

Європейський Союз та Рада Європи працюють разом для підтримки в'язничної реформи в Україні  
EU and Council of Europe working together to support the Prison Reform in Ukraine



**Analysis  
of implementation of the recommendations on the penitentiary  
system provided to Ukraine by the European Committee for the  
Prevention of Torture since 1998**

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## *Abbreviations*

**Committee, CPT** – European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

**ECHR** – European Court of Human Rights

**SCES** – State Criminal-Executive Service of Ukraine

**CEC of Ukraine** – Criminal-Executive Code of Ukraine

**SIZO** – pre-trial detention centre

**IPR** –Internal Prison Rules

**DPK** – Unit of Enhanced Supervision

**DIZO** – Detention Cell

**PKT**– Cell-Type Premises

**ITT** –Temporary Detention Centre (police)

## Content

<b>Introduction.....</b>	<b>5</b>
<b>1. Living conditions .....</b>	<b>7</b>
1.1 Type of premises .....	7
1.2 Living space.....	9
1.3 Exercise yard .....	11
<b>2. Pre-trial detention.....</b>	<b>12</b>
2.1 Length of pre-trial detention.....	12
2.2 Occupation of remand prisoners .....	15
2.3 Contacts with the outside world of remand prisoners (written correspondence, visits and phone calls) .....	17
2.4 Detention in police temporary detention centres (ITT) .....	21
<b>3. Deprivation of liberty .....</b>	<b>23</b>
3.1 Classification of inmates .....	23
3.2 Work by inmates .....	25
3.3 Contacts with the outside world .....	28
3.3.1 Frequency of visits .....	28
3.3.2 Visits fee.....	29
3.3.3 Conditions for short-term visits.....	30
3.4. Disciplinary isolation .....	32
3.4.1 DIZO, PKT and DPK placement procedure .....	32
3.4.2 Period of detention in the DIZO, PKT and DPK.....	35
3.4.3 Restrictions on disciplinary detention .....	36
3.4.4 Article 391 of the CC of Ukraine .....	38
3.5 Basic needs of inmates .....	39
3.5.1 Hygiene of inmates.....	39
3.5.2 Nutrition of inmates .....	41
3.6 Privacy .....	43
<b>4. Lifers.....</b>	<b>45</b>
4.1 Prospects of release from life imprisonment (LI) .....	45
4.2 Separate detention from other categories of inmates .....	47
4.3 Occupation.....	50
4.4 Security measures .....	52
4.5 Contacts.....	54
<b>5. Health protection .....</b>	<b>55</b>
5.1 Integration of prison health care in the Ministry of Health .....	55
5.2 Recording bodily injuries.....	57
5.3 Access to healthcare.....	62
5.4 Substitution therapy.....	64

<b>6. Other recommendations.....</b>	<b>66</b>
<b>6.1 Personnel.....</b>	<b>66</b>
<b>6.2 Violence between prisoners .....</b>	<b>68</b>
<b>6.3 Reception of information on inmates' crimes by criminal intelligence units .....</b>	<b>72</b>
<b>6.4 Transportation of inmates .....</b>	<b>74</b>
<b>6.5 Carrying special equipment within prisons .....</b>	<b>76</b>
<b>6.6 Installation of boxes for confidential complaints .....</b>	<b>77</b>
<b>6.7 Mandatory bold haircut.....</b>	<b>78</b>
<b>6.8 Installation of defibrillators .....</b>	<b>79</b>
<b>6.9 Visiting terminally ill inmates.....</b>	<b>80</b>
<b>Conclusion .....</b>	<b>81</b>

## Introduction

This analysis is devoted to the progress in implementation of the recommendations made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter – CPT, Committee). It concerns all the recommendations made by the Committee since its first visit to Ukraine in 1998. During this time, the Committee has published 15 reports pertaining to Ukraine. Of these, **12 reports** that were fully or partially devoted to the Ukrainian penitentiary system were analysed. Three remaining reports were ignored since they were dealing exclusively with other areas (psychiatric institutions, border guard facilities, etc.).

The intention was to analyse the implementation progress of only those recommendations, the implementation of which could be measured. Besides, only recommendations of systemic nature were taken for analysis. Therefore, the analysis does not consider the implementation of other recommendations with regard to:

- individual penitentiary institutions and their repair state;
- individual or collective cases of torture/degrading treatment in certain institutions;
- provision of material resources, food, medicines, etc .;
- staffing level of individual institutions.

An analysis of the implementation of such recommendations would require not only comprehensive monitoring visits to individual penitentiary institutions but also access to financial and other internal documentation. Many such recommendations rather relate to obvious procurement needs and are generally not disputed. Thereby their analysis would have been self-evident: insufficient funding is provided, repairs are not carried out, there are no medicines, etc.

Thus, the focus was on recommendations with regard to which it was possible to state on their implementation, non-implementation or partial implementation. An important part of these recommendations require legislative changes and/or additional funding. In some cases, recommendations for individual institutions were taken into account when addressing systemic issues.

