerologist, a full-time radiologist, a full-time TB specialist, four half-time specialists – a surgeon, a neurologist, an endocrinologist and a gynaecologist – and a laboratory specialist employed on a 25% basis); 6,75 doctors' posts were vacant. Lviv SIZO (population 821) had nine doctors occupying six posts (no vacancies): Head doctor (also working as radiologist), an internal medicine specialist, a TB specialist, two psychiatrists employed each on a 50% basis, two dentists (both likewise working on a 50% basis), and two further specialists working on a 50% basis (a dermatovenerologist and a radiologist). Chernivtsi SIZO (population 210) had seven doctors occupying 4,5 posts (Head doctor, two half-time internal medicine specialists, a psychiatrist, two half-time dentists and a half-time gynaecologist); one doctor's post was vacant. Ivano-Frankivsk SIZO (population 380) had eight doctors working on 6,5 posts; one more doctor's post (for a psychiatrist) was vacant. Colony No. 30 (population 774) had three doctors working on 2,5 posts (acting Head doctor (who was also the dentist), an internal medicine specialist and a half-time radiologist); two doctors' posts were vacant (Head doctor and psychiatrist). Kremenchuk Juvenile Colony (population 56) had five doctors working on 3,75 posts (a half-time internal medicine specialist, a dentist and a psychiatrist (both working on a 25% basis), a TB specialist working on a 75% basis, a half-time radiologist and a dentist); the posts of the Head doctor, another psychiatrist (0.75) and pharmacist (half-time) were vacant.

<sup>130</sup> Kyiv SIZO had ten feldshers (four of whom worked on 24 shifts) and 4 vacant posts; Lviv SIZO, Chernivtsi SIZO, Ivano-Frankivsk SIZO and Colony No. 30 each had four feldshers working on 24-hour shifts (no vacancies) while Kremenchuk Juvenile Colony had three feldshers occupying 2,5 posts (no vacancies).

<sup>131</sup> Kyiv SIZO had two nurses and two vacant posts, Lviv SIZO and Chernivtsi SIZO had each two nurses (no vacant posts), Ivano-Frankivsk SIZO and Colony No. 30 had no nurses at all, while Kremenchuk Juvenile Colony had one full-time nurse (and no vacant post).

**The CPT recommends that steps be taken to reinforce health-care teams in all the establishments visited, and especially so at Colony No. 30. The first priority should be to fill all the vacant posts. Further steps should aim at employing additional internal medicine specialists (or general practitioners) at Kyiv and Lviv SIZOs and Colony No. 30. In addition, the number of feldshers and/or nurses must be increased in all establishments visited.**

86. At Colony No. 30, the delegation observed that there were some prisoners working as orderlies in the health-care unit, despite the Committee's long-standing recommendations to abandon this practice.<sup>132</sup> In particular, they assisted health-care staff in distribution of medicines and performed certain simple medical tasks such as measuring temperature, blood pressure and pulse. Further, they had unhindered access to medical documentation concerning their fellow inmates.

As already stressed in the past, the CPT considers this totally unacceptable; **the Committee once again calls upon the Ukrainian authorities to cease the practice of using prisoners as medical orderlies. If needed, the relevant regulations should be amended.**

87. The delegation again observed severe problems with the supply of medication (except for TB, see paragraph 92 below) and, as previously, inmates or their families had to pay for most of the medicines.<sup>133</sup> The Ukrainian authorities informed the delegation that the ICRC was temporarily supplying medication to pharmacies in 10 prisons and that the Ministry of Justice would probably have to keep relying on foreign assistance because of the lack of funds for purchasing medicines.

Furthermore, the health-care facilities were very poor and unhygienic, requiring extensive renovation. At Kyiv SIZO in particular, the former medical unit had been flooded by fire brigade when putting out the fire of the roof;<sup>134</sup> as a result, health-care staff had to use a few rooms hastily converted from old cells. All the premises were dark, cold, cramped, with damaged and dirty walls and furniture.

Regarding the equipment, it was of a variable age and condition (some of it was quite modern e.g. fluorographs, some more outdated) but staff generally managed to keep it in working order. However, only Kiev SIZO had any life-saving equipment (such as defibrillators and oxygen nebulisers). The delegation also noted the absence of protective screening in the X-ray room at Chernivtsi SIZO.

**The CPT reiterates its recommendation that serious steps be taken to ensure adequate supply of free-of-charge medication<sup>135</sup> and to improve material conditions and equipment of health-care units in all the penitentiary establishments visited.**

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<sup>132</sup> See e.g. paragraph 48 of the report on the 2015 ad hoc visit (CPT/Inf (2015) 36, <https://rm.coe.int/16806940c7>). Obviously, relying on prisoner orderlies was related to the low health-care staffing levels in the Colony.

<sup>133</sup> E.g. at Kyiv SIZO there had been 3,606 so-called "medical parcels" authorised in the first 11 months of 2017. At Lviv SIZO, the Head doctor told the delegation that a lot of medication (including heart medication, antibiotics and pain killers) was purchased by inmates or their families. At Chernivtsi SIZO, the Head doctor stated that the budget for medication covered 20% of the establishment's needs. As for Ivano-Frankivsk SIZO, the budget for medication for 2017 (72,000 UAH, approximately 2,340 EUR) was only sufficient to buy the most basic medicine, the rest being secured through prisoners or their families.

<sup>134</sup> See paragraph 62 above.

<sup>135</sup> See also the recommendation in paragraph 83 above.

Further, the Committee recommends that health-care services in all prisons visited (and all the other penitentiary establishments in Ukraine) be equipped with life-saving equipment. Health-care staff should receive adequate training in the use and maintenance of this equipment.

88. There was a systematic medical screening on arrival at the establishments visited,<sup>136</sup> which included screening for injuries, with the exception of Lviv SIZO where the screening was often not performed or performed in a very cursory manner. The confidentiality of the screening was still not respected in any of the prisons (custodial officers or even police convoy staff being present, and there was the practice of collective examinations e.g. in Lviv), injuries were not always well described or not described at all (e.g. in Lviv)<sup>137</sup> and, sometimes, doctors or feldshers failed to record inmates' explanations as to the origins of their injuries in a correct and accurate manner (and never attempted to assess consistency). Furthermore, information on injuries was not always duly reported to competent investigative/prosecution authorities (and not at all reported in Lviv).

In the light of the above findings, the CPT once again calls upon the Ukrainian authorities to ensure at all penitentiary establishments that:

- all medical examinations 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 prisoner contains: (i) an account of statements made by the prisoner 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; (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; this record should take fully into account any attestation of injuries observed upon admission during the procedure of handover of custody;
- the record also contains the results of additional examinations performed, detailed conclusions of specialised consultations and a description of treatment given for injuries and of any further procedures performed;
- the recording of the medical examination in cases of traumatic injuries is made on a special form provided for this purpose, with "body charts" for marking traumatic injuries that will be kept in the medical file of the prisoner. If any photographs are made, they should be filed in the medical record of the inmate concerned. This should take place in addition to the recording of injuries in the special trauma register;
- the results of every examination, including the above-mentioned statements and the health-care professional's conclusions, are made available to the prisoner and his/her lawyer;

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<sup>136</sup> See also paragraph 92 below.

<sup>137</sup> The delegation's doctor interviewed a recently arrived remand prisoner who had a fractured jaw and whose injury was not mentioned in the relevant register. Asked about it, the SIZO doctor explained that since the injury had already been described in the ITT, he saw no need to do it again.

- **special training is provided to health-care professionals working in prisons. 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, the training should cover the technique of interviewing persons who may have been ill-treated;**
- **custodial staff having no health-care duties only have access to medical information strictly on a need-to-know basis, with any information provided being limited to that necessary to prevent a serious risk for the prisoner or other persons. There is no justification for giving staff having no health-care duties access to information concerning the diagnoses made or statements concerning the cause of injuries.**

**As for the reporting procedures, which should be part of the duties of prison health-care staff, the Committee reiterates its long-standing recommendation 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 (and, in due course, SBI official)<sup>138</sup> 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, 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.

**Finally, reference is made to the comments and recommendations in paragraph 33 above.**

89. The quality of medical documentation left much to be desired in most of the establishments visited, especially as regards the various handwritten documents and journals. Further, as already mentioned above,<sup>139</sup> medical confidentiality was still not respected, as regards medical consultations (presence of non-medical prison staff, especially for life-sentenced prisoners) and medical documentation (which was accessible to custodial staff and prisoner orderlies). Further, prescribed medication continued to be usually distributed to prisoners by custodial officers (or prisoner orderlies).

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<sup>138</sup> See paragraph 30 above.

<sup>139</sup> See paragraph 88.

**The CPT reiterates its long-standing recommendations to improve the quality of medical documentation<sup>140</sup> and to ensure medical confidentiality in all penitentiary establishments.**

90. Access to psychiatric care was highly insufficient for prisoners in the establishments visited,<sup>141</sup> especially given (as acknowledged by Directors and staff) the presence of many inmates with mental health issues.<sup>142</sup> Moreover, for legal (license-related) reasons, the few psychiatrists working in prisons were not allowed to prescribe psychotropic medication.<sup>143</sup> **The Committee recommends that urgent steps be taken to remedy this regrettable state of affairs; if necessary, the relevant regulations should be amended. More generally, steps should be taken to improve the provision of psychiatric care to prisoners. To begin with, the vacant psychiatrist posts at Ivano–Frankivsk SIZO and Colony No. 30 must be filled as a matter of priority.**

Further, the CPT recommends that steps be taken to ensure that all mentally ill prisoners who require in-patient psychiatric treatment are promptly transferred to appropriate hospital facilities. The Committee also recommends that the initial medical screening procedures be improved in all prisons so as to include the assessment of the mental health condition and needs of newly-arrived inmates (see paragraph 88 above).

91. As regards psychological assistance, each establishment visited employed one or more psychologists;<sup>144</sup> that said, none of the psychologists was clinically trained. Furthermore, as had been the case in the past, the psychologists' role was essentially limited to carrying out risk assessment of prisoners. In the SIZOs, psychologists mostly focussed on working with juveniles on remand while some prisoners, especially the lifers, told the delegation that they would have wished to see the psychologist much more often but it was hardly possible in practice.

**The Committee recommends that the Ukrainian authorities reinforce the provision of psychological care in prison (in particular, better access to psychological assistance should be granted to life-sentenced inmates) and develop the training and the role of prison psychologists, especially as regards therapeutic clinical work with various categories of inmates. In this context, efforts are needed to recruit, in due course, clinically trained psychologists who should form part of the health-care team and whose work should avoid combining two different roles i.e. risk assessment and therapeutic clinical work.**

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<sup>140</sup> In particular, a personal and confidential medical file must be opened for each prisoner, containing diagnostic information as well as an ongoing record of the prisoner's state of health and of any special examinations he/she has undergone. In the event of transfer, the file should be forwarded to the doctors in the receiving establishment.

<sup>141</sup> The situation was particularly problematic at Ivano-Frankivsk SIZO and Colony No. 30, where the posts of psychiatrists were vacant. See also paragraph 85 above for details of staffing as regards psychiatrists in the other establishments visited.

