



## **Response**

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

**from 4 to 13 August 2020**

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Strasbourg, 18 March 2021

**RESPONSE OF THE UKRAINIAN AUTHORITIES<sup>1</sup>  
TO THE REPORT OF THE EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE  
AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CPT)  
ON ITS AD HOC VISIT TO UKRAINE FROM 4 TO 13 AUGUST 2020:  
IMPLEMENTATION OF THE RECOMMENDATIONS, RESPONSES TO INFORMATIONAL  
REQUESTS**

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<sup>1</sup> This response is drawn up by the Ministry of Justice of Ukraine together with all relevant state authorities, those competence is falling within the CPT recommendations. As the CPT Report itself, this response will be composed of thematic chapters indicating precise paragraphs of the CPT report.

### **List of abbreviations**

CC	The Criminal Code of Ukraine
CEC	The Criminal Enforcement Code of Ukraine
CPC	The Criminal Procedure Code of Ukraine
ECtHR	The European Court of Human Rights
MoJ	The Ministry of Justice of Ukraine
MoHC	The Ministry of Health Care of Ukraine
SBU	The State Bureau of Investigations

## CHAPTER I. GENERAL ISSUES

### **On the progress in penitentiary reform, including modernization of penitentiary infrastructure and improving detention conditions (*response to the paragraph 11(1) of the Report*)**

1. In order to implement paragraph 670 of the Priority Actions of the Government of Ukraine for 2020, adopted by the Governmental Resolution 1133 of September 09, 2020, *the Ministry of Justice of Ukraine* (hereinafter – MoJ) *developed draft law “On Penitentiary System”*.
2. This draft law is aimed at optimizing the structure of penitentiary system, introducing new approaches to stimulating penitentiary staff, establishing effective management of enterprises within the prisons. It also envisages control over penitentiary system and supervision over observance of lawfulness in penitentiary system which is an important issue as far as ones of the elements of the penitentiary reformation was bringing the conditions of detention of remand and convicted prisoners in line with the European standards and prevention of torture and inhuman or degrading treatment as well.
3. Draft law was sent for consideration, *inter alia*, to the Council of Europe Office in Ukraine and Main Office of the European Union Advisory Mission in Ukraine. It was also published on the MoJ website for public consultations. Report about the results of such consultations was published therein. To date, this draft law is being finalized after its consideration by the relevant governmental committee.
4. An experimental project “Paid Cells in the Pre-Trial Detention Isolator” has been launched (the MoJ Order 1587/5 of May 06, 2020). The project provides for the possibility of remand prisoners to use for certain payment a place in the cell with improved housing conditions and nutrition. Paid service is provided under person`s request that might be submitted either in writing or online through automatized system “Online House of Justice”. Money gained from provision of such paid services are used to carry out ongoing and capital repairs of the premises of pre-trial detention centers, thus, creating appropriate conditions of detention for those taken into custody. To date, due to money gained from this project, *25 free-of-change cells for 162 places have been repaired*.
5. The process of mothballing of prisons is underway, in particular, 12 prisons were mothballed in the year 2020 and 8 ones in 2019. As a result, a massive “sell-out of mothballed prisons” has been launched, that will allow to sell of the SCES system property on transparent bidding (material complexes of the mothballed prisons and pre-trial detention centers) with crediting of money on the special fund that will be further used for construction, reconstruction, ongoing or capital repairs of the penitentiary infrastructure. The first item subject to privatization is Irpinskyi correctional center No. 132 situated in the Kotsiubynske village of Kyiv region. Money gained from the sell will be divided in two parts: the first one will be used for new penitentiary infrastructure; another one will supplement the state budget. The implementation of this initiative will improve the material conditions of detention of remand and convicted prisoners.
6. Prisoners are entitled to use Internet via tablet computers without SIM-cards and locked cameras directly within the social and psychological service units. They also have the right to address by e-mail the competent state authorities, human rights defending NGOs and submit online complaints. Nowadays, prisoners own 1105 tablets and 99 prisons have Wi-Fi connection (amendments to the MoJ Order 3233/5 of October 19, 2017 “On Approval the Procedure for Providing Prisoners with Internet Access”).
7. The list of food products, first-need items, other stuff that remand and convicted prisoners can receive in parcels, purchase in the shops of prisons and pre-trial detention centers and keep was revised. Particularly, convicted prisoners are entitled now to use electric kettle, microwave and multicooker to feed and keep food. Convicted prisoners are also entitled to use TV, digital

- broadcasting modem T2, DVD-player, electric ventilator, fridge. Remand prisoners in pre-trial detention may use fridge up to 280 liters, small TV and DVD-player.
8. If the walking yards of prisons and pre-trial detention centers have necessary space, it is allowed to install tables for ping-pong and various gyms training equipment there. For juvenile prisoners it is also recommended to additionally install sport areas for playing football, basketball and volleyball.
  9. Remand and convicted prisoners are now entitled to have a short beard and moustache if such matches hygiene requirements and haircut with hair not longer than 5 centimetres as well. Female prisoners got enlarged list of first-need items, personal hygiene means and other things.
  10. Within the pre-trial detention centers the lawyers, attorneys or other law specialist who have a right to provide legal aid personally or under legal entity order got entitled to carry portative computers and portative printing devices needed to perform professional duties, envisaged by the law (MoJ Order 3306/5 of September 23, 2020 “On Amendments to Certain MoJ Legal Acts regarding Improving Conditions of Detention of Remand and Convicted Prisoners”).
  11. The Unified Register of Convicted and Remand Prisoners was established. All prisons, pre-trial detention centers and probation offices are connected to it. This Register contains information about 97% of convicted prisoners and about every prisoner who are on probation records of the probation bodies. Within that Register, the sub-system “KASANDRA” is being tested. The sub-system is going to be a progressive tool for obtaining and automatic processing of the information about the prisoners. It will define the level of re-offending risks and the level of the likelihood of a threat to society (MoJ Order 2023/5 of June 26, 2018 “On approval of the Procedure for forming and maintaining the Unified Register of Convicts and Detainees» (as amended in 2019-2020 years”).

### ***Plans for 2021***

12. One of the key goals for 2021 is further bringing of conditions of detention of remand and convicted prisoners in line with international standards. This will include the following:
  - optimization of existing prisons and privatization of mothballed prisons, that will allow gaining of additional funds to invest in the building of new modern pre-trial detention centers and introducing better condition of detention;
  - further extension of the project “Paid Cells in the Pre-Trial Detention Isolator” and improving conditions of detention in ordinary free-of-charge cells via money raised from that project;
  - extension of the list of types of punishments alternative to imprisonment, thus, reducing prison and pre-trial overcrowding and ensuring resocialization of offenders without isolation from the society subject to the adoption of the law “On Amendments to Certain Legislative Acts regarding Development of the Probation System, Increase Alternatives to Imprisonment and Creation of Conditions to Reduce Re-offending”;
  - ensuring appropriate conditions of detention for life-imprisoned prisoners by carrying out of repairs within the prison of maximum-security level;
  - finalization of draft laws “On Penitentiary System”, “On Creating of the Double System of Penitentiary Inspections”, “On Compensatory and Preventive Measures In Relation to Inappropriate Conditions of Detention or Convicted and Remand Prisoners”
  - establishment of the unified medical space and launching of electronic referrals for medical treatment of remand and convicted prisoners in medical institutions of the Ministry of Health Care of Ukraine (hereinafter – MoHC);
  - improvement of social and financial benefits of prison staff and raising its qualification as well.

**Regarding amendments to the Law “On Preliminary Detention” and other legislative initiatives regarding alternative types of criminal punishments (*response to paragraph 11(2) of the Report*)**

13. Proposals about amendments to Article 11 of the Law “On Preliminary Detention” are envisaged by the draft law 0882 of August 29, 2019 “On Amendments to the Law “On Preliminary Detention” (regarding implementing certain Council of Europe standards)”, that is drawn up taking into account the recommendations of the CPT and the jurisprudence of the European Court of Human Rights (hereinafter - ECtHR). It envisages to increase the norm of living space in a cell for persons taken into pre-trial detention. *Draft law is pending the second reading.*
14. The draft also proposes to rewrite Article 11(2) of the Law “On Preliminary Detention” under which the norm of living space in the cell per one person taken into pre-trial detention shall not be less than 4m<sup>2</sup>, and for a pregnant woman or woman with a child such living space shall not be less than 4.5 m<sup>2</sup>.
15. Besides, this draft law envisages a new part three of the Article 11, according to which when calculating living space of the cell the area of sanitary facility shall not be taken into account and the distance between the cell`s walls shall not be less than 2m<sup>2</sup>. Cells that are less than 6m<sup>2</sup> shall not be used.
16. The MoJ drafted laws “On Amending Certain Legislative Acts regarding Development of the Probation System, Increase Alternatives to Imprisonment and Creation of Conditions to Reduce Re-offending” and “On Amending Criminal Code of Ukraine, Criminal Procedure Code of Ukraine regarding Development of the Probation System, Increase Alternatives to Imprisonment and Creation of Conditions to Reduce Re-offending” (are being finalized based on the results of inter-ministerial consultations).
17. These drafts are directed on, inter alia, improvement, differentiation and individualization of the system of criminal punishments through the change of list of types of punishments disconnected with deprivation of liberty. To ensure the shift from punitive to rehabilitative approach it is envisaged to reduce the application of deprivation of liberty for non-violent crimes via:
  - changing existing list of alternative punishments, particularly, by excluding such types of punishments like arrest (remains applicable against military servicemen) and restriction of liberty and establishing probation supervision as a type of punishment;
  - adding the sanctions of crimes with alternative types of punishment and reducing terms of deprivation of liberty in sanctions of certain crimes;
  - increasing efficiency of the mechanism for enforcement existing punishments.