**The purpose of the analysis was to conduct a kind of "inventory" of the Committee's outstanding recommendations.** The idea was to summarize a large number of standards scattered in the various reports. For this purpose, the historical progress and context was taken into account to demonstrate the process of implementing the recommendations. As the Committee's President, Mykola Gnatovskyi, points out: *"every CPT report only continues its dialogue with the national authorities, and therefore its full analysis is often impossible without a good understanding of the background and national context"*<sup>1</sup>.

Hopefully, the proposed "inventory" of recommendations will make it easier to get acquainted with them and contribute to their better implementation in the future.

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<sup>1</sup> Ashchenko O., Chovgan V., Ukrainian Penitentiary Legislation in Light of Standards of the UN and the Council of Europe Anti-Torture Committees / preface by M. Gnatovsky; Ed. Ye. Zaharov. – Kharkiv: Human Rights, 2014. – P. 7.

To facilitate finding the referenced reports containing relevant recommendations the year of the Committee's visit and the paragraph of the relevant report are indicated in parentheses.

# 1. Living conditions

## 1.1 Type of premises

### Recommendations

In 2002, the Committee recommended that the Ukrainian authorities consider switching from the system of large-capacity dormitories where inmates were accommodated in favour of smaller living units (2002, 86). According to the CPT, accommodation in large-capacity premises carries the following risks:

- High level of violence and intimidation;
- Creating a favourable environment for the subculture and supporting the activities of criminal groups;
- Difficulty or even impossibility to exercise control by staff;
- Proper accommodation of prisoners based on risk and needs assessment is virtually impossible (2002, 86).

The Committee later called Ukrainian authorities to support the efforts to rebuild the large-capacity dormitories into smaller living units (2009, 113, 121). The same recommendation was made on the need to convert multiple-occupancy cells in pre-trial detention centres into cells with fewer places (2009, 135; 2016, 66; 2017, 68).

In the Committee's view, the transition from large-occupancy accommodation to accommodation with fewer places should be accompanied by ensuring sufficient purposeful activities for prisoners out of their cells (2002, 86).

In general, the Committee takes a negative stance on multiple-occupancy dormitories and cells<sup>2</sup>. It points out:

*"In its 11<sup>th</sup> General Report<sup>4</sup> the CPT criticised the very principle of accommodation in large- capacity dormitories; frequently such dormitories hold prisoners in extremely cramped and insalubrious conditions. In addition to a lack of privacy, the Committee has found that the risk of intimidation and violence in such dormitories is high, and that proper staff control is extremely difficult. Further, an appropriate allocation of individual prisoners, based on a case-by-case risk and needs assessment, becomes an almost impossible task. The CPT has consequently long advocated a move away from large-capacity dormitories towards smaller living units".*

European Prison Rules contain a more radical standard: Prisoners shall normally be accommodated during the night in individual cells (18.5).

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<sup>2</sup> Living space per prisoner in prison establishments: CPT standard (CPT/Inf (2015) 44) // <https://rm.coe.int/16806cc449>



## Implementation

In Ukraine, there is no capacity limit for the cells in pre-trial detention centres and colonies. Existing living space standards set the mandatory space per person, but they do not limit the number of persons accommodated in cells. Theoretically, one cell can be designed to hold hundreds of people at a time.

The transition from a collective accommodation system to a fewer bunk (or individual) system requires allocation of significant financial resources. Such a transition entails not only repairs but also changes in the design of the existing buildings or new construction. As regards pre-trial detention centres, reducing the capacity of the cells requires not so much restructuring (which is often impossible) as limiting the number of persons accommodated in the cells. In turn, this entails the need to reduce the number of detainees.

In practice, the administrations of individual colonies have already managed to turn large-occupancy accommodation into smaller one (e.g. accommodation of 5-10 people). It is recognized that this approach greatly simplifies the maintenance of order and security in such institutions. However, such examples are rare and depend on the initiative of prisons' management and funding of individual penitentiary institutions. There is no systematic transformation of the collective accommodation of colonies in Ukraine.

The problem of the collective detention system was also recognized by the Government of Ukraine. The Human Rights Action Plan for the period from 2015 to 2020<sup>3</sup> stipulates the need to: *“Develop and submit for review by the Cabinet of Ministers of Ukraine a State Target Program for gradual reorganization of the collective detention system in penitentiary institutions into a cell-type detention system and reduction of permissible planned occupancy of penitentiary institutions to 300 - 400 people in one institution”* (p. 32.1). However, such a program has not yet been developed.

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<sup>3</sup> Order of the Cabinet of Ministers of Ukraine No. 1393-p dated November 23, 2015.

## 1.2 Living space

### Recommendations

Since its first visit to Ukraine in 1998, the Committee has recommended to increase the living space per prisoner to 4 m<sup>2</sup> (1998, 112). This recommendation was later repeated on several occasions in 2000, 2005, 2009, 2013 and 2017.

In addition, the Committee recommended that single cells should not be less than 6 m<sup>2</sup> and that the distance between opposite walls of the cell should not be less than 2 m. This being said, the size of the sanitary unit should not be taken into account when calculating the living space (2012, 45) and it should be fully partitioned from the living space (1998, 123; 2005, 108; 2013, 120; 2016, 56).