<sup>142</sup> E.g. at Lviv SIZO there were 21 patients with psychiatric diagnoses, including bipolar disorder, depression and personality disorder. There were eight prisoners at Ivano-Frankivsk SIZO with diagnosed mental disorders such as psychosis, personality disorder, bipolar disorder and dissociative disorders.

<sup>143</sup> Psychiatrists working in prisons were only allowed to prescribe medication used in acute conditions (e.g. carbamazepine and injections of chlorpromazine).

<sup>144</sup> E.g. two at Lviv SIZO, one at Colony No. 30, Chernivtsi and Ivano-Frankivsk SIZOs, as well as Kremenchuk Juvenile Colony.



92. Regular screening for tuberculosis was carried out in all the prisons visited, including a chest x-ray (fluorography) repeated once a year and a GeneXpert<sup>145</sup> test. Adequate treatment (including for multi-resistant TB) was provided regardless of the same license-related legal constraints as already mentioned with respect to psychiatric care,<sup>146</sup> but the lack of proper separation between BK positive<sup>147</sup> and negative prisoners at Ivano-Frankivsk SIZO<sup>148</sup> and the unsafe handling of sputum samples at Chernivtsi SIZO<sup>149</sup> were matters of the delegation's serious concern. Further, apart from the new showers, no improvements were observed in the unacceptable material conditions in the TB unit at Kyiv SIZO.<sup>150</sup> **The CPT calls upon the Ukrainian authorities to remedy these deficiencies.**

Prisoners in all establishments visited were offered a test for HIV on admission, and if required they were offered anti-retroviral treatment.<sup>151</sup>

93. The delegation gained the impression that very little was being done in the penitentiary establishments visited (apart a very limited methadone programme in two of the establishments visited<sup>152</sup>) to address the widespread drug addiction problem among prisoners<sup>153</sup> and the related health issues such as hepatitis.<sup>154</sup>

In the Committee's view, treatment options for prisoners in withdrawal as well as opioid agonist maintenance should be available in prison to the same extent as in the outside community; this is also in line with the Opioid Dependence Treatment Guidelines issued by the WHO in 2009.<sup>155</sup> More generally, the CPT wishes to stress that the management of prisoners with drug dependence must be varied – eliminating the supply of drugs into prisons, dealing with drug abuse through identifying and engaging drug misusers, providing them with treatment options and ensuring that there is appropriate through care, developing standards, monitoring and research on drug issues, and the provision of staff training and development – and linked to a proper national prevention policy. It goes without saying that health-care staff must play a key role in drawing up, implementing and monitoring the programmes concerned and must co-operate closely with the other (psycho-socio-educational) staff involved.

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<sup>145</sup> GeneXpert is a molecular test for TB which diagnoses TB by detecting the presence of TB bacteria, as well as testing for resistance to the drug Rifampicin. The Ukrainian prison service received it in the beginning of 2017 thanks to financial support by the Global Fund.

<sup>146</sup> See paragraph 90 above.

<sup>147</sup> I.e. active tuberculosis patients with elevated bacillus loads.

<sup>148</sup> They were placed in separate cells but on some corridor, sharing the same showers and exercise yards.

<sup>149</sup> Due to the lack of adequate ventilation.

<sup>150</sup> See paragraph 63 of the report on the 2016 visit (CPT/Inf (2017) 15), <https://rm.coe.int/pdf/1680727930>.

<sup>151</sup> At the time of the visit, 59 prisoners were undergoing such therapy at Kyiv SIZO, 46 at Colony No. 30, twenty at Lviv SIZO, eight at Ivano-Frankivsk SIZO and one at Chernivtsi SIZO. There were no HIV+ inmates at Kremenchuk Juvenile Colony.

<sup>152</sup> Three prisoners received methadone at Kyiv SIZO and two at Chernivtsi SIZO.

<sup>153</sup> As acknowledged by Directors and staff (including health-care personnel) in the establishments visited. For example, according to the Head doctor at Ivano-Frankivsk SIZO, approximately 30% of prisoners were drug users. Health-care staff at Colony No. 30 estimated that nearly half of all the inmates had drug-related issues.

<sup>154</sup> Screening for hepatitis was generally not offered, and if an inmate requested it he/she was expected to pay for it (700 UAH, approximately 23 EUR).

<sup>155</sup> See [http://apps.who.int/iris/bitstream/10665/43948/1/9789241547543\\_eng.pdf](http://apps.who.int/iris/bitstream/10665/43948/1/9789241547543_eng.pdf).

**The Committee calls upon the Ukrainian authorities to develop and implement a comprehensive strategy for the provision of assistance to prisoners with drug-related problems (as part of a wider national drugs strategy) including harm reduction measures, in the light of the above remarks.**

Further, the CPT recommends that efforts be made to ensure, throughout the prison system, systematic screening and to offer treatment for blood-borne viral diseases such as hepatitis B and C.

94. The delegation paid a brief visit to Lviv Prison Hospital, adjacent to Lviv SIZO (and with the same Director)<sup>156</sup> and serving the Lviv region for internal and surgical care and the whole Ukrainian prison service in respect of specialised oncological treatment.<sup>157</sup>

The capacity of the hospital was 130 beds (including 50 beds on surgical ward, 40 on oncological ward and 40 on internal diseases ward). There were 19,5 posts for doctors (5 of which were vacant) and 31,5 posts for nurses (2,75 of which were vacant).

Patients' living conditions varied – some parts of the hospital had recently been refurbished while work was ongoing in other parts. The refurbished rooms were bright and clean but toilet partitions were barely 1 metre high. As for the still unrefurbished rooms, they were very dilapidated, dirty and malodorous.

The operating theatre had already been refurbished but there were reportedly persistent problems with the electric generator, which was indispensable given frequent power outages (see paragraph 64 above). Doctors also said that they needed a new respirator and some surgical instruments.

**The Committee recommends that efforts be made to complete the refurbishment of Lviv Prison Hospital and, in so doing, provide all patient rooms with fully screened sanitary annexes. Further, a new generator, respirator and surgical instruments must be purchased without delay.**

95. Given what had been described in paragraphs 82 to 94 above, it should come as no surprise that the delegation was inundated – in almost all the prisons visited – with complaints about inadequate access to specialist consultations/treatments (such as neurological, dermatological, urological, dental surgery, orthopaedic, etc.) and to modern diagnostic examinations such as CT scan, ultrasound or NMR. In practice, such consultations and examinations, if possible at all, were only arranged if prisoners or their families were prepared to pay for them. In this respect, **reference is made to the recommendation in paragraph 83 above.**

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<sup>156</sup> But a separate establishment, see also paragraph 54 above.

<sup>157</sup> During the first 11 months of 2017, the hospital had admitted 1,057 patients, performed 160 surgeries (including 74 in oncological cases) and diagnosed 31 TB cases. 23 patients had died (including four due to AIDS, six due to cardiovascular conditions, eight due to cancer, four due to digestive tract illnesses and one due to meningitis).

96. At the outset of the visit, the delegation received statistical information about the number of health-related deaths in prisons.<sup>158</sup>

With the current prison population of just under 60 thousand prisoners,<sup>159</sup> the figures communicated to the delegation appear extraordinary high, arriving at a death rate of 88/10,000. This could be, among other things, an indicator of the poor quality of health-care provided in Ukrainian prisons.

**In the light of the above, the CPT recommends that the Ukrainian authorities introduce a clear policy and comprehensive procedure on the identification of the causes of death of prisoners. In particular, every death of a prisoner should be the subject of a thorough investigation to ascertain, *inter alia*, the cause of death, the circumstances leading up to the death, including any contributing factors, and whether the death might have been prevented.**

**Further, an analysis should be undertaken of each death in prison to consider what general lessons may be learned for the prison in which the death occurred and whether there are any systemic, nationwide measures that need to be taken.**

## 7. Other issues

### a. prison staff

97. The situation of prison staff continues to be very problematic in the entire prison system. Inadequate staffing levels<sup>160</sup> (too low to allow effective control, at least without relying on certain inmates<sup>161</sup>) in all establishments visited except Kremenchuk Juvenile Colony,<sup>162</sup> meagre wages<sup>163</sup> combined with difficult working conditions,<sup>164</sup> exposing prison staff to the risk and temptation of corruption,<sup>165</sup> additional stress due to ongoing reforms and the perceived lack of information about the reform's impact on their professional future – all these factors contributed (as openly acknowledged by senior officials at the Ministry of Justice) to staff demotivation and large-scale departures from the prison service.<sup>166</sup>

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<sup>158</sup> The delegation was told that an autopsy was always carried out after an inmate died and that every death in prison was investigated by the Prosecutors Office. According to the information provided by the Prosecutor General Office in the outset of the visit, there had been 474 deaths in prison in 2016 and 529 in 2017.

<sup>159</sup> See <http://www.prisonstudies.org/country/ukraine> (data as of 1 May 2018).

<sup>160</sup> The percentage of vacant posts for custodial staff varied between 9% at Kyiv SIZO and 30% at Chernivtsi and Ivano-Frankivsk SIZOs. Lviv SIZO was lacking 44 custodial staff (out of 182 posts). Colony No. 30 was understaffed too, with only 5 posts of head of unit filled out of 10 and 39 vacant posts for junior custodial staff (“controllers”). Chernivtsi SIZO was lacking 32 “controllers” out of the total of 89 posts.

<sup>161</sup> See paragraph 59 above.

<sup>162</sup> Which had a multi-disciplinary team (92 uniformed security staff and 42 civil staff members including teachers and vocational trainers) amply sufficient for the needs of the inmate population, especially at the time of the visit (see paragraph 54 above).

<sup>163</sup> E.g. the junior custodial staff's starting monthly salary was the equivalent of approximately 200 EUR.

<sup>164</sup> Material conditions in staff offices and resting areas were often at least as poor as in the inmates' quarters.

<sup>165</sup> Especially at Kyiv SIZO, where the delegation was inundated with allegations that some custodial staff expected payments for “services” such as additional telephone calls, open visits, additional outdoor exercise, additional showers, extra food parcels, etc. Allegations were also heard that staff sold mobile phones and helped smuggle drugs into the establishment. A few similar allegations were heard in other establishments (in particular at Lviv SIZO) but, overall, corruption appeared to be much less widespread there.

<sup>166</sup> Mr Chernyshov stated that the prison system had undergone a “terrible staff haemorrhage”, with especially junior custodial staff “voting with their feet” and choosing better paid jobs in the police and private sector.

The Committee must stress once again that inadequate staff complements can only increase the risk of violence and intimidation between prisoners. They also undermine the quality and level of the activities offered to the inmates, and jeopardise the prospect of preparation for release and social rehabilitation.<sup>167</sup>

98. At the end of the visit, the Ministry of Justice representatives told the delegation that a significant salary increase for prison staff (almost doubling the existing wages) had been foreseen in the 2018 budget. The Committee welcomes this positive development. Having said that, **the CPT once again calls upon the Ukrainian authorities to take urgent steps to increase both custodial staff levels and presence at the establishments visited (and, as applicable, in other penitentiary establishments) in order to ensure that there is an adequate presence of staff at all times. The Committee also reiterates its recommendation that efforts be stepped up to fill all the vacant posts, especially as regards custodial staff. Further, much more effort is needed to recruit social workers,<sup>168</sup> and probation officers.**

99. As regards corruption, Mr Chernyshov, Deputy Minister of Justice, acknowledged the existence of the problem and told the delegation that more than 90 custodial staff had been arrested during the first 11 months of 2017 and charged for drug smuggling, selling mobile phones and demanding undue payments or advantages from prisoners, also in relation to early release and transfers to hospitals. He assured the delegation that the Ukrainian authorities would continue being extremely vigilant in this area.