**On judges and prosecutors (*response to paragraph 12 of the Report*)**

***Application by judges of preventive measures alternative to pre-trial detention***

18. There is a positive tendency in choosing by courts preventive measure in the form of pre-trial detention. Under statistical reports of the State Court Administration, investigating judges (courts – under the former Criminal Procedural Code of Ukraine 1960), in the course of pre-trial investigation, granted 40,445 motions of investigators, prosecutors about application of preventive measure in the form of pre-trial detention in 2010. In 2011 this figure was 39,742; in 2012 – 25,139; in 2013 – 17,826; in 2014 – 17,198; in 2015 – 18,644; in 2016 – 17,369; in 2017 – 18,846; in 2018 – 18,794; in 2019 – 15,774; and in 2020 – 14,458.
19. In 2010, following the consideration of criminal proceedings (cases), the local general courts have taken 8,767 persons into pre-trial detention. In 2011 this figure was 8,626 persons; in 2012 – 8,585 persons; in 2013 – 6,676 persons; in 2014 – 4,119 persons; in 2015 – 2,966

persons; in 2016 – 2,341 persons; in 2017 – 1,872 persons; in 2018 – 1,507 persons; in 2019 – 1,089 persons.

20. The abovementioned statistical figures illustrate positive dynamics about reducing the number of adopted decisions by investigating judges and the courts of Ukraine regarding choosing of preventive measure in the form of pre-trial detention. In particular, in 2020 compared to 2010 the number of motions on application of preventive measure in the form of pre-trial detention that were granted during pre-trial investigation dropped to 64% and the number of persons taken into pre-trial detention, after consideration of criminal proceedings (cases) by the local general courts dropped to 88%.
21. According to Article 176(2) of the Criminal Procedure Code of Ukraine (hereinafter – CPC) the issue of application of preventive measures during pre-trial investigations shall be decided by investigating judge under motion of investigator which is approved by prosecutor, or under prosecutor`s motion, and during trial it shall be decided by the court following the prosecutor`s motion. Investigative judge, court are guided by the provisions of paragraph 1 Chapter 18 “Preventive measures, person`s apprehension” of the CPC.
22. According to provisions of Article 194 of the CPC, when considering the motion to enforce preventive measure, investigating judge, court is required to find out whether evidence produced by parties to criminal proceedings does prove circumstances which point to: 1) the existence of reasonable suspicion that the suspect, accused has committed criminal offence; 2) the existence of sufficient grounds for belief in the existence of at least one of the risks as referred to in Article 177 of the CPC, and as indicated by the investigator, prosecutor; 3) insufficiency of enforcing less strict preventive measures for preventing the risk or risks specified in the motion.  
Investigating judge, court has the right to enforce less strict preventive measure or reject the enforcement at all.
23. As indicated by judicial statistics, investigating judges, courts are actively using this right, thus the percentage of rejected motions about enforcement of preventive measure in a form of pre-trial detention is permanently increasing. In 2010, during pre-trial investigations, investigating judges considered 45,675 motions of investigators, prosecutors on application of preventive measure in a form of pre-trial detention granting 88% of them; in 2011 there were 45,675 motions (87% granted); in 2012 – 29,598 motions (84,9% granted); in 2013 – 20,980 motions (85% granted); in 2014 – 21,741 motions (79,1% granted); in 2015 – 31,708 motions (58,8% granted); in 2016 – 32,283 motions (53,8% granted); in 2017 – 36,389 motions (51,8% granted); in 2018 – 36,431 motions (51,6% granted); in 2019 – 34,699 motions (45,5% granted); in 2020 – 31,669 motions (45,7% granted).
24. The CPC does not envisage the right of the cassation instance court to review the judgments of investigating judges, first instance courts about enforcing and prolonging of preventive measure in a form of pre-trial detention, and judgments of appellate courts after consideration of appellate complaints on relevant judgments as well. At the same time, the cassation instance court following the cassation review of criminal proceedings, if cancels or changes the judgments of the first instance court of appellate court, shall also decide on the issue of choosing the preventive measure in a form of pre-trial detention.
25. According to data of the reporting sheet No. 5-SC “Report about administration of justice by the Cassation Criminal Court within the Supreme Court”, in 2020 - following reviews of judgments by the cassation instance court - 33 persons were released from pre-trial detention (in 2019 – 61 persons, in 2018 – 40 persons).
26. During 2018-2020 following the consideration of criminal proceedings and applications for the review of judgments under exceptional circumstances the Grand Chamber of the Supreme Court released from pre-trial detention 4 persons (3 persons in 2019 and 1 person in 2020).

27. In order to ensure correct and similar application by the first instance and appellate courts of domestic law regarding securing the lawfulness of deprivation of liberty, observance of the European Convention on Human Rights 1950, application of the ECtHR jurisprudence the Supreme Court transmits to appellate courts materials about execution of the ECtHR judgments in which relevant violations were stated.
28. Thus, Ukrainian courts usually take appropriate measures to ensure more restrictive approach for enforcing pre-trial detention and the use of alternative to detention preventive measures. As a result, one can see gradual and stable reduce of numbers of persons taken into pre-trial detention.

### ***Training of judges***

29. Tasks about training and periodic education of judges aimed at increasing the level of judges' qualification are defined by Article 105 of the Law "On Judiciary and the Status of Judges". These tasks are being implemented in accordance with Standard Training Programs, approved by the National School of Judges of Ukraine. Such programs are formed annually for judges of appellate courts and local courts of all jurisdictions.
30. Under mentioned programs educational events are being performed for judges who consider criminal proceedings on the themes of criminal law, criminal procedure law, including topics on *broader application of alternative to pre-trial detention preventive measures*.
31. The National School of Judges of Ukraine has developed a range of training events (interactive lectures, trainings, workshops) where themes about prevention of torture, inhuman or degrading treatment or punishment are raised. Within these educational programs, a particular attention is paid to the issue of choosing/prolonging by the judges of preventive measures during pre-trial investigation, at the preparatory court hearing and application of the ECtHR jurisprudence while deciding on preventive measures as well.
32. Standard Training Programs for Judges to maintain their qualification include three lectures: "Activity of Investigating Judge in Criminal Proceeding", "Actual Issues of Execution by Judge of Obligations on Human Rights Protection Prescribed by Article 206 of the CPC", "Preparatory Hearing and its Role in Ensuring Efficient and Quality Consideration of the Criminal Case".
33. To more deeper extent these issues are being examined in such 8-hour trainings like "Activity of Investigating Judge as a Guarantee of Human Rights Protection During Pre-trial Investigation", "Actual Issues about Choosing of Preventive Measures within the Activity of Investigating Judge", "Evidences and Proof in Criminal Proceeding in the First Instance Court" and in a course of workshop "Actual Issues of Execution by Judge of Obligations on Human Rights Protection Prescribed by Article 206 of the CPC" as well.
34. The National School of Judges will further develop and insert into the programs for the preparation of judges the lectures about abovementioned topics.

### ***Public Prosecutor's***

35. While organizing supervision activity, public prosecutor's office pay constant attention to the state of observance of constitutional rights of remand and convicted prisoners.
36. Supervision and practical measures taken during 2020 were directed on increase of efficiency of activity in that field, first of all, with regard to ensuring appropriate conditions of detention, healthcare for prisoners in prisons and pre-trial detention centers (SIZO) of the State Criminal Enforcement Service of Ukraine (hereinafter – SCES), prevention of ill-treatment against prisoners, efficient investigation of alleged cases of ill-treatment.
37. Generally, in 2020, under revealed violations of law and prisoners' rights, public prosecutors filed over 7000 documents of prosecutorial reaction, consequently almost 5000 officials were brought to accountability, 39 illegally detained persons were released, 717 legal acts were

cancelled and got corresponded with the law, 96 illegally detained persons were released from premises designed for disciplinary sanctions.

38. Further active work on awareness raising about human rights amongst public prosecutors, law enforcement and state authorities' officials is ongoing. This includes taking measures to eliminate violations of laws and prisoners' rights, increase relevant training programs about human rights protection, prevent torture and other forms of ill-treatment.
39. In 2020, the Prosecutor General Office submitted to the regional prosecutors more than 20 informational letters about, *inter alia*, supervision over observance of laws regarding compliance with the rights of prisoners to health and life, material-housing stuff, execution of detention regime requirements and compliance with the law and prisoners' rights in relation to introduction of the institute of criminal offence as well. More than 20 letters were also sent to state authorities about observance of the rights of remand and convicted prisoners and performing inspections.
40. On November 25, 2020 the Prosecutor General Office performed workshop "Actual Issues of Supervision over Observance of Laws during Enforcement of Judgments in Criminal Cases and During Enforcing Other Coercive Measures Connected with Restriction of Personal Liberty of Citizens". Representatives of all regional public prosecutor's offices in charge of supervision over that field of activity participated in that event. Issues about compliance with detention regime in prisons, prevention of torture and ill-treatment against prisoners, ensuring quality inspections, efficient reaction and real elimination of violations of prisoners' rights were discussed during the workshop.
41. The Prosecutor General Office harmonized cooperation with human rights defending NGOs. Meetings and round tables were performed with chiefs of human rights defending NGOs dealing with protection of prisoners' rights. Particularly, on September 23, 2020 during round table involving the committee on penitentiary system, criminal punishments and probation at the Public Council of the MoJ, Ukrainian Helsinki Human Rights Group, Kharkiv Human Rights Defending Group, Association of Ukrainian Monitors for Observance of Human Rights in Law Enforcement, Ukraine without torture NGO, Ukrainian Institute for Human Rights, All-Ukrainian Unity of People with Drug-addiction, Expert Center for Human Rights and public initiative «Zero Torture» such issues as protection of the rights of people within the places of deprivation of freedom were discussed.
42. Action Plan on Realization of Memorandum of Cooperation between the Prosecutor General Office and the Ombudsman, which was signed on July 1, 2020, is being implemented.

#### **On interventions of special-purpose units (response to paragraph 19 of the Report)**

43. The Procedure for Organization of Operating of Territorial (Inter-regional) Para-military Formations of the SCES is defined by the Regulation on Territorial (Inter-regional) Para-military Formations of the SCES approved by the MoJ Order 292/5 of February 06, 2017.
44. In accordance with paragraph 10 of the Chapter VI of that Regulation, the head of inter-regional office shall not less than 24 hours prior to the event notify in writing the public prosecutor of the region about involvement of the staff of special-purpose unit into conduct of special measures, and in a case of emergency the public prosecutor shall be notified immediately as regulated by the Law "On Public Prosecutors".
45. As envisaged by paragraph 3 of the Chapter V of that Regulation, in order to document unlawful actions of remand and convicted prisoners and other persons the staff of special-purpose unit shall use audio-, video-, photo- and other technical means of documenting. Remand and convicted prisoners shall be verbally notified about the use of technical means of documenting.
46. Information regarding ill-treatment against prisoners in Oleksiivska Colony No. 25 in 2019 and violations during conduct of general search of the premises of that colony involving special-

purpose unit was the ground for opening of the criminal proceeding No. 42020221090000002 of January 10, 2020 of alleged violation of Article 365(2) of the Criminal Code of Ukraine (hereinafter – CC), which is currently investigating by the State Bureau of Investigations (hereinafter – SBI). Following the outcomes of the investigation, if the mentioned violations confirm, perpetrators amongst officials and other persons will be brought into criminal liability and wide range of measures will be taken to avoid similar violations in the future.