### Implementation

As regards colonies, this recommendation was implemented in 2010. Then, the statutory norm of living space for inmates was increased from 2.5 to 4 m<sup>2</sup>. However, the new norm is still often not observed in the colonies.

At the same time, a norm of 2.5 m<sup>2</sup> (Article 11 of the Law of Ukraine "On Pre-Trial Detention") remains in force in pre-trial detention centres. That is, Ukraine has not complied with this recommendation for more than 20 years.

A draft law was developed to implement the Committee's recommendation on living space in pre-trial detention centres. The Draft Law was registered in the parliament in 2015 and adopted in the first reading<sup>4</sup>. In addition to the increase in the living space, it contains a rule that reflects other standards of the Committee in this regard<sup>5</sup>: *"When calculating the living space of the cell, the sanitary unit shall not be taken into account. The distance between the opposite walls of the cell cannot be less than 2 meters. Cells which are smaller than 6 square meters should not be used"*. At present, the prospect of adopting this bill remains uncertain.

Later, another bill was registered in the parliament to increase the living space in pre-trial detention centres<sup>6</sup>. However, on 29 August 2019, the Draft Law was withdrawn due to the election of the new parliament. The Draft Law provided for the improvement of the living space norm for women and their children in pre-trial detention centres in line with the CPT standards. However, for men, it provided for the norm of **3 m<sup>2</sup>**. This contradicts with the Committee's standards. At the same time, in the explanatory note to the bill, the authors justify its necessity specifically by the CPT standards.

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<sup>4</sup> Draft Law on Amendments to the Law of Ukraine "On Pre-trial Detention" (On implementation of certain standards of the Council of Europe) No. 2291a dated 06.07.2015 // [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=55900](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=55900)

<sup>5</sup> See in detail: Living space per prisoner in prison establishments: CPT standard (CPT/Inf (2015) 44) // <https://rm.coe.int/16806cc449>

<sup>6</sup> The Draft Law on Amendments to the Law of Ukraine "On Pre-Trial Detention" (with reference to increasing the standard area in the cell for one detained person) No. 9490 dated January 18, 2019 // [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=65362](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=65362)

The above standard for men was justified by reference to the decision of the European Court in the case of "Ananyev and Others v. Russia". In practice, the ECHR does indeed have some uncertainty as to the standard of living space required in the light of Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Beginning in 2016, the Court sometimes finds 3 m<sup>2</sup> per person sufficient<sup>7</sup>, but such decisions are rather exceptions. In making such decisions, the Court also takes into account other counterbalancing factors that mitigate the situation, such as access to activities outside the cell, the regime, and so on. Nevertheless, the CPT standard remains clear – at least 4 m<sup>2</sup> of living space per person.

As for the minimum cell size (6 m<sup>2</sup>) and the minimum distance between the opposite walls (2 m), these recommendations are still not reflected in the living space norms for pre-trial detention centres and colonies.

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<sup>7</sup> See, for example: *Muršić v. Croatia* [GC], no. 7334/13, 20 October 2016.

### *1.3 Exercise yard*

#### Recommendations

The Committee has repeatedly pointed out to Ukraine on the insufficient size of exercise yards for normal physical exercising (1998, 127; 2005, 142; 2009, 90; 2012, 47; 2013, 122; 2017, 73).

Although the CPT has not developed standards for yard sizes, it can be inferred from its comments about the sizes that it considers unacceptable. For example, it considered unacceptable yards from 8 to 13 m<sup>2</sup> in Lviv SIZO and from 16 to 20 m<sup>2</sup> in Ivano-Frankivsk SIZO (2017, 71), 16 m<sup>2</sup> in Dnipro Correctional Colony No. 89 (2012, 47), 9.5 m<sup>2</sup> for two prisoners and 34 m<sup>2</sup> for 12 prisoners in Kyiv SIZO (2013, 122).

In 2017, the Committee recommended that exercise yards be located on ground level and offer horizontal view (2017, 73). That is, exercise yards should not be located on upper floors or roofs of prison buildings, as is often the case in Ukrainian pre-trial detention centres and sometimes in colonies: exercise yards should not resemble "cells without a ceiling" (2013, 122), which is also common as most exercise yards' design offers only a "sky view". In addition, yards should have a cover in case of inclement weather (1998, 127).

#### Implementation

The practise of using small yards without horizontal view and proper equipping continues. This may be due to the fact that the relevant recommendations of the Committee have not been reflected in legislation and are therefore not being implemented in practice. In addition, this issue is usually not monitored during monitoring visits and inspections.

At the same time, the state-building norms which regulate the building standards for colonies and pre-trial detention centres are currently considered information "for in service use only" (i.e. confidential), which makes it impossible to check the existing building standards of exercise yards. The absence of these norms in the public access is unacceptable in view of Article 57 of the Constitution which provides that if the laws and other regulations defining the rights and obligations of citizens are not brought to the attention of the public in the manner prescribed by law, they are deemed invalid.