While duly acknowledging this, **the Committee calls upon the Ukrainian authorities to continue taking decisive action to combat corruption in penitentiary establishments (paying particular attention to Kyiv SIZO) through prevention, education and the application of appropriate sanctions. In this context, prison staff and officials working with the prison system should receive the clear message that obtaining or demanding advantages from prisoners is illegal and unacceptable and will be duly investigated and punished; this message should be reiterated in an appropriate form, at suitable intervals.**

100. As during previous visits, the delegation observed that some custodial staff at the establishments visited worked on 24-hour shifts followed by three days off. The CPT can only reiterate its opinion that such a shift pattern has an inevitable negative effect on professional performance; no-one can perform in a satisfactory manner the difficult tasks expected of a prison officer for such a length of time. **The Committee calls upon the Ukrainian authorities to discontinue this practice.**

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<sup>167</sup> See also paragraph 73 above.

<sup>168</sup> At the time of the visit, only Colony No. 30 had social workers but 5 out of 10 posts were vacant.

b. contact with the outside world

101. The CPT regrets to note the absence of improvement in the inadequate visiting entitlement for all categories of inmates, and especially the fact that remand prisoners continued to face excessive restrictions in access to visits (which still required an authorisation by the competent investigator, prosecutor or court)<sup>169</sup> and a general ban on telephone calls.<sup>170</sup>

**The Committee calls upon the Ukrainian authorities to take steps to implement its long-standing recommendation that all prisoners (both sentenced and those on remand) are entitled to the equivalent of at least one hour of visiting time per week. Inmates of both categories should also have the effective possibility to make telephone calls.**

102. As for the visiting arrangements, the delegation noted that short-term visits were still, almost without exception, of a closed type (through a glass or Plexiglas separation).<sup>171</sup> **The CPT reiterates its long-standing recommendation that the relevant regulations be amended so as to enable all prisoners, including those on remand, to receive visits under reasonably open conditions; the use of closed visiting facilities should be the exception rather than the rule.** Any decision to impose closed visits must always be well-founded and reasoned, and based on an individual assessment of the potential risk posed by the prisoner.

By contrast, the facilities for long-term visits (available only to sentenced prisoners, every two months for up to 72 hours) were generally of a good standard in the prisons visited.

c. discipline

103. There have been no changes since the 2016 ad hoc visit to the legal provisions concerning disciplinary solitary confinement for (adult) prisoners.<sup>172</sup> A remand prisoner could be subjected to disciplinary solitary confinement for up to 10 days and a sentenced prisoner for up to 15 days. In this context, **the Committee invites the Ukrainian authorities to reduce the maximum possible period of disciplinary solitary confinement to 14 days.**<sup>173</sup>

Regarding sentenced prisoners, the catalogue of available sanctions also included (as previously) placement in disciplinary segregation – PKT – for up to three months, and – as the most severe sanction for repeated violations of discipline – being sentenced to an additional term of up to one year of imprisonment pursuant to Section 391 of the Criminal Code.

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<sup>169</sup> In practice, such authorisations were rarely granted (and almost never during the investigation stage). Sentenced inmates had the right to one short-term visit (4 hours maximum) per month.

<sup>170</sup> Unlike the sentenced prisoners who could make telephone calls (up to 15 minutes per day for adults, without limitation in the case of sentenced juveniles).

<sup>171</sup> Open short-term visits were permitted to juveniles.

<sup>172</sup> Concerning juvenile inmates, see paragraph 110 below.

<sup>173</sup> See also 21st General Report of the CPT's activities (CPT/Inf (2011) 28), <https://rm.coe.int/1680696a88>, paragraph 56 (b).

The only major (and positive) change was that placement in a PKT could no longer be decided by the prison Director but only by court (which had reportedly already resulted in a less frequent recourse to this sanction); by contrast, the CPT regrets that its recommendation, made in the report on the 2016 ad hoc visit,<sup>174</sup> to abolish Section 391 of the Criminal Code, has not been implemented. **The Committee calls upon the Ukrainian authorities to do so without further delay.**<sup>175</sup>

104. As regards the procedure, recent amendments to the Penitentiary Code (in force since April 2017) had reinforced the procedural safeguards e.g. the right to a hearing and access to *ex officio* legal assistance. However, while all the interviewed inmates (who were or had recently been in disciplinary solitary confinement) confirmed having had the opportunity to be heard prior to the imposition of the sanction, none had benefited from *ex officio* legal assistance and none had received a copy of the decision (although most confirmed having been informed orally of the right to appeal and the relevant time-limit).

**The CPT recommends that the disciplinary procedure in prisons be improved in the light of the above remarks. In particular, inmates should be promptly informed in writing of the charges against them, should be actually enabled to benefit from *ex officio* legal assistance, and provided with a copy of the decision containing the reasons for placement and information on the means available to them to challenge the decision before an independent authority.**

105. The delegation again observed that prison doctors remained involved in the disciplinary procedure and, in particular, were still required to certify prisoners' fitness for placement in disciplinary solitary confinement (prior to the start of the measure).

The Committee wishes to reiterate its view that medical practitioners working in prisons act as the personal doctors of prisoners, and ensuring that there is a positive doctor-patient relationship between them is a major factor in safeguarding the health and well-being of prisoners. Obliging prison doctors to certify that prisoners are fit to undergo punishment is scarcely likely to promote that relationship. This point was also recognised in the Committee of Ministers' Recommendation (2006) 2 on the European Prison Rules.

**Consequently, the CPT reiterates its recommendation that the role of prison doctors in relation to disciplinary matters be reviewed. In so doing, regard should be had to the European Prison Rules<sup>176</sup> and to the above remarks.**

106. The Committee is concerned by the fact that, despite its long-standing recommendations, acts of self-harm can still be considered as disciplinary offences and punished accordingly. As stressed by the CPT many times in the past, 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.

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<sup>174</sup> See paragraph 46 of CPT/Inf (2017) 15, <https://rm.coe.int/pdf/1680727930>.

<sup>175</sup> The reasons for this are set out in paragraph 46 of the aforementioned report.

<sup>176</sup> Rule 43.3: "The medical practitioner shall report to the director whenever it is considered that a prisoner's physical or mental health is being put seriously at risk by continued imprisonment or by any condition of imprisonment, including conditions of solitary confinement".

Further, the disciplinary confinement of the prisoners concerned is likely to exacerbate their distress or psychological/psychiatric problems.

**The CPT calls upon the Ukrainian authorities to review the approach vis-à-vis prisoners who have harmed themselves, in the light of the above remarks.**

107. The examination of disciplinary records generally did not reveal excessive resort to disciplinary confinement in the establishments visited.<sup>177</sup> It was clear that Directors tried to use this sanction only as a last resort (i.e. after three warnings) and, when applied, the length of placement was usually less than the legally permitted maximum.<sup>178</sup> This gradual approach is to be welcomed.

108. Material conditions in the disciplinary cells varied from quite good at Lviv SIZO (cells measuring between 7 and 9 m<sup>2</sup>, well lit and ventilated, recently renovated and adequately equipped),<sup>179</sup> through just about acceptable at Colony No. 30,<sup>180</sup> Chernivtsi and Ivano-Frankivsk SIZOs (where the cells were sufficient in size but cold, humid, poorly lit and ventilated and, in Ivano-Frankivsk, in a poor state of repair) to absolutely unacceptable at Kyiv SIZO, where the cells were cold (13° C), humid, smelly, dirty and extremely dilapidated, with broken furniture and exposed electric wiring.

**The Committee recommends that steps be taken to complete refurbishment of the disciplinary unit at Colony No. 30 and to refurbish disciplinary cells at Kyiv SIZO (as a matter of priority) and Chernivtsi and Ivano-Frankivsk SIZOs, in the light of the above remarks.**

109. Prisoners held in disciplinary confinement were entitled to one hour of daily outdoor exercise per day. However, reading matter was generally limited to religious literature and there was still a general ban on visits and phone calls.<sup>181</sup> **The CPT reiterates its recommendation that inmates placed in disciplinary solitary confinement cells be allowed a reasonable range of reading material (not only religious literature).** Further, **the Committee calls upon the Ukrainian authorities to 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 should be used only where the offence relates to such contacts.**<sup>182</sup>

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<sup>177</sup> E.g. there had been 56 placements at Lviv SIZO in the first 11 months of 2017, 21 placements at Chernivtsi SIZO.

<sup>178</sup> E.g. 5 to 7 days at Lviv SIZO, 3 to 5 days in Chernivtsi.

<sup>179</sup> Sleeping platform, table, stool, partially screened toilet and washbasin.

<sup>180</sup> Refurbishment of the disciplinary unit had started shortly before the delegation's visit and most of the cells had been taken out of service pending completion of the works.

<sup>181</sup> Such restrictions did not apply to sentenced prisoners placed in PKT cells.

<sup>182</sup> See Rule 60.4. of the European Prison Rules.

110. Regarding juveniles, the Ukrainian law still permits their placement in disciplinary solitary confinement for up to 5 days.<sup>183</sup>

In this context, the Committee wishes to point out that the UN Standard Minimum Rules on the Treatment of Prisoners (Nelson Mandela Rules) stipulate that solitary confinement shall not be imposed on juveniles.<sup>184</sup> **The CPT fully endorses this approach and recommends that the sanction of disciplinary solitary confinement for juvenile prisoners be abolished.**

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<sup>183</sup> Although such placements were hardly ever resorted to in practice in the establishments visited, e.g. there had been no placement at Kremenchuk Juvenile Colony in 2014, 2015 and 2016, and only two in the first 11 months of 2017.

<sup>184</sup> See Rule 45 (2) of the Nelson Mandela Rules and Rule 67 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules).



## C. Psychiatric establishments

### 1. Preliminary remarks

111. The CPT's delegation visited three psychiatric hospitals under the authority of the Ministry of Health: Kyiv Municipal Psychiatric Hospital No. 3 (located in the small town of Hlevakha, approximately 10 km from Kyiv, hereafter Hlevakha Psychiatric Hospital) and Poltava Regional Psychiatric Hospital (hereafter Poltava Psychiatric Hospital) were visited for the first time, whilst National High-Security Psychiatric Hospital in Dnipro (hereafter Dnipro Psychiatric Hospital) had been visited many times in the past, most recently in 2009.<sup>185</sup>

112. At the time of the visit, Hlevakha Psychiatric Hospital, occupying an extensive (22 hectares) site, was accommodating 240 patients including 69 women, for an overall capacity of 290 beds.

Patients were accommodated in six wards including a forensic medium-security ward (capacity 50), a general psychiatry ward for men (capacity 50), a general psychiatry ward for women (capacity 50),<sup>186</sup> a geriatric ward for men and another one for women (total capacity of 100) and a nursing ward<sup>187</sup> (capacity 40). All the wards were locked, including those accommodating formally voluntary patients (see paragraph 148 below).