47. There should be also noted that during 2020 the staff of paramilitary formations of the North-East Inter-regional Office for the Enforcement of Criminal Punishments of the MoJ has not been involved into special operations within the Oleksiivska Colony No. 25.

### **On development of new legal acts following the coordinating session at the Prosecutor General Office in June 2020 (response to paragraph 32 of the Report)**

48. Executing the Resolution of the coordinating session of the law enforcement on the prevention of torture, held in June 2020, the Prosecutor General Office, in the context of developing a procedure for recording the presence of injuries in persons seeking medical assistance in connection with the actions of law enforcement officers, has developed draft “Cards of Primary Fixation of External Injuries” and the Instruction for their fulfilment.
49. The MoHC is considering the issue of approval of mentioned drafts through insert of relevant amendments to the MoHC and Ministry of Interior Order 612/679 of July 6, 2016 “On the Procedure for Recording the Facts of Inquiries and Delivers to the Medical Institutions of Persons in Relation to Harming Them with Body Injuries of Criminal Nature and Informing Police of Such Cases”.
50. The Prosecutor General Office has also developed draft Procedure for Interaction of Prosecutors, SBI Investigators and the Agent before the ECtHR During Pre-Trial Investigations of Offences Connected with Torture or Inhuman or Degrading treatment or Punishment. The draft Procedure is being finalized taking into account the SBI suggestions. The approval of that Procedure is expected to be accomplished in the mid-2021.

## **CHAPTER II. PREVENTION OF TORTURE AND ILL-TREATMENT**

### **On alleged intimidation of prisoner in visited prisons and total control by state authorities and civil society over activity of visited penitentiaries (response to paragraphs 10, 20 of the report)**

51. After the CPT delegation visited Berdianska Colony No. 77, Temnivska Colony No. 100 and Oleksiivska Colony No. 25 any kind of reprisals or disciplinary sanctions were not applied against any prisoner staying therein.
52. Prisoners in the visited penitentiaries did not complain neither to the Department for the Enforcement of the Criminal Punishments of the MoJ, nor to the South-East and North-East Inter-Regional Offices for the Enforcement of the Criminal Punishments of the MoJ.
53. Information about alleged widespread psychological pressure by the staff of prisons of the SCES and climate of fear, provided to the CPT delegation by certain negative-oriented prisoners who have high level of psychological and educational deviations, stable mood on unlawful behaviour, is aimed at counteracting prisons administrations that take measures to maintain appropriate order within the prisons.
54. This corresponds to the old and well-known algorithm of actions of organized crime directed on weakening the regime within the prisons, in particular:
- insolent, defiant ignoring of the regime requirements and lawful requirements of the prison staff;
  - setting up the majority of prisoners to counteract the staff and administration of the prison who allegedly break requirements of the law;

- in-depth bullying of prisoners who step towards the path of correction, support efforts of the prison administration aimed at creating within the prison appropriate operative situation and positive psychological climate and implement the “dynamic security” principles;
  - forcing other prisoners to write unjustified and fake complaints involving the relatives to that process;
  - providing prosecutors, other state authorities, media and NGOs with disinformation in order to deflect prison staff from execution of duties, disseminate the atmosphere of diffidence amongst the staff, thus reduce its professional activity up to dismissal;
  - attempts to gradually draw over themselves certain functions of the prison staff and administration;
  - get connections with organized crime outside the prison.
55. The goal of such actions by that category of prisoners is to strengthen own “weight”; weaken requirements of regime and security of the prison to get unlawful access to prohibited products (alcohol beverages, drugs, money); improve own material state by means of other prisoners.
56. During 2019-2020 representatives of control and supervision bodies conducted numerous visits of penitentiaries visited by the CPT delegation. In 2019, *Berdianska Colony No. 77* was visited 111 times (once per 3 days average), in 2020 – 47 times. In 2019, *Oleksiivska Colony No. 25* was visited 146 times, in 2020 – 78 times. *Temnivska Colony No. 100* was visited 87 times in 2019 and 85 times in 2020.
57. Such a total control and numerous inspections make it impossible to conduct those tortures declared by NGOs, human rights defendants and prisoners themselves. It is worth to add that domestic law does not envisage any accountability of prisoners for providing intentionally untrue information regarding prison staff actions, thus provoking them to submit unjustified fake complaints.
58. In 2020, *Oleksiivska Colony No. 25* and *Temnivska Colony No. 100* were inspected by the prosecutor’s office. Inspections established that within these prisons, in order to maintain clearness in the living areas of prisoners, obey with the rules of keeping personal belongings in designed areas, inform the prison administration about the state of order within the social and psychological service (cell), senior duty and duty persons (cell duties) are appointed amongst prisoners which is not contrary to the requirements of the criminal enforcement legislation.

***On the work of psychological service to harmonize positive climate within the penitentiary***

59. Psychologists of prisons and pre-trial detention centers of the SCES permanently take measures to examine and monitor the state of socially psychological climate within the micro-environment of prisoners. Psychologists implement measures of social psychological adaptation of remand and convicted prisoners to staying in isolation from the society and neutralizing its negative impact on personality.
60. Psychologists permanently do individual interviews and consultations with prisoners to examine their psychiatric state, peculiarities and nature of relationships within social and psychological service. Psychologists also diagnose the level of proneness to conflict of prisoners.
61. Information about the state of social and psychological climate is reporting to the prison administration and considering during operative sessions involving prison administrations. Further, individual programs of social and educational work with prisoners are developed with the staff of social and psychological service.
62. Psychologists do individual consultative, preventive and correctional activity aimed at improving psychiatric state of prisoners and revealing ones who need heightened control over their behaviour by the staff. Psychologists also examine their psychological peculiarities and provide recommendations to the staff about setting them to the preventive record and lifting it.

63. Prison psychologist performs his/her activity in close cooperation with other prison services. In order to perform psycho-correction sessions with remand and convicted prisoners each prison is equipped with the special room for psycho-emotional withdrawal.

**On delivering clear messages to prison staff about unacceptability of ill-treatment against remand and convicted prisoners (response to paragraphs 18, 22, 26(2) of the Report)**

64. By the letter No. 11-218 of January 11, 2021, the Department for the Enforcement of the Criminal Punishments of the MoJ instructed the administrations of the penitentiaries visited by the CPT to consider the Report of the CPT during the operative service meetings and aware the subordinated staff about its content.
65. Human Resources Units of the penitentiaries visited aware the staff about the provision of the Professional Ethic Code of the SCES staff approved by the MoJ Order 1275/5 of April 14, 2017 (amended in 2020). Prison staff confirms that the provisions of that Code are read with personal signature. Text of that Code is a part of the personal profile of the prison staff.
66. Prison staff is also aware about the criminal liability for torture (Article 127 of the CC). Precautions about such liability are signed by the staff and added to their personal profiles.
67. Staff of penitentiaries and pre-trial detention centers of the SCES is permanently provided with clear and precise instructions about compliance with domestic law and international requirements, including about prevention and prohibition of torture and ill-treatment, ensuring constitutional rights and legal interests of prisoners, provisions of the European Convention on Human Rights, revised Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules), European Prison Rules, UN Convention against Torture.
68. In accordance with internal agency legal acts, *in prisons and pre-trial detention centers of the SCES instructions of the duty staff shall be done every day regarding observance of lawfulness, humanity and tolerance concerning remand and convicted prisoners.*
69. Professional and ethnic requirements for the penitentiary staff are also considered during additional sessions within service trainings.

**On carrying out inquiry from the central level about activity of Berdianska Colony No. 77 (response to paragraph 26(1) of the Report)**

70. The Department for the Enforcement of Criminal Punishments, under grounds determined in Chapter II of the Procedure for Carrying Out Service Inquiries within the SCES, approved by the MoJ Order 356/5 of March 12, 2015 and according to the MoJ Order 3179/7 of December 8, 2020, carried out service inquiry regarding non-fulfilment or inappropriate fulfilment during service by the staff of Berdianska Colony No. 77 of the requirements of domestic law which caused violation of the rights and legal interests of the citizens or had negative impact on ensuring execution of prison functions.
71. Following the outcomes of conducted service inquiry, the facts, actions or omission of the staff of this colony that would confirm committing by them of offences or disciplinary shortcomings *were not established.*
72. Information about SBI's investigation of events in Berdianska Colony No. 77 is provided in below-mentioned paragraphs 96-111.

**On "duty prisoners" (response to paragraph 27 of the Report)**

73. According to paragraph 2 of the Chapter XVIII of the Internal Prison Rules approved by the MoJ Order 2823/5 of August 28, 2018, senior duty persons and duty ones (duty on the cell) amongst the prisoners are to be appointed to maintain clearness within the living space of prisoners, obey of the rules of keeping personal belongings, inform prison administration about the state of order in social psychological service (cell).

74. According to paragraph 4 of the Chapter 4 of the Section I of the Internal Pre-Trial Detention Rules approved by the MoJ Order 1769/5 of June 14, 2019, duty on the cell is obliged to: report on the number of persons held within the cell and say his/her surname when the pre-trial detention center administration or staff enters into the cell; look after keeping the room's furniture, equipment and other stuff; ensure clearness within the cell; collect and return product wastes after eating; wash the cell's floor, clear the sanitary facility and maintain clearness in the walking yards.
75. Duty person shall be appointed on day by the pre-trial detention center staff in priority order during quantitative checks of remand and convicted prisoners. Appointed as duty person remand or convicted prisoner leaves signature in the relevant journal.
76. The provisions of Internal Prison Rules and Internal Pre-Trial Detention Rules *do not envisage the execution by the senior duty prisoners or duty ones of any supervisory functions over other prisoners.*
77. In 2020, *Oleksiiivska Colony No. 25 and Temnivska Colony No. 100* were inspected by the prosecutorial organs. Inspections established that within these prisons, in order to maintain clearness in the living areas of prisoners, obey with the rules of keeping personal belongings in designed areas, inform the prison administration about the state of order within the social and psychological service (cell), senior duty and duty persons (cell duties) are appointed amongst prisoners *which is not contrary to the requirements of the criminal enforcement legislation.*
78. Prisoners serving their sentences in the penitentiaries are not involved in any supervisory functions over other prisoners. Prison administration does not delegate any powers to the so called "duty prisoners". Supervision over prisoners is done by the staff according to staff rates and the sheet of service posts.