## 2. Pre-trial detention

### 2.1 Length of pre-trial detention

#### Recommendations

The Committee drew attention to the overpopulation of prisons from the very beginning of its visits to Ukraine. During its first visit to Ukraine in 1998, 211,000 prisoners were held in Ukrainian pre-trial detention centres and colonies. The prison population has decreased four times since then so the respective recommendations are more relevant to the times of the first reports of the Committee.

However, the problem of overpopulation in pre-trial detention centres persists. Prior to the adoption of the Code of Criminal Procedure in 2012, the CPT also drew attention to the need to shorten the length of court proceedings in criminal cases and to circumscribe more precisely the circumstances in which recourse can be had to the preventive measure of remand in custody (2009, 75).

In its last two reports on visits that concerned penitentiary institutions, the CPT recommended that the Ukrainian authorities continue their efforts to reduce the prison population, in particular by making more use of the available alternatives to remand detention (2016, 36; 2017, 56).

#### Implementation

Currently, there are restrictions on the length of pre-trial detention during the pre-trial investigation, but not during the trial. Paragraph 1 of Article 318 of the CPC states that "the trial must be conducted and completed within a reasonable time". As a consequence, the vast majority of prisoners in pre-trial detention centres are held pending trial rather than investigation (1,894 persons versus 9,833, respectively)<sup>8</sup>. In addition, as of the 1<sup>st</sup> of April 2020, 7,859 persons of other categories were held in pre-trial detention centres (sentenced inmates, "transit" prisoners, lifers, etc.).

In 2020, the Ministry of Justice of Ukraine has announced the development of a bill that would unload pre-trial detention centres. In particular, it is supposed to introduce:

- Limitation of the maximum detention time limit at the trial stage;
- Gradual reduction of the offered bail through the period of detention;
- Possibility of the mortgage of property instead of money bail.

Besides, it was proposed to enshrine at the legislative level the possibility of opening pre-trial detention sections in colonies as currently the legality of such sections is questionable.

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<sup>8</sup> Information of the SCES as of April 01, 2020.

Overpopulation of pre-trial detention centres is also caused by too detailed rules for the internal classification of different categories of prisoners. The CPT drew attention to this problem (2016, 39). In particular, Article 8 of the Law of Ukraine "On Pre-Trial Detention" stipulates the following separation rules:

*"men – separate from women;*

*minors – separately from adults;*

*detained personnel of the intelligence services of Ukraine, employees of the State Bureau of Investigation and employees of the National Anti-Corruption Bureau of Ukraine – separately from other persons in custody;*

*persons who are prosecuted for the first time - separately from persons who have previously been prosecuted;*

*persons who have previously served sentences in places of imprisonment - separately from persons who have not served time in places of imprisonment;*

*persons accused or suspected of committing serious and especially serious crimes - separately from other persons in custody;*

*persons accused or suspected of committing crimes against the national security of Ukraine - as a rule, separately from other persons in custody;*

*persons who previously worked in the internal affairs bodies, the National Police, the Military Law Enforcement Service in the Armed Forces of Ukraine, the Security Service, the Prosecutor's Office, Justice authorities, the State Bureau of Investigation, the National Anti-Corruption Bureau of Ukraine, State Criminal-Executive Service of Ukraine and in courts - separately from other persons in custody;*

*inmates - separately from persons in custody;*

*foreign citizens and stateless persons – as a rule, separately from other persons in custody;*

*persons suspected or accused of committing crimes, the responsibility for which is provided by Articles 173-177, 200-235 of the Criminal Code of Ukraine, separately from other persons in custody;*

*inmates sentenced to life imprisonment are kept in isolation from all other persons in custody;*

*accused or suspected in the same criminal proceedings shall be kept separate, if there is the relevant decision of the person or body conducting the criminal proceedings".*

As a consequence, there is local overcrowding of individual cells (2016, 39). Instead, the placement of prisoners should be based on a risk assessment, as required by the Council of

Europe standards<sup>9</sup> and as it works abroad<sup>10</sup>. For example, European Prison Rules require the separate mandatory detention of only a few categories of prisoners: untried prisoners separately from sentenced prisoners; male prisoners separately from females; and young adult prisoners separately from older prisoners (Rule 18.8). Exceptions can be made to these requirements in order to allow prisoners to participate jointly in organised activities or if they consent to be detained together and the prison authorities judge that it would be in the best interest of all the prisoners concerned (Rule 18.9).

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<sup>9</sup> See, for example, paragraph 10, Recommendation Rec (2003) 23 of the Committee of Ministers to member states on the management by prison administrations of life sentence and other long-term prisoners (Adopted by the Committee of Ministers on 9 October 2003 at the 855th meeting of the Ministers' Deputies)

<sup>10</sup> Avtukhov K., Chovgan V., Yakovets I., Risk Assessment and Modern Criminal Justice. - Kyiv: European Union Advisory Mission Ukraine, 2019. - P. 41.

## 2.2 Occupation of remand prisoners

### Recommendations

The CPT drew attention to the under-employment of prisoners in Ukrainian pre-trial detention centres during its first visit to Ukraine in 1998:

*“The overwhelming majority of prisoners did not take part in any activities outside the cells, apart from outdoor exercise .... There were no opportunities for work and no access to educational/training or sporting activities ... In-cell activities were limited to reading and, for some prisoners, watching television acquired through their families”* (1998, 126).