113. Dnipro Psychiatric Hospital was accommodating 658 patients, including 66 women, for an overall estimated capacity of 830 beds.<sup>188</sup> The great majority of patients were found to be criminally irresponsible and subjected by court decision to compulsory treatment under a high-security regime. There were also three patients who had developed a mental disorder during the investigation period and had been hospitalised by court decision, and 16 patients who were remand prisoners for whom there were good grounds to believe they would be declared criminally irresponsible and subject to compulsory treatment.

The delegation was also informed that out of 658 patients, 59 were deprived of their legal capacity, including seven who had no guardians and for whom the hospital's Director was appointed as a guardian (see paragraph 151 below).

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<sup>185</sup> For a detailed (and still generally correct) description of the establishment see e.g. paragraph 191 of the report on the 2001 periodic visit (CPT/Inf (2002) 19), <https://rm.coe.int/1680698393>.

<sup>186</sup> This ward also accommodated three men – referred to by health-care staff as Chernobyl veterans – accommodated in a separate room.

<sup>187</sup> The nursing ward was accommodating patients who are awaiting placement to social care establishments.

<sup>188</sup> The Director told the delegation that the previous overall capacity had been 1,200 and, subsequently, the hospital had suggested to the Ministry of Health to reduce it to 830, which was reportedly accepted. The hospital then suggested decreasing it further, to 710 beds, which the Ministry did not approve without confirming the previous capacity of 830. There was thus no official capacity at the time of the visit, which could – in the Director's opinion – lead to management-related difficulties, especially as regards financial planning.

The hospital had 13 wards: Ward 1 for male somato-psychiatric patients,<sup>189</sup> Wards 2 to 8 for male psychiatric patients, Ward 9 – female psychiatric ward, Ward 10 for psychiatric patients with open TB,<sup>190</sup> Ward 11 – male observation infectious psychiatric ward (11 HIV+ male psychiatric patients were in the ward at the time of the visit, receiving anti-retroviral therapy), Ward 12 for female somato-psychiatric patients, and Ward 13 for psychiatric patients with “closed” (BK–) TB.

There were also three other units: a centre for psycho-social rehabilitation, legal advice and outpatient assistance, a cabinet for psycho-social diagnoses and psycho-pedagogical rehabilitation, and a cabinet for labour and social rehabilitation.

114. At the time of the visit, there were 724 patients at Poltava Psychiatric Hospital, for an overall capacity of 765 beds. The hospital had functioned in the same place for 126 years and was situated on extensive grounds on the outskirts of the city. The surface of the whole compound, also including some agricultural areas, was 200 hectares. It was the only hospital in the region having a medium-security ward and a number of its patients had been transferred from Dnipro Psychiatric Hospital (after having spent some time there under a high-security regime). The hospital also received general psychiatry patients from Poltava, Kharkiv, Kirovohrad and Sumy regions.

There were 17 wards in total, including 8 wards for general psychiatry (4 for acute patients and 4 for chronic ones). The other wards had more specific functions, i.e. a geriatric ward, a TB ward, a children’s and adolescent ward, a nursing ward, an infectious diseases ward, an intensive care ward, a ward for war veterans, a ward for patients with borderline personality disorders and a medium-security forensic ward. The latter was the only ward with a secure perimeter and, at the time of the visit, it was accommodating 55 male and one female patients (for a capacity of 55), including four on remand placed there under Section 508 of the CCP. In total, 81 patients out of 724 were forensic patients, some of whom were assigned to a general security regime and placed on general psychiatric wards.

At the time of the visit, 101 patients were deprived of their legal capacity. All of them had a guardian, but in some cases the guardian was the Director of the hospital (see paragraph 151 below).

## 2. Ill-treatment

115. The delegation heard no credible allegations of recent physical ill-treatment of patients by staff, apart from one case at Hlevakha Psychiatric Hospital where a patient alleged having been slapped by a security guard because he was smoking in the toilet of the medium-security ward.

However, the delegation received several allegations about verbal abuse by health-care staff and “controllers” (security staff employed by the Ministry of Justice) in all psychiatric establishments visited. **The CPT recommends that the managements of psychiatric hospitals visited exercise continuous vigilance and remind all staff at regular and frequent intervals that any form of ill-treatment of patients, including verbal abuse, is totally unacceptable and will be punished accordingly.**

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<sup>189</sup> I.e. patients who had serious somatic conditions in addition to mental disorders.

<sup>190</sup> Even though there had been no such patients since 2015 and the ward was now accommodating male psychiatric patients without any somatic pathology.

116. At Hlevakha Psychiatric Hospital the delegation saw a security officer openly carrying a truncheon inside the medium-security ward. **The Committee recommends that steps be taken to ensure that security officers do not openly carry truncheons inside the wards and other areas of Hlevakha Psychiatric Hospital commonly frequented by patients.**

117. At the aforementioned establishment, the delegation saw, in the relevant medical register, one example of a patient who bore injuries upon admission; however, the description of the injuries was very succinct and did not allow any forensic medical interpretation. **The CPT recommends that the Ukrainian authorities ensure that all injuries observed on psychiatric patients (upon admission and subsequently) are diligently recorded. Reference is also made to the recommendation in paragraph 88 above, which applies *mutatis mutandis*.**

### 3. Patients' living conditions

118. The buildings of Hlevakha Psychiatric Hospital dated back to the 1970s and were clearly in need of refurbishment. The recently appointed Director had managed, despite the lack of budgetary means allocated by the Ministry of Health, to renovate the roof in the medium-security ward and some of the patients' dormitories and exercise yards.

Living conditions were generally satisfactory: there was adequate lighting, heating and ventilation and the state of cleanliness of patient accommodation was good. The delegation noted efforts to create a personalised environment in most of the patient accommodation and to facilitate patients' access to their personal belongings.

The dormitories were generally not overcrowded in the medium-security ward<sup>191</sup> but the same was not true for some dormitories in general psychiatry wards<sup>192</sup> and geriatric ward<sup>193</sup>. The delegation also noted that double-barred doors of dormitories in the male medium-security ward created an excessively restrictive environment and were not conducive to creating a therapeutic milieu.

119. Living conditions were on the whole satisfactory at Dnipro Psychiatric Hospital and the delegation observed several positive developments since the CPT's 2009 visit: patients were now allowed to wear their own clothes, every ward had an area dedicated to psycho-social activities and patients' rooms were somewhat less overcrowded.<sup>194</sup> That said, many patients complained about the lack of diversity of the food. Further, the delegation was concerned to note that two juvenile patients had been placed in rooms with older patients. **The Committee recommends that this practice cease.**

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<sup>191</sup> E.g. some 18 m<sup>2</sup> for 4 beds.

<sup>192</sup> E.g. some 18 m<sup>2</sup> for 6 beds.

<sup>193</sup> E.g. some 43 m<sup>2</sup> for 12 beds.

<sup>194</sup> Nevertheless, overcrowding remained an issue, especially in the observation rooms (e.g. some 47 m<sup>2</sup> for 14 beds and some 27 m<sup>2</sup> for 9 beds).

In 2015, the hospital had reintegrated a number of buildings that had been occupied for some 20 years by the adjoining SIZO.<sup>195</sup> These buildings were now undergoing refurbishment which was to be completed by the end of 2018. **The CPT would like to be informed about the completion of these works, living conditions in refurbished buildings (including the average size and capacity of patient rooms) and whether the establishment's capacity will change after the refurbished buildings enter into service.**

120. The wards at Poltava Psychiatric Hospital were clean but most parts of the hospital required refurbishment. The delegation was especially concerned about the fact that the majority of patients were accommodated in large-capacity dormitories which were seriously overcrowded<sup>196</sup> and there were no dedicated rooms for psycho-social activities in the wards. The ceilings and walls in some dormitories were damp and there was a lack of personalised environment and lockable space for patients.

Further, as in Dnipro (see paragraph 119 above), many patients complained about the quality of the food and the lack of its diversity and insufficient quantity.<sup>197</sup>

121. In the light of the remarks in paragraphs 118 to 120 above, **the Committee recommends that the Ukrainian authorities take the necessary measures to improve living conditions in the psychiatric establishments visited, and in particular to :**

- **reduce occupancy levels in the dormitories (including in the observation rooms) of Dnipro and Poltava Psychiatric Hospitals, as well as in general psychiatry wards at Hlevakha Psychiatric Hospital;**
- **remove all double barred doors in medium-security wards of Hlevakha Psychiatric Hospital;**
- **refurbish all patients' accommodation areas, especially at Hlevakha and Poltava Psychiatric Hospitals, and eliminate the humidity problem at the latter establishment;**
- **in the course of refurbishment work, transform large-capacity dormitories into smaller patients' rooms;**
- **improve food provision to patients, both in terms of quantity and diversity;**
- **provide conditions in the patients' rooms that are conducive to the treatment and welfare of the patients and a more personalised environment and lockable spaces.**

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<sup>195</sup> Last visited by the CPT in 2014. For a detailed description, see paragraphs 118 and 120 of the report on the 2013 periodic visit (CPT/Inf (2014) 15), <https://rm.coe.int/1680698465>.

<sup>196</sup> As an example, in Ward 3B, there were 13 beds for a total of 35 m<sup>2</sup> (i.e. 2.7 m<sup>2</sup> of living space per patient).

<sup>197</sup> Which was hardly surprising given that the average budget allocated for food per patient and per day amounted to 10.49 UAH (0.3 EUR).

122. In their letter of 5 April 2018 (see paragraph 12 above), the Ukrainian authorities informed the CPT of their plans to reconstruct patient accommodation areas at Hlevakha Psychiatric Hospital; reportedly, the required financial resources had been included in the Ministry of Health's 2018 budget.

**The Committee would like to receive updated information on this subject, including on the capacity and the type of new patient accommodation and the precise timeline for the completion of reconstruction works. In the context of these works, the CPT refers to its recommendations in paragraph 121 above.**

#### **4. Staff and treatment**

123. Regarding the staff, at *Hlevakha Psychiatric Hospital* there were 62.5 vacancies out of 268 posts. The main problem was the lack of psychiatrists<sup>198</sup> with 4 vacancies out of a total of 19.5 posts – reportedly mainly due to the lack of (financial) incentives.<sup>199</sup> Another problem was related to the lack of staff and resources during patients' transportation from and to the court, as well as from and to a SIZO (for those patients who were hospitalised according to Section 508 of the CCP). Solutions had to be found, sometimes using private vehicles of staff members, given that as a municipal hospital, the establishment did not receive any funding for that purpose from the Ministry of Justice (contrary to a high-security psychiatric hospital for instance). **The Committee would like to receive comments from the Ukrainian authorities on this matter.**

124. At *Dnipro Psychiatric Hospital* the staff situation was not reported as problematic, although there were 62 vacancies for a total of 673 posts. There were 71 doctors (for 86 available posts), 44 of whom were psychiatrists (for 55 available posts), while the rest possessed various other specialisations (dentist, neuropathologist, etc.). Further, there were 227 posts for "middle rank staff",<sup>200</sup> of which 217 were filled, and 213 posts for "junior rank staff",<sup>201</sup> of which 202 were filled. Concerning staff qualified to provide therapeutic activities, the hospital had 8 full-time psychologist posts, all filled. There were also two "occupational inspectors". The hospital also employed 1.5 full-time clinical psychologists (another 1.5 posts were vacant).