### **CHAPTER III. STATE BUREAU OF INVESTIGATION. INVESTIGATIONS IN VISITED PRISONS**

#### **On the staffing of the SBI with operational units (response to paragraph 30 of the Report)**

79. During 2020, competitions for 765 positions in the operational units of the SBI were announced, including 331 positions in territorial departments.
80. As of January 1, 2021, the staffing of the SBI has increased from 34% to 65% according to the results of the competitive selection. The staffing of operational units of the central office of the SBI *has increased by 63%* and amounted to 69% as of January, 01, 2021. Work on further staffing arrangements of operational units of the SBI is currently underway.

#### **On the updated statistics on SBI investigations (response to paragraph 31 of the Report)**

81. The SBI investigators carried out pre-trial investigation in 351 criminal proceedings concerning torture or ill-treatment by prison staff (information on 144 criminal proceedings was entered into the Unified Register of Pre-trial Investigations in 2020) during 2018-2021. At present, 133 criminal proceedings of the mentioned category are being investigated by the SBI.
82. As a result of the pre-trial investigation, decisions were made in 74 criminal proceedings, namely 73 - were closed and 1 - was brought before the court with an indictment.

#### **On the investigation of alleged excessive use of force in Oleksiivska Colony No. 25 (response to paragraph 34 of the Report)**

83. The Territorial Department of the SBI in Poltava is conducting a pre-trial investigation in criminal proceedings № 4202022109000002 of January 10, 2020, which examines the circumstances of the alleged commission of 26 criminal offenses provided for by Article 127(2) and Article 365 (1,2) of the CC, according to the possible facts of torture and ill-treatment of prisoners in Oleksiivska Colony No. 25.

84. The grounds for the prisoners' complaints were the use of physical force and special means which were discovered during a search on January 8, 2020 in Oleksiivska Colony No. 25.
85. 26 prisoners were interrogated as victims during pre-trial investigation, including through the use of a computer polygraph. It has been established that some prisoners do not consider themselves victims and refuse to participate in investigative (search) actions, in particular, to undergo a forensic medical examination. As a result of forensic examination, the testimony of another prisoner was not objectively confirmed.
86. Staff of the Oleksiivska Colony No. 25 and other SCES officials who were interrogated as witnesses denied the abuse and torture of prisoners.
87. In addition, in criminal proceedings, investigators carried out, inter alia, forensic medical examinations, temporary access to things and documents.
88. A pre-trial investigation is ongoing. It is planned to conduct a set of investigative (search) actions aimed at establishing the circumstances that have to be proven. In particular, the circumstances of possible illegal actions of the staff of the Oleksiivska Colony No. 25 in relation to two more prisoners are being investigated. A set of investigative (search) actions were carried out to check the information about torture. It is currently planned to carry out a range of procedural measures on the events under investigation. Pre-trial investigation in the mentioned criminal proceeding is under control of the Main Investigation Department of SBI.
89. In order to thoroughly verify the facts, set out in the CPT's Report, the Office of the Prosecutor General had organized an inspection of the state of observance of the constitutional rights of prisoners in Oleksiivska Colony No. 25.
90. On January 10, 2020, investigation in criminal proceeding was launched under Article 365(2) of CC according to the fact of physical ill-treatment with prisoners. On January 11, 2020, 3 other criminal proceedings were also initiated by the Office of the Prosecutor General under Articles 127(2), 365(2) of the CC on statements of representatives of the Kharkiv Human Rights Group and prisoners on violation of the rights of prisoners to proper treatment.
91. Pre-trial investigation in the criminal proceeding is carried out by the investigators of the Territorial Department of the SBI in Poltava city, the procedural guidance is conducted by the prosecutors of the Office of the Prosecutor General and the prosecutors of the Prosecutor's Office of Kharkiv region.
92. A total of 26 criminal proceedings were registered according to the Unified Register of Pre-trial Investigations, 7 of which have been registered this year and later on consolidated under one proceeding. During pre-trial investigation, the following investigative (search) actions were carried out and following procedural decisions were made:
- 45 interrogations of victims, 25 of which were additional. A full verification of the facts set out in the statements of 17 victims was conducted. *The circumstances of the torture of prisoners were not confirmed according to the results of the inspection.*
  - more than 100 interrogation of witnesses;
  - 25 temporary accesses to things and documents;
  - 73 examinations were conducted;
  - both 7 permits were obtained and covert investigative (search) actions were carried out;
  - security measures were taken for up to 8 prisoners;
  - 15 requests were sent.
- The pre-trial investigation in the mentioned case is currently ongoing.*
93. In 2020, a total of 46 prosecutorial action documents were submitted to the Oleksiivska and Temnivska Colonies administrations by the Prosecutor's Office for Supervision of Observance of Laws in Execution of Criminal Punishments of Kharkiv region. As a result, disciplinary actions were taken against 57 officials. 17 acts issued by the prison administration were cancelled and brought into conformity with the legislation.

94. The prosecutor response documents were submitted on the issues of non-admission of assistants of MPs to the colony, protection of the rights of prisoners to material welfare and health care, wage policy and labour protection, fire safety, indemnification for damages resulting from crimes, payments on writs of execution, non-staffing, compliance with the requirements of the regime and supervision of prisoners, as well as the legality of imposing disciplinary sanctions on them, preventing the spread of COVID-19, social, educational and psychological work with prisoners in the state institutions.

**On the investigation of alleged torture in Berdianska Colony No. 77 and measures taken to protect witnesses (response to paragraph 35 of the Report)**

95. Investigators of the Territorial Department of SBI in Melitopol city are conducting a pre-trial investigation in criminal proceedings No. 42019081120000015 of February 22, 2019 on the grounds of criminal offenses under Articles 364 (1,2), 365 (2) of the CC on alleged torture and ill-treatment against prisoners in Berdianska Colony No. 77. Procedural guidance in criminal proceeding is being carried out by prosecutors of the Prosecutor's Office of Zaporizhzhia region. *The pre-trial investigation is being conducted by a group of 17 investigators.*
96. It was established during pre-trial investigation that unlawful measures of physical or psychological nature had been applied to the victims by other prisoners serving sentences in the above colony. The above prisoners are called «assistants of the administration of the colony». *However, the administration did not commit such illegal acts against them, and the fact of abuse of power by officials of Berdianska Colony No. 77 was not confirmed*, as mentioned criminal offenses were committed directly by prisoners serving sentences in the mentioned colony.
97. At present, the pre-trial investigation is ongoing, procedural, investigative (search) and covert investigative (search) actions are being carried out to verify previously obtained testimony, in particular, regarding the involvement of the prison administration in extorting money from prisoners.
98. In total, 5 criminal proceedings were registered according to the Unified Register of Pre-trial Investigations, which were further consolidated into one proceeding, during the pre-trial investigation in which the following investigative (search) actions were carried out and following procedural decisions were made:
- 16 victims were interrogated (8 of them were prisoners and 8 more their relatives);
  - a full examination of the circumstances set out in the testimony of 16 victims was carried out, *as a result of which the circumstances of torture and extortion against prisoners were not confirmed*;
  - more than 100 witnesses were interrogated, including from among 59 prisoners (including those who were released from Colony No. 77), 4 relatives of prisoners who transferred money and 38 officials of the SCES of Ukraine;
  - 4 examinations of prisoners' mobile phones were conducted;
  - 23 temporary accesses to things and documents were made;
  - 7 searches were conducted;
  - 5 forensic medical examinations were appointed and conducted;
  - certain permits were obtained and 8 covert investigative (search) actions were carried out;
  - security measures were taken concerning 7 prisoners;
  - 8 inquiries and 4 instructions were sent; other investigative and procedural actions were carried out.
- The pre-trial investigation in the criminal proceeding is ongoing.
99. In addition, in order to verify information on possible torture and extortion of money by the so called «duty prisoners», materials of pre-trial investigation No. 6202008000000936 were

- taken from the criminal proceeding No. 42019081120000015 of December 24, 2020 under Articles 127(2), 189(2) of the CC. The pre-trial investigation is ongoing.
100. SBI investigators are taking measures to ensure the safety of persons that are parties to criminal proceeding, as provided for in the Law «On Ensuring the Safety of Persons Participating in Criminal Proceedings».
101. In 2020, investigators introduced a practice of transferring victims to other prisons to prevent pressure from the administration, in particular, in criminal proceedings on possible facts of torture in Berdianska Colony No. 77 and Oleksiivska Colony No 25. It was done to take into account the nature and degree of danger to life and health of persons in criminal proceedings concerning torture in prisons. As for other measures to ensure the anonymity and security of participants in criminal proceedings, such measures are taken if needed or at the request of interested persons.
102. Prosecutor's Office of Zaporizhzhia region visited Berdianska Colony No. 77 in implementing the instructions from the Office of the Prosecutor General to inspect and personally interview the prisoners. As a result, *complaints on inappropriate detention conditions, poor nutrition as well as the use of physical or psychological violence were not received.*
103. In addition, individual prisoners who had arrived at Berdianska Colony No. 77 for further imprisonment and were being held in a quarantine, diagnostic and distribution unit were interviewed as well. The interview was conducted by prosecutors in a separate room in the absence of the prison staff. And, as a consequence, *none of the prisoners reported the use of physical or psychological violence, as well as extortion of money in exchange for appropriate conditions of detention.* The prisoner, who were on duty within quarantine, diagnostic and distribution unit had also explained that he didn't receive instructions from the prison administration regarding the use of measures of influence to other prisoners.
104. During the verification of the facts set out in *paragraph 9 of the CPT's Report*, officials of the prosecution office also interviewed some prisoners, who explained that they had the opportunity to communicate directly with the CPT's representatives. Prison administration didn't forbid prisoners to contact with the delegation. The interviewed prisoners denied the facts of ill-treatment by «duty prisoners» for refusing to clean, as it was stated in the CPT's report. Physical and psychological violence wasn't used as well. It was reported that they knew nothing about these actions against other prisoners. They have no complaints or statements about the staff members of the institution and other prisoners.
105. During the verification of the facts set out in *paragraph 23 of the CPT's Report* on the existence of the so-called «duty prisoners» in the institution, it was established that it was meant those prisoners who were on duty within the prison in accordance with Internal Prison Rules. The interviewed prisoners denied the facts of committing illegal actions against them by mentioned persons.
106. In terms of arguments of CPT's representatives (*paragraph 25 of the Report*) concerning low recourse to formal disciplinary sanctions with regard to the existence of an informal disciplinary system it was discovered the following. During 2020, prisoners violated imprisonment regime 156 times (in 2019 its amount was 167), 96 fines were imposed in this connection (120 fines in 2019), 3 persons were placed in disciplinary isolator (3 persons in 2019 accordingly), and preventive discussions were held with others. At the same time, 290 incentives were applied to prisoners, in relation to 121 prisoners, statutory incentives provided for by Article 81, 107 of the CC had been used. The fact that in 2020 not a single criminal offense was committed by prisoners, indicates the proper conduct of preventive work by the staff.
107. By verifying the facts set out in *paragraph 66 of the CPT's report* concerning the non-compliance of the disciplinary punishment cells in Berdianska Colony No. 77 with the legislation, it was established that there are 4 single cells in the disciplinary isolator, each with