In this regard, it was recommended that:

*“all prisoners are able to spend a reasonable part of the day (i.e. eight hours or more) outside their cells, engaged in purposeful activities of a varied nature (recreation/association; work, preferably with vocational value; education; sport)”* (1998, 130).

This recommendation with regard to pre-trial detention centres has been repeated in various modifications in a number of subsequent reports (1999, 33; 2000, 93; 2009, 76; 2011, 46; 2013, 102; 2017, 57). Thereby it was recommended that programs of activities be developed to suit the needs of different categories of prisoners (adult prisoners and inmates, lifers, women, juveniles, etc.) (2013, 102).

The Committee also drew attention to the consequences of lack of occupation:

*“almost total lack of activities aggravated the experience of imprisonment and rendered it more punitive than the regime for sentenced persons. Taken together with the restrictions on contact with the outside world and association, this produced a regime which was oppressive and stultifying”* (2009, 76).

At the same time, the longer the detention, the more diverse the opportunities for occupation outside the cell should be<sup>11</sup>.

### Implementation

Despite the fact that more than 20 years has elapsed since the first recommendation, Ukrainian pre-trial detention centres still do not offer sufficient opportunities of activities for prisoners.

Among other things, this can be linked to the design of pre-trial detention centres. Their design and architecture do not provide for a space for prisoners' activities. Unlike in colonies,

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<sup>11</sup> Paragraph 58 of the 26th General Report of the Committee (26<sup>th</sup> General Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, CPT/Inf(2017)5)



there is no "industrial" part of the institution, i.e. there is no workshops in which inmates could work. Also, there are usually no gyms or sport yards.

In addition, the Law of Ukraine "On Pre-Trial Detention" still provides for an anachronistic rule that prisoners on remand may be involved in work only with the permission of the investigator or the court conducting the criminal proceedings (Paragraph 1 of Article 16).

As for education, it is usually unavailable for adult inmates. One of the reasons for this situation is called the short stay in pre-trial detention centres, which does not allow for completion of a course.

Communication between prisoners is limited to communication with cellmates. In addition, if prisoners still communicate with other cells, such a communication is considered illegal. According to the Law of Ukraine "On Pre-Trial Detention", one of the main security requirements in pre-trial detention facilities is isolation of detainees. This requirement is reflected in the Internal Prison Rules of pre-trial detention centres:

*"[prisoners are not allowed] to shout to one another and knock, as well as to establish in any other way communication with persons who are in other cells, and during the walks - with persons who are in neighbouring yards" (paragraph 4.3 of Section 1).*

As a result of these factors, Ukrainian prisoners are forced to spend 23 hours a day in their cells. Such an approach to detention is caused by the fact that pre-trial detention is still based on the so-called concept of isolation (2017, 57). According to this philosophy, occupation and communication of detainees can interfere with criminal proceedings. This philosophy also leads to significant isolation of remand prisoners from the outside world. The Committee has been making recommendations in this regard for over 20 years.

## 2.3 Contacts with the outside world of remand prisoners (written correspondence, visits and phone calls)

### Recommendations

The Committee first made a relevant recommendation to Ukraine in 1998:

*"As far as visits to remand prisoners are concerned, the CPT recognises that it may sometimes be necessary, in the interests of justice, to place certain restrictions on visits for particular remand prisoners. However, these restrictions should be strictly limited to the requirements of the case and should apply for the shortest possible period. On no account should visits between a remand prisoner and his/her family be banned for a prolonged period. If there is considered to be an ongoing risk of collusion, it is preferable to authorise visits but under strict supervision. This approach should also cover correspondence with relatives"(1998, 168).*

Later, this recommendation was repeated on many occasions (2000, 121; 2002, 106; 2009, 152; 2011, 50; 2013, 127; 2016, 39; 2017, 101).

The Committee continued to develop its position gradually:

*"... restrictions should be decided according to the circumstances of each individual case and applied for the shortest possible time. Further, the need to impose restrictions on certain prisoners cannot justify the blanket imposition of a restrictive regime on the remand population as a whole" (2002, 106).*

*"The CPT calls upon the Ukrainian authorities to take measures in order to ensure that remand prisoners are entitled to receive visits and send/receive letters as a matter of principle. Any refusal to permit visits or send/receive letters should be specifically substantiated by the needs of the investigation, require the approval of a body unconnected with the case in hand and be applied for a specified period of time, with reasons stated. If necessary, the relevant legislation and regulations should be amended" (2009, 152).*

*"... amend the current legislation to ensure that remand prisoners are as a rule entitled to receive visits, make/receive phone calls and send/receive letters. Any restriction/prohibition placed on them as regards visits, phone calls or correspondence must be specifically substantiated by the needs of the investigation, always require the approval of a judicial authority, and be applied for a specified period of time, with reasons stated. In the meantime, investigators and judges should be reminded that the starting point for considering requests for visits and for sending letters must be the presumption of innocence and the principle that remand prisoners should be subject to no more restrictions than are strictly necessary for the interests of justice and that, unless there are clearly defined reasons for not allowing visits/correspondence or for imposing certain restrictions (e.g. organisation of visits through a partition) for a specified period in an individual case, remand prisoners should be authorised to*