As regards doctors and nurses, the above-mentioned staffing situation shows an improvement compared to the last visit of the Committee in 2009, but there was still scope for improvement of the numbers of multi-disciplinary clinical staff.

Given that Dnipro hospital was a high-level security hospital, there were also 145 security staff including 39 women – 14 officers and 131 junior inspectors (only one vacancy at the time of the visit). They worked in shifts of 31 and were under the responsibility of the Ministry of Justice. Their co-operation with health-care staff seemed to be adequate.

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<sup>198</sup> There were also three psychologists (two of them clinical) occupying 2.5 posts.

<sup>199</sup> The basic salary of a psychiatrist amounted to 4,000 UAH (125 EUR).

<sup>200</sup> This category of staff included nurses, laboratory assistants, physiotherapists, pharmacists, etc.

<sup>201</sup> This category included orderlies, staff in charge of distributing the food, bed linen, etc.

125. At *Poltava Psychiatric Hospital* there were almost no vacancies among medical staff: 87.5 posts for doctors were filled out of 89.5, including 45 psychiatrists, and there were 13 psychologists. Nevertheless, according to some nurses, the presence of health care staff during weekends was not sufficient. **The CPT would like to receive more detailed information on staffing levels during weekends and at night at Poltava Psychiatric Hospital.**

126. In all establishments visited, the treatment was mainly based on pharmacotherapy. As a result of the paucity of activities, the majority of patients spent most of the time lying in their beds or walking in the corridors. Furthermore, at Poltava Psychiatric Hospital several patients presented symptoms of overmedication such as drug-induced Parkinsonism and somnolence. **The Committee would like to receive observations from the Ukrainian authorities on this subject.**

127. Furthermore, the delegation saw, in some individual medical files at the above-mentioned establishment, doctors' instructions to administer injections of haloperidol and diazepam "in case of agitation". The CPT must stress that such a practice might place too much responsibility on nurses as regards the assessment of the patient's mental state and the provision of an adequate response, and lead – in the absence of a medical doctor – to potential complications. It may also reduce the nursing team's motivation to attempt de-escalation of the situation by other means and consequently open the door for abuse.

In the Committee's opinion, in the event of a patient presenting a state of agitation which cannot be dealt with by the nursing staff, the patient's psychiatrist (or the duty psychiatrist) should be called immediately and intervene promptly to assess the state of the patient and issue instructions on the action to be taken. **The CPT recommends that due attention be paid to these precepts at Poltava Psychiatric Hospital (see also paragraph 138 below).**

128. Some elements of psycho-social rehabilitation programmes were observed, in particular at Dnipro Psychiatric Hospital,<sup>202</sup> but they could not be effective due to the lack of financial and human resources, as well as the absence of proper individual treatment plans and multidisciplinary team work (in particular, the lack of co-operation between psychiatrists and psychologists). Moreover, a better coordination between the different security regimes in the whole forensic psychiatric system would ensure better continuity in the treatment of patients.

129. **The Committee reiterates its recommendation to take the necessary measures to draw up and regularly revise/update an individual written treatment plan for each patient (taking into account the special needs of acute, long-term and forensic patients and, with respect to the last-mentioned, the need to reduce any risk they may pose), including the diagnosis, the goals of treatment, the therapeutic means used and the staff members responsible. Patients should be involved in the drafting and revision of their individual treatment plans and be informed of their progress.**

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<sup>202</sup> E.g. individual and/or group discussions on anger management.

Further, the CPT recommends that serious efforts be made in all the psychiatric establishments visited to develop a range of therapeutic options and involve patients in rehabilitative psycho-social activities such as anger management, in order to prepare them for more independent living and/or return to their families and reduce the risk of re-offending. Psychological and occupational therapy should be an important part of the long-term treatment programme, providing for motivation, development of learning and relationship skills, acquisition of specific competences and improving self-image. It is axiomatic that this will require the recruitment of more specialists qualified to provide therapeutic and rehabilitation activities (psychologists, occupational therapists, and social workers); further, there needs to be a much fuller and more multi-disciplinary clinical team treatment approach, including multi-disciplinary clinical meetings where patients cases can be regularly discussed.

130. At Dnipro Psychiatric Hospital, there was a very detailed recording of all cases of death, with autopsy reports available, in particular with a view to ascertaining whether there were lessons to be learned as regards operating procedures. **The Committee welcomes this positive practice and recommends that it be adopted in the other psychiatric establishments visited (and, more generally, in all psychiatric establishments in Ukraine).**

131. As concerns outdoor exercise, at Dnipro Psychiatric Hospital it was offered twice a day. The only exception concerned newly-admitted patients. Indeed, in the admission unit, patients did not get the opportunity to take outdoor exercise before they completed their first medical examinations.

Most patients in the other psychiatric establishments visited, especially those in general psychiatric wards, had had no access to outdoor exercise for several months in a row. The situation was especially serious in Poltava where the delegation raised it with the management of the establishment and asked for it to be immediately remedied. In Hlevakha too, it was problematic: several forensic patients accommodated in general psychiatric wards told the delegation that they did not have access to outdoor exercise, especially during winter time, apparently due to lack of adapted clothes.

The fact that patients do not have appropriate clothing and footwear should not be a reason why they do not get access to outdoor exercise during winter time. **The CPT recommends that all patients be provided with such appropriate clothing and footwear.**

132. As already mentioned in paragraph 12 above, at the end of the visit the delegation invoked **Article 8, paragraph 5, of the Convention** and requested the Ukrainian authorities to ensure a daily access of at least one hour (and preferably more) to outdoor exercise to all patients of psychiatric establishments. The Ukrainian authorities were requested to inform the CPT of the steps taken **within three months**.

In their letter of 5 April 2018, the Ukrainian authorities informed the Committee that at Hlevakha Psychiatric Hospital, patients in general-regime wards now had daily access to outdoor exercise in the refurbished yard. The Ukrainian authorities also informed the CPT that in Poltava, the lack of sufficient access to outdoor exercise had been caused by “organisational shortcomings” and insufficient provision of warm clothes and footwear for patients.

In order to remedy this, action had been taken to offer two hours of outdoor exercise in the morning and in the evening, a register of patients' outdoor exercise had been introduced and footwear and clothes would be provided at the hospital's expense during autumn and winter-time.

Additionally, in a document attached to their letter of 5 April 2018, the Ukrainian authorities informed the Committee that the Ministry of Health Order No. 992 had entered into force and its Section 22 stipulated that all patients should be offered outdoor exercise at least two hours per day, regardless of the security level. The CPT welcomes this.

## **5. Means of restraint**

133. The legal provisions concerning means of restraint were amended in 2016 by the Ministry of Health Order No. 240 "On approving rules of application of physical restriction and (or) isolation when providing psychiatric support to individuals with mental health disabilities, and forms of primary registration documentation". The main change concerned the duration of physical restraint which according to the new provisions should not exceed 4 hours, while seclusion should not exceed 8 hours. Also, every 2 hours, a doctor should evaluate changes in the physical and psychological state of the patient. Restraint measures can only be prolonged by the decision of the hospital's psychiatric commission.

134. The delegation noted that, in the psychiatric establishments visited, there was no evidence of excessive use of mechanical restraint and when applied, it was for the shortest time possible. However, when mechanical restraint was applied, it was not always done outside the view of other patients. Most of the time, patients were tied to their own beds in the presence of other patients. Moreover, it appeared that on occasion instances of restraint were not recorded in the register or the patient's file (or they were all systematically recorded for the same duration, i.e. 30 or 60 minutes).

In the Committee's view, restraint interventions need to be accurately recorded in a detailed, standardised form (name, time, means of restraint, reason for restraint, medication given, time when terminated, debriefing provided) so that the use of such measures can be properly assessed and integrated into a patient's on-going treatment.

135. At Poltava Psychiatric Hospital, the delegation spoke with a patient who had been held in a seclusion room for 5 days. The room was cold and the patient was delusional, afraid and shaking. In the room, there was only a bed fixed to the floor, no running water, no sanitary facilities and no call bell. The Committee wishes to stress in this respect that locking up a vulnerable mentally disordered patient alone in a room must be very carefully applied and should only be a measure of last resort and for the shortest possible period. Moreover, the place where a patient is secluded should be specially designed for that specific purpose. It should be safe and provide a calming environment for the patient.



136. The CPT recommends that the Ukrainian authorities take measures to modify the current practice of the use of means of restraint at Hlevakha, Dnipro and Poltava Psychiatric Hospitals, and, as applicable, in all other psychiatric establishments in Ukraine so as to ensure that:

- patients are not subjected to mechanical restraint in view of other patients (unless the patient explicitly expresses a wish to remain in the company of a certain fellow patient); visits by other patients should only take place with the express consent of the restrained patient;
- every patient who is subjected to mechanical restraint or seclusion is subjected to continuous supervision. In the case of mechanical restraint, a qualified member of staff should be permanently present in the room in order to maintain a therapeutic alliance with the patient and provide him/her with assistance. If patients are held in seclusion, the staff member may be outside the patient's room (or in an adjacent room with a connecting window), provided that the patient can fully see the staff member and the latter can continuously observe and hear the patient;
- once means of restraint have been removed, a debriefing of the patient takes place, both to explain to the patient why they have been subjected to restraint and to offer the patient an opportunity to explain his/her emotions prior to the restraint, which may improve both the patient's own and the staff's understanding of his/her behaviour;
- a specific central register is established to record all instances of recourse to means of restraint in order for the management to be able to monitor the frequency of their use. This is in addition to the records contained within the patient's personal medical file. The entries in the register should include the time at which the measure began and ended; the circumstances of the case; the reasons for resorting to the measure; the name of the doctor who ordered or approved it; and an account of any injuries sustained by patients or staff. Patients should be entitled to attach comments to the register, and should be informed of this entitlement; at their request, they should receive a copy of the full entry.

137. The delegation also noted that internal instructions on the use of means of restraints given to staff varied from one hospital to another, including about the maximum duration for applying such means. On this, the Committee wishes to stress that the involvement and support of both staff and management in elaborating a policy on restraint is essential.

Such a policy should make clear which means of restraint may be used, under what circumstances they may be applied, the practical means of their application, the supervision required and the action to be taken once the measure is terminated. Such a comprehensive policy is not only a major support for staff, but is also helpful in ensuring that patients and their guardians or proxies understand the rationale behind a measure of restraint that may be imposed.