an area of more than 4.5 m<sup>2</sup>. According to Article 115(1) of the Criminal Enforcement Code of Ukraine (hereinafter - CEC) the standard living space per one prisoner may not be less than 4 m<sup>2</sup>.

108. 20 inspections of the Berdianska Colony No. 77 were carried out by the prosecutors of the Berdiansk Local Prosecutor's Office in 2020. Doctors, inspectors of the Department for Emergency Prevention, specialists of the Berdiansk City Department of the Main Department of the State Food and Consumer Service within Zaporizhzhia region were involved as well.
109. 83 prisoners of the Berdiansk colony No. 77 were received personally by the officials of the local prosecutor's office during 2020. *No complaints were acknowledged by the Berdiansk local prosecutor's office against the actions of the prison staff.*
110. Last year, the prosecutor's office submitted 18 response documents based on the results of supervisory activities to eliminate the identified violations in Berdiansk colony No. 77, including 6 on hygiene and health care of prisoners, 2 on material standards and living conditions, and 3 on improper social and educational work. According to the results of the consideration, 19 officials were disciplined.

***On investigation of facts about Temnivska Colony No. 100 based on the CPT's Report***

111. On January 19, 2021, the Prosecutor's Office of Kharkiv region launched criminal proceeding under Article 365(2) of the CC in response to the facts set out in the CPT's Report of alleged physical ill-treatment of prisoners in Temnivska Colony No. 100. It was sent for pre-trial investigation to the territorial administration of the SBI in Poltava city. A pre-trial investigation into the mentioned case is currently under way.

***On impossibility to disclosure of information of the pre-trial investigation***

112. According to the Article 222 of the CPC, information concerning pre-trial investigation may be disclosed only with the written permission of the investigator or prosecutor and to the extent recognized by them, which is an additional guarantee of the safety of witnesses and other participants within criminal proceedings.
113. The information obtained during pre-trial investigation is not publicly accessible. Disclosure of such information is subject to criminal liability (Article 387 of the CC).

***On staffing of the visited prisons (response to paragraph 36 of the Report)***

114. The Personnel Service of the Department for the Execution of Punishments is constantly providing analysis of the effectiveness of work on filling vacancies in prisons and pre-trial detention centers of the SCES. Positions within the mentioned institutions are provided to be held by prison staff; the control over reduction of the staff shortage is ensured as well.
115. As of January 1, 2020 general understaffing of the custodial staff within the Berdianska Colony No. 77 was 30 persons or 22% out of staff rate. Senior staff and administration are 100% staffed. In 2020 measures were taken to complement vacant posts of the custodial staff: local employment center was addressed several times; lots of notifications were posted on local TV and relevant HR web-sites. The outcomes of the job done show that as of January 1, 2021 general understaffing of the custodial staff was only 14 persons or 10,4% of the staff rate.
116. As of January 1, 2020, general understaffing of the custodial staff within the Oleksiivska Colony No. 25 was 16 persons and as of January 1, 2021 – 14 persons; of the security department – 5 persons and as of January 1, 2021 – 1 person. Within the living and labour areas of prisoners the supervision over them is arranged in a way that prisoners are always under control of the custodial staff, operational group, production staff and the management of the social and psychological service. 24/7 video-surveillance monitoring within that penitentiary provides for immediate reveal of the violations of the imprisonment regime and other unlawful actions both from the prisoners and the staff.

117. As of January 1, 2020, the fulfilment of the staffing rate of the custodial staff within the Temnivska Colony No. 100 was 96% with only 10 vacant positions of custodial staff. As of January 1, 2021, the fulfilment of the staffing rate of the custodial staff within that penitentiary was 90,8% with only 14 vacant positions of custodial staff. 24/7 video-surveillance monitoring within that penitentiary provides for immediate reveal of the violations of the imprisonment regime and other unlawful actions both from the prisoners and the staff. Supervision over prisoners is ensured by the staff.

**On usage of video recording and body-worn cameras (response to paragraph 37 of the Report)**

118. The Department for the Enforcement of the Criminal Punishments of the MoJ is planning to further introduce the video-monitoring centers, use portative video-recordings and GPS-trackers by the custodial staff during execution of their duties which will allow document the interaction between the staff and prisoners. Such a step not only makes the staff more disciplined but also protects the staff, makes it impossible to torture and leads to justified punishment if torture occurred.

119. In accordance with the requirements of Articles 102 and 103 of the CEC, in order to ensure the adherence of the regime in prisons, prevent escapes and other criminal offenses, as well as violations of the rules concerning undergoing sentence, the MoJ approved the Procedure of the Use of Technical Means of Supervision and Control in Prisons of the SCES. The Procedure, in particular, provides for the use of video cameras and portable video recorders.

120. The use of portable video recorders and video surveillance systems has been introduced within the prisons of the SCES and other institutions. As of January 01, 2021, 1071 portable video recorders were used in prisons. It is planned to purchase another 700 units. Briansk Colony No. 77, Temnivska Colony No. 100 and Oleksiivska Colony No. 25 are equipped with 10, 7 and 7 video-recording means respectively.

121. The abovementioned measures are preventive and are intended to primarily ensure the honesty and openness of the bodies and institutions, provide for the observance and realization of the legitimate rights and interests of the convicted and remand prisoners, guarantee the safety of staff, prisoners and citizens who are in the territory of the prison.

122. The following is ensured through the use of video recorders and video surveillance systems:

- increasing the responsibility of the staff of institutions in the performance of official duties;
- increasing the level of public confidence to the staff of institutions;
- increasing the level of protection of human rights and freedoms;
- prevention of cases of unjustified use of physical measures, special means and firearms by the staff of institutions and (or) in relation to the staff of institutions;
- ensuring the objective consideration of cases by authorized bodies through the establishment of additional evidences;
- ensuring objective consideration of appeals, letters, applications, complaints against decisions, actions or inactions of the staff of institutions, reducing the number of unfounded complaints;
- conflict prevention.

#### CHAPTER IV. CONDITIONS OF DETENTION OF THE GENERAL PENITENTIARY POPULATION

##### **On the movement from the system of large-capacity dormitories in prison towards a system of smaller living units (response to paragraph 40 of the Report)**

123. The Department for the Execution of Criminal Punishments of the MoJ took into account the CPT's recommendations concerning the movement from the system of large-capacity dormitories in prison towards a system of smaller living units. This issue will be considered.
124. In preparing the budget request of the MoJ for 2021 and the next two budget periods (2022-2023), the General Directorate of the SCES of Ukraine included a proposal to finance the reconstruction of structural units for block accommodation of prisoners within the institutions of the SCES in the amount of UAH 1,869.9 million, including among other the following: UAH 149.8 million for 2021, UAH 759.8 million for 2022 and UAH 960.3 million for 2023 accordingly. *However, funds for mentioned aims for 2021 were not provided by the Law of Ukraine «On the State Budget of Ukraine for 2021».*

##### **On possibility to increase the frequency of prisoners' access to a shower (response to paragraph 41 of the Report)**

125. In order to ensure the proper organization of convicted and remand prisoners' access to shower, the MoJ Order 2870/5 of September 10, 2019 amended the Regulation on Organization of Access to Bathroom and Laundry Facilities for Convicted and Remand Prisoners. It provides *«access to a shower not less than twice a week and compulsory change of the underwear»*. The mentioned amendments will come into effect *on January 01, 2022*.
126. Currently, paragraph 2.6 of Chapter II of the Regulation on organization of access to bathroom and laundry facilities for persons held in prisons and pre-trial detention centers provides for, among other, weekly access to a shower along with a compulsory change of clothing, bed linen and towels. The capacity of the bathroom should provide weekly washing of persons taken into pre-trial detention and their stay there during 40 minutes. It should operate 12 hours a day. At the same time, the number of working days of the bathroom should not exceed five days per week, depending on the number of places. A cleaning day is provided for general cleaning of the premises on other days.
127. According to the results of the prosecutor's inspections of the institutions visited by the CPT, it was established that the bath and laundry services for prisoners in mentioned institutions generally meet the requirements of the law. Thus, prisoners visit the bath at least once a week and those who are employed in industry take a shower every day after shift ended. At the same time, additional time for taking a shower is provided by the prison administration at the request of prisoners.

##### **On the employment of prisoners in the visited penitentiary institutions (response to paragraphs 42, 43 of the Report)**

128. Cases of prisoners' engaging to unpaid labour on enterprises in exchange for food, cigarettes or other procedural benefits are not revealed. Engaging of prisoners to socially useful labour is carried out according to the provisions of the Procedure for Production Activity and Engaging Prisoners to Socially Useful Labour within Penitentiaries of the SCES, approved by the MoJ Order 26/5 of January 3, 2013. Prisoners are engaged to work without payment only for public services and amenities within the prison and close territory and improvement of living and housing conditions of prisoners or helping activities with nutrition as well. Prisoners are engaged to such work in priority schedule, for no more than 2 hours a day and during non-working hours.