*receive at least three visits of up to four hours a month, and send/receive letters, as provided for by the law” (2013, 127)<sup>12</sup>.*

*"The Committee calls upon the Ukrainian authorities to take steps to implement its long-standing recommendation that all prisoners (both sentenced and those on remand) are entitled to the equivalent of at least one hour of visiting time per week. Inmates of both categories should also have the effective possibility to make telephone calls” (2017, 101).*

The Committee raises issues of contacts with the outside world for remand prisoners in its 26th General Report, which summarized its standards of pre-trial detention. In addition to the already mentioned recommendations provided to Ukraine, the following standards are of relevance<sup>13</sup>:

- All inmates should benefit from a visiting entitlement of at least one hour every week and have access to a telephone at the very least once a week (paragraph 59);
- Restrictions must be based on a thorough individual assessment of the risk which prisoners may present (paragraph 60);
- Any refusal in a given case to permit such contacts should be specifically substantiated by the needs of the investigation, require the approval of a judicial authority and be applied for a specific period of time (paragraph 61);
- If it is considered that there is an ongoing risk of collusion, particular visits (or telephone calls) can be monitored (paragraph 61);
- Restrictions should never be applied for the purpose of bringing pressure to bear on persons remanded in custody in order to induce them to co-operate with the justice system (paragraph 62);
- Decisions imposing restrictions described in the previous paragraph should normally be taken when the remand prisoner appears in court and be subject to appeal in a separate procedure. The written decision should provide reasons for every restriction imposed and should be given to the prisoner concerned and/or his/her lawyer. The restrictions must be reviewed by the competent court on a frequent basis to ensure that there is a continuing need for them. The longer a restriction is imposed on a prisoner in remand custody, the more rigorous should be the test as to whether the measure remains necessary and proportionate. (paragraph 63).

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<sup>12</sup>In making this recommendation, the CPT also referred to Rule 99 of the European Prison Rules: *"Unless there is a specific prohibition for a specified period by a judicial authority in an individual case, untried prisoners: a. shall receive visits and be allowed to communicate with family and other persons in the same way as convicted prisoners; b. may receive additional visits and have additional access to other forms of communication; ..."*.

<sup>13</sup> The 26th General Report of the Committee (26<sup>th</sup> General Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, CPT/Inf(2017)5)

## Implementation

Contrary to the Committee's persistent recommendations, the situation with the contacts of remand prisoners remains virtually unchanged.

The Law of Ukraine "On Pre-Trial Detention" still stipulates that "*Visits by relatives or other persons may be granted to remand prisoners by the administration of the pre-trial detention facility only with the written permission of the investigator or court conducting the criminal proceedings, for at least three times a month. The duration of the visit is set from one to four hours*" (Paragraph 1 of Article 12). Similar restrictions apply to correspondence.

Moreover, contrary to the recommendations, the law still does not provide for the detainees' possibility to make telephone calls.

In 2015, the parliament adopted in the first reading a Draft Law with regard to these issues<sup>14</sup>. In particular, the Draft Law proposes that:

- Visits to remand prisoners be confidential, except when "individual risk assessment requires necessary and proportionate intervention in the interests of national security and public order, to prevent riots or crimes, to protect the health or to protect the rights and freedoms of others". In this case, based on the risk assessment, a justified decision should be made to restrict visits;
- Correspondence of detainees does not undergo checking, except in cases where an individual risk assessment indicates that the correspondence "contains prohibited articles or information that may be used to violate the security rules";
- Telephone conversations be allowed and not be tapped, except on the basis of an individual risk assessment.

Although significantly remedying the situation, this bill does not take into account certain aspects outlined in the CPT standards. For example, under the Draft Law, restrictions on the contacts of remand prisoners may be applied by investigators or the court. Whereas the standards provide that such restrictions may be applied only by a court.

Delays in implementing the Committee's recommendations has already led to Ukraine's violation of Article 8 of the Convention (right to privacy and family life) in judgments of the European Court of Human Rights:

Decision in the case "**Serhii Volosiuk v. Ukraine**" (2009)<sup>15</sup>. The ECHR found a violation because of the fact that administration of the pre-trial detention centre regularly monitored the applicant's correspondence under the Law of Ukraine "On Pre-Trial Detention". The

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<sup>14</sup> The Draft Law on Amendments to the Law of Ukraine "On Pre-trial Detention" (with reference to implementing certain standards of the Council of Europe) No. 2291a // [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=55900](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=55900)

<sup>15</sup> <http://hudoc.echr.coe.int/eng?i=001-91726>

specified law did not comply with the standards of the Convention, as it did not provide grounds for such a monitoring, did not oblige to take a formal decision in this regard and did not provide for the possibility of legal challenging such control (§§ 83-83). Similar findings were reiterated in the judgment of the European Court of Human Rights in case "Belyaev and Digtyar v. Ukraine" (§§ 50-54).