**The CPT recommends that steps be taken to ensure that every psychiatric establishment has a comprehensive, carefully developed written policy on restraint. Such a policy should be aimed at preventing as far as possible the resort to means of restraint and should make clear which means of restraint may be used, under what circumstances they may be applied, the practical means of their application, the supervision required and the action to be taken once the measure is terminated. The policy should also contain sections on other important issues such as: staff training; complaints policy; internal and external reporting mechanisms; and debriefing. Further, patients should be provided with relevant information on the establishment's restraint policy.**

**The frequency and duration of instances of restraint should be reported on a regular basis to a supervisory authority and/or a designated outside monitoring body. This will facilitate a national overview of existing restraint practices, with a view to implementing a strategy of limiting the frequency and duration of the use of means of restraint.**

138. The medical files of some patients seen in the establishments visited did mention the use of medication, such as chlorpromazine (aminazin), diazepam (sibazon) or haloperidol, in circumstances suggesting they were used as chemical restraint.<sup>203</sup> The CPT must underline in this context that the injection of rapidly acting tranquillisers (which is a form of chemical restraint) is associated with significant risks to the health of the patient, in particular life-threatening cardiac arrhythmia, low blood pressure and respiratory depression. Their use therefore requires close medical supervision and adherence to strict protocols by all staff involved, as well as the necessary skills, medication and equipment.

**The CPT recommends that the Ukrainian authorities take the necessary measures to ensure that the above-mentioned principles are respected when deciding to administer chemical restraint to a patient.**

## **6. Safeguards**

139. The legal framework applicable to involuntary hospitalisation is provided by the Act on Psychiatric Care, the Criminal Code and the Code of Criminal Procedure.

140. The Criminal Code contains the legal grounds for compulsory medical measures<sup>204</sup> in respect of persons found to be criminally irresponsible for their acts or who develop a mental illness in the period after committing a crime. Chapter 14 of the Code provides that the placement of such persons in a psychiatric establishment is decided by a court which also specifies the type of regime<sup>205</sup> to which the person concerned is to be subjected.

Pursuant to Section 95 of the Criminal Code, persons subjected to compulsory treatment are examined at least once every 6 months by a panel of psychiatrists (in practice, the hospital's psychiatric commission) who determine any reasons that may justify a court motion seeking discontinuation or change of any such measures. If no reasons are found which would justify the

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<sup>203</sup> See also paragraph 127 above.

<sup>204</sup> Hereafter referred to as compulsory treatment.

<sup>205</sup> Ordinary, reinforced or strict security, see Section 94 of the CC.

discontinuation or change of the measure, the hospital's Director must file an application with the court, together with an opinion of the hospital's psychiatric commission, which provides reasons for the continuation of compulsory treatment. If the measure needs to be extended beyond a six-month period, the same procedure applies. Every further extension may not exceed 6 months.

Section 514 of the CCP provides for a periodic review of the court's decision regarding compulsory treatment on the basis of a recommendation made by the hospital's psychiatric commission. The court's decision on extension, alteration or termination of compulsory treatment can be appealed by the patient, his/her relatives or legal representative.

141. At Dnipro Psychiatric Hospital, the delegation was concerned about the interpretation of the legal provisions concerning court decisions on the termination/extension/change of compulsory treatment. The Director of the above-mentioned establishment stated that if the hospital's psychiatric commission submitted an opinion which suggested prolonging compulsory treatment but the court refused to do so without explicitly issuing an order terminating the measure, the hospital was under no obligation to release the patient.

In the Committee's view, this is a very questionable interpretation of the legislation in force. It should not be the role of the hospital to decide about the termination/extension/change of compulsory treatment but that of a judicial body. **The CPT would welcome observations of the Ukrainian authorities on this subject.**

142. In attachment to their letter of 5 April 2018, the Ukrainian authorities provided the Committee with the text of the Act "On Making Amendments to Laws on Psychiatric Care" No. 2205-VIII of 14 November 2017, which entered into force on 10 June 2018. The new legislation introduces important changes to the procedures for a compulsory treatment in the course of criminal proceedings.

For example, Section 512.1 of the CCP, as amended by the aforementioned Act, foresees an obligatory participation in court hearings of persons in respect of whom the issue of compulsory treatment is being decided. The person concerned has the right to express his/her personal opinion on the conclusions of psychiatrists on the issues related to the provision of psychiatric care and restrictions of the person's rights in this regard (Section 25 of the Law). So far, the participation of the person concerned was not obligatory; it depended on whether the state of the person's mental health permitted such participation.<sup>206</sup> The CPT welcomes this positive development.

Another positive legislative change brought about by the aforementioned Act is the right of the patient or his/her defence counsel/representative to appeal the decision concerning his/her continued compulsory treatment – not more than once per 6 months and regardless of whether the court considered this issue within the specified period.<sup>207</sup> The request for change or termination of compulsory treatment shall be accompanied with the conclusion of the hospital's psychiatric commission or, if any, with the conclusion of the independent psychiatrist of the patient's choice.

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<sup>206</sup> It is noteworthy in this context that at Hlevakha Psychiatric Hospital, several patients told the delegation that they had expressed their wish to take part in the court proceedings but staff had repeatedly refused to bring them to court. The delegation was informed by the establishment's Director that in spite of her attempts to bring judges to the hospital and/or organise hearings via video-conference, the courts were not interested in such hearings.

<sup>207</sup> See Section 514.3 of the CCP, Section 95.1 of the CC, Section 19.3-19.5 of the Act.

Further, the Act makes clear that the patient, independently or through his/her defence counsel or other legal representative, has the right to apply to a psychiatrist who is not an employee of the hospital for the purpose of conducting an alternative psychiatric examination. In case of such request of the patient to his/her treating psychiatrist, the latter prepares an extract from medical records within one day in order to provide it to the psychiatrist who will conduct an alternative psychiatric examination.<sup>208</sup> The hospital's administration must provide an unimpeded opportunity to examine the person concerned by an independent psychiatrist of his/her choice on the establishment's territory.<sup>209</sup>

143. Concerning the situation in the psychiatric establishments visited, the delegation noted that provisions on the 6-monthly reviews by the hospitals' psychiatric commissions were indeed observed.<sup>210</sup>

144. At Poltava Psychiatric Hospital, the lawyer of the establishment informed the delegation that, for forensic patients, the hospital took into account the sentences and the circumstances of the crime committed, therefore not taking into account the mental state of the patient. More generally, it was obvious to the delegation that, in the three establishments visited, the actual length of hospitalisation/treatment of forensic patients did not depend on an individual risk assessment but on the length of the sentence which would have been applied if the person had been found criminally responsible for one's acts. **The CPT would welcome the Ukrainian authorities' observations on this subject.**

145. Concerning the "civil" involuntary psychiatric hospitalisation, Section 16 of the Act on Psychiatric Care foresees that a person can be referred to a psychiatric hospital by decision of a psychiatrist and, thereafter, must be examined by the hospital's psychiatric commission within 24 hours from the time of admission. If the commission finds that involuntary hospitalisation is necessary, a reasoned request for involuntary placement, on the grounds provided for by Section 14, must be addressed to the relevant court within 24 hours. In the course of a judicial placement, the hospital's psychiatric commission must conduct a monthly review of the placement in order to determine whether it is possible to terminate it or whether it should be extended.

146. The Act on Psychiatric Care appears to lack important safeguards for access to independent psychiatric expertise in the context of "civil" involuntary hospitalisation. Section 25 indeed provides persons admitted to a psychiatric hospital with a right to an alternative psychiatric evaluation. However, such a right is provided in general terms and does not put in place a precise and foreseeable procedure that could be applied in practice. **The Committee would like to receive clarification from the Ukrainian authorities as to whether the new provisions on access to independent psychiatric expertise, described in paragraph 142 above, apply also to "civil" involuntary patients.**

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<sup>208</sup> See Section 16 of the Ministry of Health Order No. 992.

<sup>209</sup> See Article 19.5 of the Act on Psychiatric Care.

<sup>210</sup> See Section 95 of the Criminal Code and Section 19 of the Act of Psychiatric Care. Under Section 22 of the Act on Psychiatric Care the court has up to 10 days to study the file and must notify the hospital of the time and date of the hearing, which must take place at the latest at the end of the 10-day period.

147. The Committee understands that regarding the current procedure for “civil” involuntary hospitalisation of incapacitated persons, the Constitutional Court of Ukraine by its decision No. 2-рп/2016 of 1 June 2016 found the provision allowing admission of an incapacitated person to a psychiatric institution upon request or with the consent of his/her guardian (i.e. without judicial control) unconstitutional, and indicated that such hospitalisation is possible only by a court decision until the introduction of respective legislative changes (i.e. until the new legislative changes enter into force on 10 June 2018). **The Committee would like to receive clarifications from the Ukrainian authorities on the present legal framework regulating this matter.**

148. Only a few “civil” patients in the establishments visited were *de jure* involuntary (i.e. according to civil involuntary hospitalisation procedure). All others had signed a consent form at the time of the hospitalisation or shortly thereafter. However, a number of “voluntary” patients told the delegation that they did not wish to remain in the hospitals where all wards were locked and from where they were not permitted to freely leave (see e.g. paragraph 112 above). These patients were therefore de facto deprived of their liberty without recourse to proper legal safeguards that formal involuntary hospitalisation should provide.

In the light of the above, **the CPT recommends that the Ukrainian authorities take effective steps to ensure that the provisions of the Act on Psychiatric Care are fully implemented in practice. The Ukrainian authorities must also ensure that proper information and training is given, as a matter of priority, to all structures and persons involved (in particular, psychiatrists, hospital managements and judges) on the legal provisions pertaining to civil involuntary placement of patients in psychiatric hospitals in the country.**

**The Committee also recommends that the legal status of all patients currently considered as “voluntary” be urgently reviewed by an independent external authority. Moreover, patients should be heard in person by the judge also in the context of involuntary placement (and review) of a civil nature.**

**Finally, patients should, upon their admission into the psychiatric establishments visited, be provided with full, clear and accurate information, including on their right to consent or not to consent to hospitalisation, and on the possibility to withdraw their consent subsequently.** This was not the case at the time of the delegation’s visit.

149. Concerning informed consent to treatment, the Act on Psychiatric Care places great emphasis on both patients' information and their free and informed consent to treatment.

However, at Hlevakha Psychiatric Hospital patients told the delegation that, whilst they had been informed orally about the treatment they were receiving, they had not been asked to confirm in writing that they consented to their treatment; in the absence of any written proof of consent in patients’ medical files, it was difficult for the delegation to verify these assertions. Also several patients at Dnipro Psychiatric Hospital complained about the lack of information on the treatment they were receiving.

In this context, the CPT welcomes the aforementioned amendments to the Act on Psychiatric Care (see paragraph 142) which now expressly provide for the right to a “prior written consent or refusal of new diagnostic and therapeutic methods and medication” and the right to a “refusal of psychiatric treatment, except for cases of provision of involuntary medical treatment as prescribed by law”.<sup>211</sup>

150. Several patients in the three establishments visited complained about the effectiveness of legal assistance when it was provided for free by *ex officio* lawyers. For instance, *ex officio* lawyers would reportedly come to the court for the hearing but they would not take an active part in it. Some legal professionals working within the hospitals also acknowledged that this was a real problem.