129. According to the production program of the workshop within Temnivska Colony No.100, services for the production of paper bags, disposable slippers, collection of clothespins, as well as manufacture of carrier bags are provided. As of January 1, 2021, 201 prisoners are involved in paid work under employment contracts in Temnivska Colony, of which 16 persons are working as support staff, 118 persons at the SCES establishments, 15 persons at the counter-party objects, 50 persons in the workshops of the institution and 2 persons are engaged in other paid employment accordingly. 56 incapable prisoners are attending daytime courses.
130. According to the production program of the workshop within Oleksiivska colony No.25, the following services are provided, namely, soda packaging, raincoat wrapping, putting paper in folders, protective overshoes packaging. As of January 1, 2021, 153 prisoners are involved in paid work under employment contracts in the mentioned colony, of which 11 persons are working as support staff, 126 persons at the SCES establishments, 11 persons at the counter-party objects, 5 persons are engaged in other paid employment. 55 incapable prisoners are attending daytime courses.
131. According to the production program of the workshop within Berdianska colony No.77, services on manufacture souvenirs (wooden boxes), bobbars and industrial gears are provided. As of January 1, 2021, 6 prisoners are involved in paid work under employment contracts in the mentioned colony. All of them are working as a support staff. 81 prisoners are involved in paid work under civil labour contracts (including 5 prisoners who must compensate the damage according to the court enforcement documents), of which 44 are working at the SCES establishments, 36 in the workshop of the institution and 1 at the counter-party object accordingly. 104 incapable prisoners are attending daytime courses.
132. Under the statutes, penitentiaries have the right to independently plan their activities, determine the strategy and main directions of their work according to the strategic development plan of the enterprise, approved by the authorized management body.
133. Bringing of prisoners to paid work is carried out in accordance with the special schedule and according to the Procedure for Production Activity and Engaging Prisoners to Socially Useful Labour within Penitentiaries. In case of need to bring prisoners to additional paid works, or removal from work, the supplementary order and report shall be drawn accordingly. *Thus, the number of working prisoners is a dynamic indicator that is permanently changing depending on production needs and is promptly corrected according to the working load of prisoners at each time*, which probably led to differences mentioned by the CPT delegation.
134. Staff of prisons and state-owned enterprises take effective measures to increase the efficiency of the use of prisons' labour. Their individual employment is carried out taking into account the available specialties. Substantive issues are regularly considered at operational meetings with the participation of production and prison staff. The production and custodial staff are focused additionally on improving the quality of checks, in order to identify persons violating the technological process of production and safety measures. Staff of the social and psychological service regularly carries out explanatory work with prisoners on the need to comply with the rules of production discipline and resolve existing claims, which is one of the prerequisites for applying the incentive norms of the CEC.

## CHAPTER V. LIFE-SENTENCED PRISONERS

### **On Handcuffing (response to paragraphs 45 of the Report)**

135. Pursuant to paragraph 2 of Section XXVI of the Internal Prison Rules, handcuffs are used to prisoners under order of prison head, his deputies, regular assistants of the head and their deputies.
136. Prisoners are handcuffed in the following cases:
- committing physical resistance to the personnel, guard, administration of the prison or expression of anger (to calm down);
  - attempting to commit suicide, self-harm or assault on prisoners or other persons;
  - detention or convey of prisoners who have committed gross violations of the detention regime to disciplinary isolator, solitary confinement or cell if the said persons resist the personnel, or if there are grounds to believe that they may harm others or themselves;
  - transferring of the prisoner who had escaped or left the prison without permission.
137. Handcuffs are applied to prisoners with their hands tied behind their back, taking into account their physical defects. Every two hours, prison staff shall check the condition of the locks (if necessary, loosen the fixation), medical staff, in its turn, shall check the state of health of the prisoner. Prison staff shall use handcuffs while there is an urgent need for it, taking into account the cases specified in the Internal Prison Rules.
138. Handcuffs are removed when prisoners need to relieve themselves, want to eat, on the instruction of the medical staff, on the orders of the persons who gave the instructions to use them, or on the orders of the prison administration. If their continued use is required, an official of the prison shall draw up a report addressed to the prison administration as provided for in the Regulations. It is forbidden to use handcuffs for more than two straight hours or without loosening its fixation.
139. During the CPT's visit to Temnivska colony No. 100 up to 25% of life-sentenced prisoners were handcuffed every time they left the cell. At the time of the prosecutor's inspection, such measures were applied to only 12 of the 54 convicts, which is 22%. *All handcuffed prisoners are under preventive supervision as those who prone to escape or assault on prison staff.*

### **On putting an immediate end to anachronistic practices in relation to life-sentenced prisoners (response to the paragraphs 46, 48 of the Report)**

140. The procedure of movement of life-sentenced prisoners within prisons has been brought into full compliance with the requirements of the current instructions, in particular, *cases of escorting life-sentenced prisoners in a half-squatting position or with their hands lifted are excluded*. All life-sentenced prisoners move through the territory of prison in full growth in the position «*hands behind the back*», accompanied by the prison staff (provisions of the updated Internal Prison Rules, Section VIII «Procedure for movement of convicts within the prison»).
141. No cases of life-sentenced prisoners moving in a half-squatting position or with their hands lifted have been established during the prosecutor's inspection.
142. When equipping cameras, additional solid frames are installed at the windows. They made of opaque thick glass, which limits transparency but transmits sunlight.

### **On the regime for life-sentenced prisoners (response to paragraphs 49, 50 of the Report)**

143. According to the law, life-sentenced prisoners shall be kept in strict isolation. Communication with prisoners from other cells is not provided by the law. According to Article 151 of the CEC, life-sentenced prisoners are placed in solitary confinement primarily with two persons in each. Its living space is at least 4 m<sup>2</sup> per one person.

144. According to the daily schedule, life-sentenced prisoners are permitted to have daily 1-hour walk, and ones with active tuberculosis are given 2-hour walk accordingly. The exercise yards are equipped with a crossbar and parallel bars for exercise.
145. In order to ensure the right of the prisoners convicted to life imprisonment to daily 1 hour outside walking on fresh air, the Temnivska Colony No. 100 has 9 walking yards. Area of each walking yard is not less than 12 m<sup>2</sup>. Walking yards are located on the territory of the maximum-security sector and built taking into account 3m<sup>2</sup> per each person and no less than 25% of the general places for prisoners in that sector.
146. To ensure the right of life-sentenced prisoners to labour, they, where necessary, are engaged in work that does not require additional special equipment, directly in cells.
147. According to provisions of Articles 100, 151-1 of the CEC, depending on behaviour and attitude to labour, if he/she has such, and education, the life-sentenced prisoners after serving not less than 5 years of imprisonment in the solitary confinement cell (where 2 prisoners are held) may be transferred to the large-capacity confinement cell of the maximum security sector within the prison. After serving another 5 years there such category of prisoners may be transferred to ordinary living rooms of the maximum-security level prison.
148. Article 151 (2,6) of the CEC envisages that life-sentenced prisoners shall have the same rights and obligations of ordinary prisoners prescribed in Article 107 of the CEC. If the prisoner demonstrates excellent behaviour and attitude to labour, after serving 5 years of imprisonment he/she might be allowed to participate in group events of educational, cultural, physical and recreational character.
149. Out of 54 life-sentenced prisoners 8 ones are transferred to large-capacity confinement cell of the maximum-security sector of the Temnivska Colony No. 100; *these 8 prisoners participate in group events of educational, cultural, physical and recreational character.*
150. Regarding the CPT recommendation in paragraph 50 about review of the legislation that regulates segregation of life-sentenced prisoners, there should be mentioned that the MoJ developed draft law "On Amending Certain Legislative Acts regarding Development of the Probation System, Increase Alternatives to Imprisonment and Creation of Conditions to Reduce Re-offending" which proposes to re-write Article 18(2) of the CEC as the following: "2. *Sentenced to deprivation of liberty shall serve the punishment in the prisons of minimum-security level with less restrictive conditions of detention, minimum security level with general conditions of detention, medium security level and maximum-security level depending on the level of their criminogenic risk. In order to distribute prisoners to the prisons of relevant security levels one must assess their criminogenic risk under the procedure defined by the MoJ. It is prohibited to detain within one prison persons who earlier served a punishment connected with isolation and persons who did not serve such a punishment, apart from establishing of sectors, prescribed by Article 11(6) of that Code.*"

**On the technical means of surveillance inside the cells of sentenced to life imprisonment (response to paragraph 51 of the Report)**

151. According to Article 103(1,2) of the CEC the prison administration has the right to use audiovisual, electronic and other technical means to prevent escapes and other criminal offenses, violations of the regime established by law, and to obtain the necessary information about prisoners' behaviour. Prison administration is obliged to inform the prisoners about the use of technical means of supervision and control.
152. Paragraph 1 of Section XXIII of the Internal Prison Rules stipulates that supervision of prisoners is a system of measures aimed at ensuring the serving and execution of criminal punishments in the form of restriction and imprisonment, life imprisonment and arrest by round-the-clock and constant monitoring of prisoners' behaviour in their places of residence

- and work, prevention and cessation of illegal actions by them, ensuring the requirements of isolation of prisoners and security of the staff of prisons.
153. To ensure supervision of prisoners' behaviour in social and psychological services, cells, playgrounds, places of work, canteens, clubs, medical units and hospitals, the prison administration shall install video cameras, of which the prisoners shall be informed under the signature.
154. Some restrictions on the use of technical means of supervision and control are defined in paragraph 8 of the Procedure for the Use of Technical Means of Supervision and Control in Prisons of the SCES. *It is forbidden to use video cameras and portable video recorders:*
- *in baths, locker rooms, showers and toilets;*
  - *in the premises (cells) where medical examinations of convicted and remand prisoners, personal search with undressing are conducted;*
  - *in rooms for long-term visits;*
  - *in the rooms of children's homes at prisons, where children under three years of age are fed.*
155. Paragraph 1 of Section XXIII of the Internal Prison Rules stipulates that the viewing angle of video cameras installed in living quarters and cells must not cover sanitary facilities.
156. According to Article 151(1), Article 151-1(2) of the CEC, life-sentenced prisoners shall be placed in cell-type premises, usually two people each, and wear special clothes. On the request of the prisoner and in other necessary cases, in order to protect the prisoner from possible encroachment on his/her life by other prisoners or to prevent him/her from committing a crime or in the presence of a medical report, by order of the prison head he/she may be kept in solitary confinement.
157. Life-sentenced male prisoners *may be transferred from two-bed cell-type premises to multi-bed cell-type premises of the maximum security level prison* with permission to participate in group events of educational, cultural, physical and recreational activity in the order, established by the legislation, - after the actual serving in such premises for not less than five years of punishment; *from multi-bed cell-type premises to ordinary living quarters of a maximum security level prison - after the actual serving of at least five years of imprisonment in such premises.*
158. In the case of amendments of the CEC regarding *the residence of life-sentenced male prisoners in cell-type facilities for one person*, the regulations governing the use of video cameras will be revised.