The decision in the case of "**Dovzhenko v. Ukraine**" (2012)<sup>16</sup>. The ECHR found a violation, as the applicant was not allowed to have written correspondence during his stay in the pre-trial detention centre, and the relevant legislative provision in Article 13 of the Law of Ukraine "On Pre-Trial Detention" was of poor quality:

*"The Court notes that the applicable provision of the domestic law does not oblige the competent authority to adopt a formal decision on the request, give reasons for such a decision or provide a copy thereof to the detainee concerned. Nor does that provision lay down a specific remedy enabling the detainee to contest the action or omission by the relevant authority. It appears therefore that due to the lack of these important procedural safeguards the applicant's requests for a correspondence permit could remain unanswered or refused for no valid reason. The lack of the abovementioned guarantees is all the more disconcerting given that the domestic law, as a general rule, prohibits correspondence and obliges pre-trial detainees to seek a permit as an exception thereto, rather than respecting, in principle, a detainee's right to correspondence and ensuring that any interference therewith is provided by and is in accordance with law... the applicable domestic law did not indicate with reasonable clarity the scope and manner of exercise of the discretion conferred on the public authorities in issuing permits for correspondence to detainees..." (§§ 78-79).*

Decision in the case of "**Shalimov v. Ukraine**" (2010)<sup>17</sup>. The ECHR found violations in connection with the poor quality of provisions of the Law of Ukraine "On Pre-Trial Detention", which regulates permission to have visits. As a result, the applicant was unable to see his family for 4 years. The court stated:

*"...these provisions do not indicate with reasonable clarity the scope and manner of exercise of discretion conferred on the public authorities in respect of restrictions on detainees' contacts with family. Indeed the above provisions do not require them to give any reasons for their discretionary decision or even to take any formal decision that could be appealed against, and therefore contain no safeguards against arbitrariness or abuse" (§ 88).*

Decision in the case of "**Feldman v. Ukraine (No. 2)**" (2012)<sup>18</sup>. The ECHR found violations on the same grounds (§ 26). In addition, in this judgment, the Court found a violation of the Convention due to the reason that the applicant, who was being held in the SIZO, was not allowed to attend his father's funeral (§§ 34-36).

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<sup>16</sup> <http://hudoc.echr.coe.int/eng?i=001-108549>

<sup>17</sup> <http://hudoc.echr.coe.int/eng?i=001-97627>

<sup>18</sup> <http://hudoc.echr.coe.int/eng?i=001-108496>

In a new decision in the case of "**Krasnyuk v. Ukraine**" (2019)<sup>19</sup>. The court found violations on the same grounds as the restriction of contacts was not regulated by legislation of proper quality (§ 148).

## *2.4 Detention in police temporary detention centres (ITT)*

### Recommendations

The Committee insists that detention in the temporary detention centres of the National Police is unacceptable if such detention lasts for more than a few days. In particular, the CPT criticized the practice of detention in the ITT for up to 10 days (as well as longer) explained by "logistical reasons" (2017, 17-18). It reiterated its recommendation to the Ukrainian authorities to ensure that detainees are quickly transferred to pre-trial detention centres (2017, 17).

One reason for this approach is that continued detention in the ITT can be used to conceal traces of ill-treatment of detainees (2016, 11).

The Committee also criticized the established practice of returning detainees from the SIZO to the ITT for investigative purposes. It recommended taking measures, including at the legislative level, to end this practice (2016, 13; 2017, 19). It is all the more unacceptable to transfer inmates to the ITT to conduct investigative actions (2017, 17). The transfer may be an exceptional measure, but in this case, the decision on a transfer must be made by the court or the prosecutor (2016, 13).

In addition, the Committee drew attention to the problem of keeping in the ITT persons who have been placed under administrative arrest for up to 15 days. In its opinion, ITTs are not adapted to keep persons for such a period, because:

*"...nearly total absence of any activities (including access to radio, TV and board games).<sup>51</sup> It is also noteworthy that persons detained in ITTs have, as a rule, no right to receive visits and make telephone calls, which is an issue of concern in case of detention period exceeding a few days."* (2017, 49).

In addition, with regard to the ITT of the SSU in Kyiv, the Committee recommended that this institution be handed over to the Ministry of Justice as long as it continues to function as a place of pre-trial detention (2017, 53). This recommendation is supported by Rule 10.2 of the European Prison Rules and is caused by the risk of ill-treatment when the investigating authority has the right to detain suspects and accused persons under investigation. For the same reason, in the late 1990s, pre-trial detention centres were transferred from the Ministry of Internal Affairs jurisdiction to the Ministry of Justice jurisdiction.

Moreover, the Committee considers that the ITT of the SSU in Kyiv is unsuitable as a pre-trial detention centre (2017, 53).

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<sup>19</sup> <http://hudoc.echr.coe.int/eng?i=001-199172>

## Implementation

None of these recommendations has been implemented so far.