**The Committee recommends that the Ukrainian authorities take the necessary steps to ensure that indigent patients are in fact offered free legal assistance during involuntary placement proceedings, whether they are of civil or criminal nature.**

151. As already mentioned in paragraph 113 above, at Dnipro Psychiatric Hospital, the treating doctor was the guardian of seven patients out of the 59 declared as legally incompetent. In the two other psychiatric establishments visited, the Director was appointed as guardian of some of the incompetent patients. The CPT must reiterate its view that granting guardianship to the very same establishment in which the patient concerned is placed may easily lead to a conflict of interest. **The Committee calls upon the Ukrainian authorities to find alternative solutions which would better guarantee the independence and impartiality of guardians.**

152. Turning to contact with the outside world, at Poltava Psychiatric Hospital patients who had mobile phones could use them to make phone calls. The CPT welcomes this possibility. Allowing patients to retain their mobile phones is a good practice given how much a phone is often an integral part of a person’s daily life, used to keep not only contacts and personal information but to manage day to day activities. Any restrictions on access to mobile phones should be clearly regulated by hospitals and explained to patients. Having said all that, the Committee wishes to stress that patients who do not have their own mobile phones should also have access to a telephone.

At Dnipro Psychiatric Hospital, due to technical reasons making phone calls was not possible during the month preceding the delegation’s visit and many patients complained about it. **The Committee would like to be informed whether this technical problem has now been solved.**

At Hlevakha Psychiatric Hospital, telephone calls were allowed only during certain time slots which made it inconvenient for some patients to contact their families. Given that the maintenance of patients' contact with the outside world is essential from a therapeutic standpoint, **the CPT recommends that patients be enabled to make telephone calls during the day without time restrictions and under conditions allowing privacy.**

153. The delegation was pleased to note that visiting rights were guaranteed in the three establishments visited. However, some patients at Hlevakha Psychiatric Hospital complained about the fact that meetings with their lawyer could not take place in private. **The Committee would like to receive clarifications of this point from the Ukrainian authorities.**

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<sup>211</sup> See Section 25 of the Act on Psychiatric Care, as amended.

## **D. Social care establishments**

### **1. Preliminary remarks**

154. The delegation carried out a follow-up visit to one social care establishment (so-called “Internat”) under the authority of the Ministry of Labour and Social Policy, the Kyiv Svyatoshynskiy Psychoneurological Institution (hereafter Svyatoshynskiy Internat).<sup>212</sup> It is the only social care establishment for women in the Kyiv area.

155. On the day of the visit, the establishment was operating at its full capacity and was accommodating 705 residents. The delegation was informed that residents usually spend lengthy periods at Svyatoshynskiy Internat. According to the Director, many residents suffered from serious mental health problems and should have been transferred to psychiatric establishments under the responsibility of the Ministry of Health rather than reside in a social care facility. Compared with the last visit in 2009, Svyatoshynskiy Internat was accommodating more elderly persons and the average age of residents had increased. From a diagnostic point of view, 85% of the residents were diagnosed with schizophrenia, while the others suffered from learning disability or dementia.

**The CPT recommends that steps be taken by the Ukrainian authorities to ensure that all residents of Svyatoshynskiy Internat requiring psychiatric hospitalisation be transferred to appropriate psychiatric establishments.**

156. At the outset of the visit, senior officials from the Ministry of Labour and Social Policy informed the delegation that “internats” were funded and run by regional authorities. The Ministry only ensured the overall coordination of management of all such establishments. The delegation was also told that there was a clear lack of human resources, especially in the establishments located in rural areas.

Further, the delegation was informed of ongoing efforts to reform psycho-neurological institutions including the gradual de-institutionalisation process. In this context, the delegation was told about amendments foreseen in the legislation concerning de-institutionalisation for adults as of 2018. In their letter of 5 April 2018, the Ukrainian authorities informed the Committee that the Governmental Resolution No. 1018 of 27 December 2017 adopted the “Concept of mental health care development up to 2030”, which, *inter alia*, focussed on ensuring accessibility of mental health support at the local level and elimination of barriers to access rehabilitation and social services for persons with mental and intellectual disabilities. **The Committee would like to be provided with the text of the aforementioned Concept and of the draft legislation referred to above.**

More generally, **the CPT recommends that the Ukrainian authorities continue their efforts towards the development of social care in the community, as this can not only shorten or avoid institutional stay and reduce the potential for ill-treatment, but also improve experiences and outcomes for service users.**

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<sup>212</sup> Visited by the CPT for the first time in 2009. See paragraph of CPT/Inf (2011) 29, <https://rm.coe.int/1680698430>.

**Such community accommodation should consist of small group home living units in the community, ideally in towns, with all the relevant facilities close at hand, and not larger units situated on the grounds of long-standing social care establishments (which do not allow genuine de-institutionalisation and proper re-integration into the community).**

## **2. Ill-treatment**

157. The delegation did not receive any credible allegations of physical ill-treatment of residents by staff. However, the delegation heard a number of allegations that some orderlies were at times verbally abusive.

In their letter of 5 April 2018, the Ukrainian authorities informed the Committee that awareness raising activities for the staff of Svyatoshynskiy Internat had been carried out, and staff had been duly reminded of the necessity to treat residents in a respectful manner. **The CPT welcomes this and invites the management of Svyatoshynskiy Internat to reiterate this message at frequent and regular intervals.**

## **3. Residents' living conditions**

158. Living conditions at Svyatoshynskiy Internat were broadly satisfactory, with resident accommodation areas being generally clean, well-lit and ventilated, and adequately furnished.<sup>213</sup> However, there was a complete lack of dayroom facilities in the wards and a lack of personalised environment in residents' rooms.

**The Committee recommends that the Ukrainian authorities take steps at Svyatoshynskiy Internat to:**

- **complete the renovation of Ward 2;**
- **offer more congenial and personalised surroundings for residents, in particular by providing them with lockable space and allowing a reasonable number of personal belongings in their rooms;**
- **properly furnish and decorate the day rooms.**

159. Residents had access to a shower once or twice per week. There was a sufficient supply of disposable pads for incontinent residents and the lack of waterproof mattress covers was no longer an issue.<sup>214</sup> According to residents interviewed by the delegation, the quality of the food had recently improved and the food's quantity was adequate.<sup>215</sup>

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<sup>213</sup> At the time of the visit, one of the wards (Ward 2) was closed for renovation.

<sup>214</sup> It was a problem during the CPT's 2009 visit.

<sup>215</sup> The budget dedicated to food was 78 UAH (2.4 EUR) per resident per day.



**The CPT recommends that the Ukrainian authorities take the necessary measures to ensure that all residents at Svyatoshynskiy Internat have access to a shower at least twice a week and more frequently if needed.**

160. Access to outdoor exercise was offered on a daily basis in some wards. Having said that, the delegation received a number of complaints from residents in Wards 5 and 7a who stated that they were not offered outdoor exercise, especially when weather conditions were not good. It was clear that none of the residents could leave the wards unaccompanied by staff. Further, the delegation was informed that outdoor exercise was not always offered to residents with reduced mobility due to the lack of proper infrastructure.

**The CPT calls upon the Ukrainian authorities to take measures to ensure that all residents at Svyatoshynskiy Internat benefit from unrestricted access to outdoor exercise during the day unless treatment activities require them to be present inside the building. In this respect, residents should be provided with appropriate clothes and shoes, and with staff assistance in case of reduced mobility.**

161. In their letter of 5 April 2018, the Ukrainian authorities informed the Committee that two “terraces” allowing patients to enjoy “outdoor recreation” would be opened in the course of 2018. **The Committee would like to receive confirmation that this has indeed happened.**

#### **4. Staff and treatment**

162. As had been the case during the 2009 visit,<sup>216</sup> the number of staff in direct contact with residents was clearly insufficient for such a large number of needy patients. In the two-storey Ward 1 for instance, there were 159 bed-ridden or immobile residents. The delegation was informed by the establishment’s Director that the impossibility to recruit and retain qualified staff was linked to low salaries.<sup>217</sup>

Additionally, part of the staff in the wards was dedicated to care of residents with acute somatic conditions, who should in principle not be placed in such an establishment. For example, one resident had suffered from a brain hemorrhage and his condition was requiring the whole attention of one staff member. **The CPT recommends that residents with somatic conditions requiring hospitalisation be transferred to appropriate establishments under the responsibility of the Ministry of Health.**

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<sup>216</sup> See paragraphs 179 and 180 of CPT/Inf (2011) 29, <https://rm.coe.int/1680698430>.

<sup>217</sup> The average monthly salary was reportedly amounting to 3,200 UAH (some 100 EUR).

163. At the time of the visit, there were 103.5 staff vacancies for a total of 385 posts (some 40% of staff members worked on 1.5 posts). Svyatoshynskiy Internat employed two Heads of medical units, one full-time gynecologist, five full-time psychiatrists (among those 1.5 posts were temporarily filled by other permanent staff), one full-time dentist, one full-time internal diseases specialist (a second post was half vacant, half filled by another permanent staff); there were two Head nurses, 27 posts for nurses (11 of them vacant), another 13 posts for nurses (dietary, physiotherapy, etc.) of which 2 were vacant, and 204 posts for orderlies (5 of them filled by other permanent staff and 62 vacant). Finally, there were 5 posts for social workers, of which 1.5 were vacant and 0.5 filled by other permanent staff. During the weekend there was one doctor on duty, and one nurse per ward during the night.

At the time of the previous visit to the establishment in 2009, almost all (396) posts were filled and the Committee had already declared the situation as unacceptable. **The CPT reiterates its recommendation that the Ukrainian authorities explore the possibilities of providing enhanced conditions of service for staff at Svyatoshynskiy Internat, so as to facilitate appropriate staff recruitment and retention. The numbers of staff in direct contact with residents (including nurses, educators, work therapists, social workers and psychologists) should be substantially increased.**

164. Regarding the treatment, residents' medical records appeared adequate and properly kept. The delegation observed that residents were examined by a doctor at least once a year. However, the delegation was surprised to learn that medical doctors, including psychiatrists, employed by the establishment could not prescribe adequate treatment to residents or change the initial treatment prescribed due to legal restrictions. This appears to be a waste of resources and an underuse of medical skills of doctors.<sup>218</sup>

Concerning patients with severe psychiatric disorders or with acute state of illness, the Internat's doctors (including psychiatrists) could not treat them at all. They had to await the arrival of external staff from health care establishments. Further, there seemed to be a lack of co-operation between in-patient units of social services and healthcare institutions when it came to the provision of palliative care (for instance when pain treatment was necessary).

165. The above-mentioned situation reportedly resulted from the Governmental Decree No. 957 (issued on 14 December 2016) on psycho-neurological "internats", which stipulated that medical assistance within "internats" should be provided either in accordance with the license allowing the medical practice or according to agreements concluded with general hospitals. However, Svyatoshynskiy Internat had no such license, and no agreements. The situation was thus clearly unacceptable. **The Committee recommends that urgent steps be taken to remedy it and to ensure that residents at Svyatoshynskiy Internat receive swiftly appropriate medical (including psychiatric) care whenever required by their state of health.**

166. The delegation was informed at the outset of the visit that there was a draft legislation which would solve the problems related to the provision of medical assistance within "internats". **The CPT would like to receive detailed information on the draft legislation and its entry into force.**

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<sup>218</sup> See paragraph 90 above about a similar problem observed in prisons.

167. Whatever treatment was provided at Svyatoshynskiy Internat, it was mainly based on pharmacotherapy. There was no focus on rehabilitation given that residents were actually not supposed to return to society (as openly acknowledged by the Director). The establishment provided some occupational activities (mainly sewing, drawing, painting, etc.) and offered limited possibilities for voluntary work (cleaning, helping in the canteen, etc.).