**On the notices on the doors of the cells (response to paragraph 52 of the Report)**

159. Upon the CPT recommendation, the form of personal notices of prisoners, which are placed on the doors of the cells, was changed, in particular, the plot of crimes committed by prisoners was excluded from these cards.

**On legislative initiatives in the field of release from serving sentences of life imprisonment (response to paragraph 53 of the Report)**

160. In order to humanize certain provisions of criminal law on the application of life imprisonment, the MoJ has prepared a draft law "On Amendments to the Code of Administrative Offenses, the Criminal Code of Ukraine and the Criminal Procedure Code of Ukraine to implement decisions of the European Court of Human Rights."
161. This draft law, in particular, proposes to amend Articles 81 and 82 of the CC, which provide for the possibility of replacing for a person serving life-imprisonment, the unserved part of the sentence with a milder term of 15 to 20 years, if the prisoner has served not less than 10 years of the sentence imposed by the court, as well as the application of parole after the prisoner has actually served at least  $\frac{3}{4}$  of the sentence imposed by the court, in case of replacement of life

imprisonment with imprisonment for a certain term. On September 3, 2020, this draft law was registered in the Parliament (register No. 4049).

## **CHAPTER VI. PRISON HEALTH CARE. MEDICAL EXAMINATIONS.**

### **On further reform of penitentiary health care (response to paragraph 55 of the Report)**

162. The order of the MoJ and the MoHC of July 01, 2020 No. 2256/5/1491 "On amendments to the order of the Ministry of Justice of Ukraine, the Ministry of Health of Ukraine of August 15, 2014 № 1348/5/572" amended the Procedure for Organizing the Provision of Medical Care to Prisoners.
163. The Concept of reforming of the penitentiary system of Ukraine, approved by the Governmental Resolution No. 654 of September 13, 2017, establishes the general principles of further reform and functioning of the penitentiary system in Ukraine. Paragraph 42 of Section IV of this Concept stipulates the need to take a set of measures for the planned transfer of the function of providing medical care to convicted and remand prisoners from the MoJ to the MoHC.
164. This provision is also reflected in the draft law "On the Penitentiary System", paragraph 2 of the Final and Transitional Provisions of Section VIII of which proposes to establish that penitentiary medical facilities belong to MoJ until the transfer of these facilities to the sphere of management of the MoHC, with simultaneous transfer of powers in the field of implementation of the state policy in the field of medical care to the staff of the penitentiary system, prisoners, children born by female prisoners, and remand prisoners.
165. The MoJ and the MoHC are currently actively working to improve the provision of medical services to convicted and remand prisoners.
166. During August-November 2020, several meetings of the working group formed by the MoHC Order No. 1677 of July 24, 2020, took place, at which proposals on the model of medical care presented by both the MoJ and the MoHC were considered. Work in this direction continues. To date, given the current state of affairs, the estimated period of implementation of the above measures will take from 3 to 5 years.
167. In order to increase the effectiveness of control over the organization of health care for convicted and remand prisoners in each region (except for regions with a small population and number of penitentiary institutions), branches of *the Penitentiary HealthCare Center* were established, which allowed to respond more quickly and efficiently to issues arising in the activities of health care institutions, interact directly with regional state administrations, participate in regional coordination councils, coordinate activities of relevant regional NGOs working in the medical field.
168. At present, the staff rate of the Penitentiary HealthCare Center for 2420 positions has been approved, *2186.5 positions have been filled, which is 90% of full capacity.*

### **On thorough medical examinations of convicted and remand prisoners, both after arrival at the penitentiary and after violent events (response to paragraphs 57, 59, 62(1) of the Report)**

169. The organization of primary, secondary (specialized) and palliative care is carried out in accordance with the requirements of regulations and organizational and administrative acts of the MoHC. Treatment of convicted and remand prisoners, patients with any disease is carried out on the basis of impartiality and in accordance with the requirements of relevant clinical protocols and guidelines.
170. In accordance with paragraph 10 of the MoHC and the MoJ Joint Order No. 1348/5/572 of August 15, 2014 "On Approval of the Procedure for Providing Medical Care to Prisoners" -

medical examinations of prisoners shall be conducted out-of-hearing and (if medical staff does not want otherwise in each case) out of sight of non-medical staff.

171. In the context of the implementation of the recommendations of paragraph 59 of the Report, it should be noted that the Penitentiary HealthCare Center has developed and sent clear instructions on the application of the updated Procedure for the Organization of Provision of Medical Care to Prisoners in case of injuries during initial examinations and received by prisoners during their entire sentence, namely:
- the report of the CPT was brought to all staff of branches and structural subdivisions of the Penitentiary HealthCare Center for consideration during the work;
  - a letter No. 3589/02-20 of July 23, 2020 was sent to the medical staff of the subordinate structural subdivisions of the Penitentiary HealthCare Center regarding the implementation and management of the updated Procedure for the Organization of Provision of Medical Care to Prisoners.
172. In addition, a letter No. 5271/02-20 of December 01, 2020 was sent to the medical staff of the Penitentiary HealthCare Center branches, which once again clearly spelled out the actions of medical workers during the detection of bodily injuries on convicted and remand prisoners. In particular, it was written that "In case the convict is found to have bodily injuries, the medical worker draws up a certificate in three copies, which states in detail: information (written statement, oral or written explanation of the convict, relating to the medical examination (including information on mistreatment); a comprehensive description of medical indicators that characterize the state of health of the prisoner, the nature of the injuries, their size and location; assumptions of the medical worker in view of the information provided by the prisoners and medical indicators, as well as justification of their correlation. Photographs of the existing bodily injuries of the prisoner are attached to the certificate by the medical worker. Two copies of the certificate are attached to the materials of the personal file and medical card of the outpatient 025/o, the third copy is issued to the prisoner personally. The medical worker shall inform the prosecutor and the penitentiary administration in writing about the fact of detection of bodily injuries on the prisoner immediately from the moment of detection of bodily injuries. Information on the fact of detection of bodily injuries shall be entered by the head of the medical unit or the next medical worker in the logbook of detection of bodily injuries".
173. In order to improve the provision of medical care to convicted and remand prisoners in the same letter the Penitentiary HealthCare Center delivered to all medical workers the developed "Algorithm of Actions of Medical Staff in Case of Bodily Injuries" and "Procedure for Providing Medical Care in Case of Injury". Heads of branches of the Penitentiary HealthCare Center were obliged to consider the letter at an operational meeting with subordinate branch staff, as well as to hold lectures with subordinate staff to study the regulations of the MoHC, the MoJ, which regulate the actions of medical workers in case of detection of injuries.
174. *Medical staff constantly pays attention to injuries that occur on convicted and remand prisoners, conducts official inspections and describes injuries in medical records.* Every year, the Penitentiary HealthCare Center issues an order "On Conduct of Preventive Medical Examinations of Convicted and Remand prisoners".
175. In order to regulate the organization of health care for convicted and remand prisoners, Penitentiary HealthCare Center sent the documents of organizational and administrative nature to the branches for execution, in particular:
- Order No. 25-OD of May 18, 2018 "On Some Provisions of the Legislation of Ukraine in the Field of Health Care", which regulates the organization of treatment in accordance with standards, clinical protocols and other regulations of the MoHC in accordance with the level of medical care;

- Order No. 177-OD of July 28, 2020 "On Distribution to Health Care Institutions of Prisoners in Need of Inpatient Medical Care";
  - Order No. 308-OD of December 04, 2020 "On Approval of the Procedure for Organizing Medical Care for Seriously-Ill Prisoners, Women with a Pregnancy Lasting More than 22 Weeks or who Have Children under 3 years of Age and Patients with Mental Disorders";
  - a number of orders on the implementation of standard operating processes for the prevention, diagnosis, treatment, care and support of convicted and remand prisoners.
176. In addition to orders, organizational *letters on treatment, disease prevention, mortality control, emergency care, etc.* are constantly sent to the branches of the Penitentiary Health Care Center.
177. Paragraphs 4-6 of Section 1 of Chapter XXVI of the Internal Prison Rules stipulate that each case of application of measures of physical influence, special means and a straitjacket shall be recorded and reported to the prosecutor. Each case of use of a weapon shall be recorded and reported to the prosecutor and the Ombudsman. Prisoner subjected to physical measures, special means, a straitjacket or a weapon must undergo a medical examination and, if necessary, receive immediate medical aid. The results of the medical examination are registered in the medical card.
178. The inspection of the prosecutor's office regarding compliance with the requirements of the legislation on ensuring the rights of prisoners to receive medical care established that medical and preventive work in Oleksiyivska Colony No. 25 and Temnivska Colony No. 100 is organized and carried out by medical units Nos. 25, 100 in accordance with health care legislation. *Inspections of the prosecutor's office did not establish the facts of concealment of injuries or self-harm committed in these colonies.*

### ***On staff training***

179. Medical staff is permanently learning the provisions of the Guide to the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) and the revised Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules).
180. On July 20-23, 2020 a training on the Istanbul Protocol was conducted for general practitioners and health care managers of the branches of the Penitentiary HealthCare Center, organized by the Association of Psychiatrists of Ukraine and the Georgian Center for Psychosocial and Medical Rehabilitation of Torture Victims (GCRT) within the project "Combating Torture in Georgia, Ukraine and Armenia", funded by the European Initiative for Strengthening Democracy and Human Rights of the EU.
181. The event was held online. The coaching team included Georgian and Ukrainian experts - doctors, psychologists and lawyers who have practical experience in the sphere and directly with the implementation of the Istanbul Protocol. The training was attended by about 50 medical workers of the Penitentiary HealthCare Center. During the training many important issues were updated and all the information presented was focused on its use in practice. Emphasis was placed on working with psychological pressure and torture, as well as with the diagnosis of such conditions.

