

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 m² 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.