Nevertheless, a considerable number of residents interviewed by the delegation reported that they were not involved in any purposeful activities outside their rooms and were spending most of the day in the state of idleness, some of them reading books in their rooms or watching TV in the corridor of the ward.

**The CPT reiterates its recommendation about the need to develop psycho-social and rehabilitative activities for the residents of Svyatoshynskiy Internat.<sup>219</sup>**

168. The delegation checked the death register and found five cases of death where the presence of “deep and wide bed sores” had been recorded. The fact that residents were allowed to develop bed sores of such seriousness that their presence was noted in the “cause of death” column of the death register is a source of the CPT’s serious concern. **The Committee would like to receive clarifications from the Ukrainian authorities on this issue, including copies of autopsy reports and information on the management of bedridden residents and measures to prevent bed sores.**

## 5. Means of restraint

169. Neither mechanical restraint nor seclusion appeared to be used at Svyatoshynskiy Internat.<sup>220</sup> However, the Director told the delegation that it could “theoretically not be excluded” that such means might have to be applied, and in this context he was concerned by the fact that the Ministry of Health Order No. 240 (issued on 24 March 2016)<sup>221</sup> did not apply to “internats”.

In this context, **the CPT would like to receive clarification from the Ukrainian authorities as to the legal basis for any possible use of mechanical restraint and/or seclusion vis-à-vis residents at Svyatoshynskiy Internat.**

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<sup>219</sup> See paragraph 186 of the report on the 2009 visit (CPT/Inf (2011) 29, <https://rm.coe.int/1680698430>) which states as follows: “The treatment of mentally disabled persons should involve a wide range of therapeutic, rehabilitative and recreational activities, such as access to appropriate medication and medical care, occupational therapy, group therapy, individual psychotherapy, art, drama, music and sports. Residents should have regular access to suitably-equipped recreation rooms; it is also desirable for them to be offered education and suitable work, the aim being to prepare residents for independent or at least more autonomous living. The CPT recommends that the Ukrainian authorities take steps to ensure the implementation of individual treatment and rehabilitation plans by involving all residents in activities adapted to their needs. Achieving this goal will require recruiting more staff.”

<sup>220</sup> At least according to the Director and staff – and the delegation found no indications to the contrary.

<sup>221</sup> Which approved the Rules on the use of physical restraint and/or seclusion in psychiatric establishments, see paragraph 133 above.

## 6. Safeguards

170. The legal framework for placement in an “internat” was described in the report on the 2002 visit.<sup>222</sup> In the reports on the 2002 and 2009 visits, the CPT requested information as to whether a person who has been placed in an “internat” may apply to a court at any time to contest his/her placement and, if so, under what conditions. The Director of Svyatoshynskyy Internat was of the view that residents who were deprived of their legal capacity (i.e. more than 80% of all the residents of his establishment) could not do so.

**The Committee wishes to receive clarification of this point from the Ukrainian authorities. Needless to add, were it to be indeed the case, the relevant legislation should be amended so as to enable legally incompetent residents to apply to a court with a view to terminating their placement. Steps should also be taken to ensure that the need for continued placement of legally incompetent persons is automatically reviewed by a court at regular intervals or residents themselves are able to request at reasonable intervals that the necessity for continued placement be considered by a judicial authority.**

Further, the CPT would like to receive information on the number of cases in which courts in Ukraine have decided that persons were illegally placed in an “internat” since the Act on Psychiatric Care entered into force.

171. As it had been observed in 2009, some residents deprived of their legal capacity were still placed under the establishment’s guardianship. In these cases, the duties of the guardian were carried out by the Director of Svyatoshynskyy Internat.

The Committee wishes to stress in this context that one aspect of the role of a guardian is to defend, if necessary, the rights of the incapacitated person vis-à-vis the hosting establishment. Obviously, entrusting guardianship to the very same establishment may easily lead to a conflict of interest and compromise the independence and impartiality of the guardian. **The CPT calls upon the Ukrainian authorities to search for alternative solutions which would better guarantee the independence and impartiality of guardians.**<sup>223</sup>

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<sup>222</sup> See paragraph 145 of CPT/Inf (2004) 34, <https://rm.coe.int/1680698411>: Committal to a neuropsychiatric social protection or special education institution is governed by the 2000 Law on Psychiatric Care, but by different sections from those concerning committal to a psychiatric hospital. Under Section 23 of the law, committal requires a personal request on the part of the patient (or, in the case of minors and incapacitated adults, their parents or legal representative) and the conclusions of a panel of doctors, including a psychiatrist. Once committed, the patient must be examined at least once a year by a panel of doctors, including a psychiatrist and by a panel comprising a psychiatrist, a psychologist and a special needs teacher to determine whether he or she should continue to be held in the institution. Under Section 24, the person may be discharged at his or her request if a panel of psychiatrists concludes that he or she is able to support himself or herself; the person may also be discharged by a court decision if it rules that the person in question was committed to the institution illegally.

<sup>223</sup> See also the recommendation in paragraph 151 above.

172. Concerning contact with the outside world, residents could receive visitors three times per week. A special annual authorisation for such visits was issued by the Internat's Director. Further, some residents were taken out by their families for weekends, holidays or longer periods, following prior approval by the Director. Some residents were also allowed to leave the establishment's grounds without supervision.

There were no public telephones at Svyatoshynskiy Internat and the delegation was told that residents could use their own mobile phones upon prior authorisation (as their mobiles were stored in the staff's office).

**The CPT invites the Ukrainian authorities to pursue their efforts to encourage residents' contacts with the outside world. In this context, the limitation on visits to only three days a week seems unduly restrictive. Further, steps should be taken to increase residents' access to a telephone; in particular, such access should also be granted to those of the residents who do not possess their own mobile phones.**

173. The delegation was informed that Svyatoshynskiy Internat had received a number of inspections from the Ministry of Labour and Social Policy and Kyiv municipal authorities, but also from independent outside bodies such as the NPM. The CPT welcomes this. However, it appeared that residents were still lacking information about the different types of complaints they could lodge.

**The CPT recommends that steps be taken to ensure that residents at Svyatoshynskiy Internat are informed of their rights and possibilities to lodge formal complaints (both internally and externally), on a confidential basis, with clearly designate outside bodies.**

**The Committee also recommends that written information (e.g. in the form of a brochure) on daily routine, residents' rights, and complaints bodies and procedures be made available to all residents of "internats" in Ukraine. Any residents unable to understand this brochure should receive appropriate assistance.**

**APPENDIX I:**

**List of the establishments visited by the CPT's delegation**

Police establishments

- Chernivtsi Temporary Holding Facility (ITT)
- Dnipro ITT
- Dnipro District Police Division
- Kalush ITT
- Kremenchuk Police Unit
- Kyiv ITT
- Kyiv Shevchenkiivskiy District Police Division
- Nadvirna ITT
- Poltava ITT
- Poltava Oktyabrskiy District Police Division
- Pustomyty ITT
- Zhovkva ITT

State Border Guard Service establishments

- Chernivtsi Temporary Detention Place (TDP)
- Lviv TDP

Security Service of Ukraine (SSU) establishments

- SSU Temporary Detention Facility, Kyiv

Penitentiary establishments

- Chernivtsi Penitentiary Institution No. 33
- Ivano-Frankivsk Penitentiary Institution No. 12
- Kremenchuk Educational Colony for Juveniles
- Kyiv Pre-Trial Detention Centre (SIZO)
- Lviv Penitentiary Institution No. 19
- Lychakivska Prison No. 30, Lviv

Psychiatric establishments

- Kyiv Municipal Psychiatric Hospital No. 3 (Hlevakha)
- Dnipro High-Security Psychiatric Hospital
- Poltava Regional Psychiatric Hospital

Social care establishments

- Kyiv Svyatoshynskiy Psychoneurological Institution ("Internat")

**APPENDIX II:**

**List of the national authorities, other bodies,  
International and non-governmental organisations  
with which the CPT's delegation held consultations**

**A. National authorities**

**Ministry of Internal Affairs**

Tetiana Kovalchuk	Deputy Minister
Natalia Borodych	Head of the Human Rights Monitoring Unit
Serhii Maksymov	Head of the Human Rights Unit, National Police
Oleksandr Yeromin	Deputy Head of Unit of Organisational Support for Temporary Detention Isolators (ITT), National Police
Oleh Mazurok	Organisational-Analytical and Rapid Response Unit, National Police
Volodymyr Maksymenko	Organisational-Analytical and Rapid Response Unit, National Police
Tamila Kravchuk	Juvenile Prevention Unit, National Police
Oleh Laba	Head of the Unit of Detention, Removal and Activities with Asylum Seekers, State Border Guard Service

**Ministry of Justice**

Denys Chernyshov	Deputy Minister
Ivan Lishchyna	Deputy Minister, Government Agent before the European Court of Human Rights
Oksana Pashchenko	Head of the State Criminal-Executive Service Department
Oleksii Bondarenko	Deputy Head of the State Criminal-Executive Service Department
Andrii Nechypelskyi	Deputy Head of the State Criminal-Executive Service Department
Oleksandr Sivodin	Head of the State Criminal-Executive Service Resourcing Department

Myroslav Lavrinok	Deputy Head of the Free Legal Aid Co-ordinating Centre
Serhii Vasiliev	Head of Medical Unit
Volodymyr Trokhymchuk	Head of Prison Inspections Department
Oleh Korchovyi	International Law Department
Natalia Marchuk	Unit for the Provision of Access to Legal Aid
Oleksandr Deineko	Deputy Head of International Co-operation Unit

### **Ministry of Health**

Serhii Shum	Director of the Institute of Social and Forensic Psychiatry and Drug Addiction
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### **Ministry of Social Policy**

Oleksandra Churkina	Deputy Minister
Oksana Sumila	Head of Department for Protection of Older Persons and the Provision of Social Services
Alla Karpova	Head of the Unit for the Provision of Social Services in Internats
Tetiana Liashuk	Specialist, Unit for the Provision of Social Services in Internats

### **Security Service of Ukraine**

Ihor Demchenko	Head of Unit for Pre-trial Investigation
Andrii Kiseliiov	Head of the International Co-operation Centre
Nataliia Altyntseva	Deputy Head of the International Co-operation Centre
Vitalii Maiakov	Deputy Head of the Central Investigation Department



**Prosecutor General's Office**

Viacheslav Svirets	Head of the Unit for Supervision of the Legislation Observance during the Enforcement of Judicial Decisions in Criminal Cases and other Coercive Measures in Places of Deprivation of Liberty
Dmytro Guzyr	Prosecutor, International Co-operation Department

**Office of the Parliament Commissioner for Human Rights (Ombudsperson)**

Valeriia Lutkovska	Ombudsperson
Kateryna Chumak	Head of the National Preventive Mechanism Department

**B. International Organisations**

European Union Delegation to Ukraine

European Union Advisory Mission

National Office of the United Nations High Commissioner for Refugees (UNHCR)

OSCE Project Co-ordinator in Ukraine

Council of Europe Office

**C. Non-Governmental organisations**

Expert Centre for Human Rights

Centre for Civil Liberties