### **On medical examinations through metal barriers and termination of access of "Prisoners on duty" to medical records of other prisoners (response to paragraph 60, 62(2) of the Report)**

182. During the prosecutor's office inspection of the facts mentioned in paragraph 62 of the Report, in terms of violation of the rights of prisoners to medical care during the examination or consultation, it was established that prison staff is actually involved in these actions. However, Article 116(7) of the CEC stipulates that only medical staff may be present during a medical

examination, except when the doctor considers that there are exceptional circumstances, or when the doctor asks the prison staff to be present for security reasons, or when the prisoner requests for it.

183. Considering that the staff of the medical unit No. 77 of the Penitentiary HealthCare Center branch in Zaporizhia region are civilians (staff - 10 people), of which 6 are women, the involvement of prison staff during medical examinations does not contradict the specified norms, as it is carried out for the purpose of ensuring the safety of the medical staff. In addition, the prisoners interviewed selectively during the inspection explained that they did not consider the presence of the prison staff during medical examinations and consultations to be a violation of their rights and had no complaints in this regard.
184. During the prosecutor's office inspection of the medical units Nos. 25, 100 within Oleksiivska and Temnivska Colonies, any facts of providing medical care within the cells and metal closed areas were not established.
185. However, the facts of conducting medical examinations of prisoners and providing them with consultations in the medical unit No. 25 in the presence of prisoners from the "duty prisoners" category were confirmed. In this regard, Kharkiv local prosecutor's office No. 1 issued an instruction of January 19, 2021 to the management of the Penitentiary HealthCare Center branch in Kharkiv and Luhansk regions, which is currently under consideration.
186. At the same time, the Penitentiary HealthCare Center informs that access to medical documentation is available only to the medical staff of the relevant structural unit of the Penitentiary HealthCare Center.

## **CHAPTER VII. DISCIPLINARY PROCEDURES. ACCESS TO LEGAL AID. FURTHER CONTROL INSPECTIONS OF VISITED INSTITUTIONS**

### **On the placement of convicts in disciplinary isolators (response to paragraph 63 of the Report)**

187. In accordance with Article 134 (1,9) of the CEC the reasons, circumstances and motives for the violation, prisoner's behaviour, the number and nature of previously imposed penalties, and the prisoner's explanation of the nature of the offence shall be taken into account. The penalties imposed must be commensurate with the gravity and nature of the prisoner's misconduct.
188. *Penalty in the form of transfer of the prisoner to a cell-type room (PKT) is imposed in case of unsuccessful application of other measures of influence.*
189. The Law "On Amendments to the Criminal-Executive Code of Ukraine on Improving the Procedure for Applying Encouragement and Penalty Measures to Convicts" amended Article 135 of the CEC, which defines the procedure of disciplinary proceedings, including the obligation to decide on the expediency of imposing a penalty on prisoners at a meeting of the disciplinary commission of the prison. *Placement of a prisoner in a cell-type room (PKT) is carried out by a court decision.*
190. The decision to bring a prisoner to disciplinary responsibility must be substantiated in detail and may be appealed by the prisoner or his/her representative to a higher-level prison authority, a prosecutor or a court. The prisoner shall be issued a copy of the decision on the imposition of a penalty on him/her within 3 working days, indicating the possibility and procedure for appeal.
191. The CEC does not provide for the solitary confinement of prisoners serving the sanction in the form of placement in a disciplinary cell or transfer to a cell-type facility.
192. Pursuant to Article 132 (1 (8,9)) of the CEC, for non-fulfilment of duties and violation of established prohibitions, prisoners may be subject to such measures as the placement of

prisoners held in cell-type premises of the maximum security level prisons to solitary confinement without being taken to work for up to 14 days; transfer of prisoners, except for prisoners in minimum security level prison with simplified conditions of detention, to a cell-type facility (PKT) for up to 3 months.

193. According to Article 134 (11 (4)) of the CEC, *the detention of prisoners in carcer is solitary*.

194. The possibility of reducing the length of placement in carcer and single-bed cell will be considered by the MoJ during drafting of amendments to the CEC.

**On the abolition of Article 391 of the Criminal Code (response to paragraph 64 of the Report)**

195. Article 50(2) of the CC stipulates that the essence of punishment is not only to punish, but also to correct prisoners, as well as prevent re-offending. In turn, the criminal-executive legislation aims, *inter alia*, to create conditions for correction and re-socialization of prisoners.

196. According to Article 107 of the CEC, prisoners are obliged, in particular, to comply with the requirements of the prison staff and to comply with the rules and conditions of imprisonment, the daily routine of the prison, and legal relations with other prisoners and the staff.

197. Article 131<sup>1</sup> of the CEC clearly defines the concept of disciplinary misconduct, in particular, it is an illegal, culpable act (action or inaction) that encroaches on the established procedure in the field of execution of punishments. If the prisoner is found guilty during the disciplinary proceedings, the procedure of which is determined by Article 135 of the CEC, it becomes clear that the prisoner knowingly, systematically, stubbornly refuses to follow the established order of serving the sentence, neglecting and leveling the above goals and objectives of the criminal-executive legislation.

198. Systematic violations of the established order of serving a sentence by one prisoner create precedents for such behaviour of other prisoners and acquire public danger in that negligence of the established requirements further acquires its scale, which in turn obstructs the execution of a court sentence and the achievement of the purpose of punishment, violates the regulated activities of prisons.

199. The abolishing of Article 391 of the CC will deprive the prison administration of significant influence on the behaviour of prisoners who do not want to take the path of correction, incite other prisoners to disobedience and opposition to the administration, which in turn does not ensure the purpose of punishment and leads to a decrease in the level of security of both prisoners and prison staff.

200. Ensuring the established order of serving sentences in penitentiaries is aimed not only at the formation of law-abiding behaviour and correction of prisoners, but also at creating safe conditions for prisoners to serve their sentences and fulfil their powers by the staff. In order to eliminate the preconditions for prisoners to re-offend, the issue of exclusion of Article 391 of the CC should be considered comprehensively together with the issue of improving the security system in penitentiaries.

**On the provision to prisoners of a copy of the decision to impose a disciplinary sanction and access of prisoners to legal aid (response to paragraph 65 of the Report)**

201. The disciplinary proceedings are conducted under requirements of Article 135 of the CEC. Prisoners, not later than 1 day before the meeting of the disciplinary commission, shall be acquainted with the signature on the time and place of the commission meeting and informed about the right to use the services of a lawyer or a specialist in the field of law. Receipts are attached to the materials considered at the meeting of the disciplinary commission. A copy of the decision to apply a disciplinary sanction shall be handed over to the prisoner within 3 days from the date of the commission meeting.

202. The prisoner shall be issued with a copy of the decision to impose a sanction on him/her within 3 working days, indicating the possibility and procedure for appeal. The decision to bring a prisoner to disciplinary responsibility must be substantiated in detail *and may be appealed by the prisoner or his/her representative to a higher-level penitentiary authority, a prosecutor or a court.*
203. According to the outcomes of the public prosecutor's office inspection, *any facts of non-informing of prisoners in the Oleksiivska Colony No. 25 and Temnivska Colony No. 100 about the right to obtain legal aid or non-receiving of a copies of the decisions about application of sanctions against them were not established.*

### ***On legal aid***

204. In compliance with the Law "On Free Legal Aid" and the CPC requirements, regional centers for free secondary legal aid provide free secondary legal aid to the subjects of the relevant law, defined by paragraphs 3 - 7 of Article 14(1) of the Law "On Free Legal Aid". Persons sentenced to imprisonment or restriction of liberty are subject to the right to free secondary legal aid and are entitled to all types of legal services provided for in Article 13(1) of the mentioned Law, particularly: legal protection; representation of interests in courts, before other state and local authorities, other persons; preparation of procedural documents.
205. From January 1, 2020 to January 1, 2021 free secondary legal aid centers made 3053 decisions on the provision of such legal aid to persons sentenced to imprisonment or restriction of liberty under their written applications. The majority of issues raised by the prisoners concerned criminal proceedings, administrative, civil, family and criminal law.
206. During 2020, lawyers (attorneys) performed 2,463 meetings with convicted and remand prisoners in prisons and pre-trial detention centers, including 857 online consultations engaging 855 lawyers (attorneys). The number of convicted and remand prisoners who received legal advice directly in the institutions is 2,909 persons.
207. In order to take joint measures to ensure the provision of free legal aid to persons serving a sentence of imprisonment or restriction of liberty, detained in of pre-trial custody or registered within probation bodies, on September 17, 2018 a Memorandum of Cooperation was signed between the Coordination Center for the Provision of Legal Aid, the Administration of the SCES and the state entity "Probation Center", and a Joint Action Plan aimed at its implementation was approved as well.
208. Staff of the free legal aid system conduct appropriate legal awareness campaigns aimed at increasing the level of legal awareness of prisoners, distributing information materials (booklets) with information about their rights, including to free legal aid, the procedure for obtaining such aid, contact details of the free secondary legal aid centers.
209. Moreover, free legal aid system staff makes regular visits to prisons and pre-trial detention centers, during which they provide prisoners with individual legal advice and clarification on issues raised by them. As of January 1, 2021, there are 98 remote access points to free legal aid in the premises of prisons, 16 of which are in pre-trial detention centers.
210. In 2020, free legal aid was provided to 12 prisoners within the remote access point for free legal aid in Berdianska Colony No. 77 as well as in Oleksiivska Colony No. 25 and Temnivska Colony No. 100 free legal aid was provided to 6 prisoners in each prison using the Skype platform.

### ***On further inspections of prisons visited***

211. The CPT's report has been carefully analyzed by the staff of the Penitentiary Inspection Division of the MoJ. Measures taken by the prison authorities and penitentiaries to implement the recommendations set out in the CPT's report will be further examined during inspections to prisons under the schedule approved by the MoJ.