The ITT continues to detain people for more than a few days. The Law of Ukraine "On Pre-Trial Detention" states that the procedure and term of detention in a temporary detention centre are determined by the legislation of Ukraine (Part 2 of Article 4). According to paragraph 2.1 of the Internal Code of Conduct in the temporary detention centres of the internal affairs bodies of Ukraine<sup>20</sup>, the term of detention in the police ITT is up to 3 days. However, if it is not possible to deliver prisoners to the SIZO within this period due to the remoteness or lack of proper means of transportation, they may be held in the ITT for a maximum of 10 days.

The Law of Ukraine "On Pre-Trial Detention" also stipulates that in certain cases, which are determined by the need to conduct investigative actions, such persons may be held in temporary detention centres (Part 1 of Article 4). The mentioned Rules also stipulate that inmates who have arrived from pre-trial detention centres and penitentiary institutions may be kept in the ITT in connection with the pending court case or investigative (search) actions (paragraph 2.1). These norms do not reflect the Committee's recommendation on the exclusivity of transfer from the SIZO to the ITT for investigative actions.

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<sup>20</sup> Order of the Ministry of Internal Affairs No. 638 dated 02.12.2008.

### 3. Deprivation of liberty

#### 3.1 Classification of inmates

The Committee supports a flexible classification system of inmates by institutions, as well as accommodation within institutions. From its prospective, a formal classification based solely on the gravity of the crime committed is unacceptable. Instead, the basis for classification should be an individual assessment of the risks of each individual convict.

For example, the CPT drew attention to the problem of classification in the context of the automatic placement of certain categories of inmates to cell-type premises of the maximum-security institutions:

*“As regards placement, Section 140 of the Code on Enforcement of Sentences provides that prisoners sentenced for particularly serious crimes and certain repeat offenders held in maximumsecurity conditions should also be subjected to a strict cellular regime. ... The CPT considers that the placement of prisoners in special conditions of high security should not be merely a result of prisoners’ sentences. In the great majority of cases, such a placement should be decided by the prison authorities after a period of accommodation in a normal location and, in all cases, on the basis of a thorough risk and needs assessment, linked to an individualised sentence plan ... The Committee recommends that the relevant legal provisions be amended accordingly.” (2009, 95).*

This recommendation was later repeated with additional clarifications:

*“the margin of manoeuvre of the penitentiary authorities is unduly restricted by law. Several categories of inmate are automatically held in conditions of maximum security and placed on segregation for preventative purposes for a prolonged period following a court sentence, on the sole basis of their crimes. The CPT must recall its position of principle that decisions concerning the security level to be applied to a given prisoner as well as the measure of segregation for preventative purposes should not be pronounced – or imposed at the discretion of the court – as part of the sentence. The decision whether or not to impose a particular security level or whether segregation for preventative purposes is necessary should lie with the penitentiary authorities, on the basis of an individual risk assessment, and should not be part of the catalogue of criminal sanctions. The Committee reiterates its recommendation that the relevant legal provisions be amended accordingly.” (2012, 55).*

These recommendations were also reminded in 2013 (2013, 129). In addition, as far as the classification procedure goes, the Committee noted the following shortcomings:

*“...the information gathered by the delegation during the visit<sup>21</sup> suggested that the procedure for the placement on “tyurma” regime (and for its possible renewal) continued to display several important lacunas; in particular, there was no systematic oral hearing (specifically on the subject of the placement) before the imposition of the*

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<sup>21</sup> Based on the interviews with convicts held according to the "prison" security regimen, interviews with the management and staff of the correctional colony No. 3 in Kryvyi Rih, and the study of relevant documentation.



*measure, and the prisoners concerned were not informed in a sufficiently detailed manner of the reasons behind the decision<sup>22</sup>, which negatively influenced the exercise of their right to appeal<sup>23</sup>. The CPT recommends that steps be taken to remedy these deficiencies, if necessary through amending the relevant procedural provisions.” (2013, 129).*

Please note that these recommendations are general in nature and relate not only to the matter of placement into cell-type premises of maximum security colonies but also to the classification of inmates by institutions in general.

### Implementation

These recommendations remain unfulfilled.

As before, the CEC of Ukraine provides for a rigid norm, which directly indicates the categories of inmates who are placed in cell-type premises of colonies of the maximum level of security:

*"men sentenced to life in prison;*

*men whose death penalty has been commuted to life imprisonment;*

*men convicted of intentional especially serious crimes;*

*men convicted of committing an intentional serious or especially serious crime while serving a prison sentence;*

*men who have previously been sentenced to imprisonment for any of the following crimes: against the foundations of Ukraine's national security; premeditated murder under aggravating circumstances; hostage-taking; rape, which caused particularly serious consequences, as well as rape of an underage female or male, a minor female or male; robbery committed by an organized group or combined with causing grievous bodily harm; extortion committed by an organized group or combined with the infliction of grievous bodily harm; creation of a criminal organization; gangsterism; terrorist act; encroachment on the life of a law enforcement officer, a member of a public association for the protection of public order and the state border or a military man; encroachment on the life of a judge, jurymen or juror in connection with their activities related to the administration of justice; malicious disobedience to the requirements of the administration of the penitentiary institution; escape from the place of imprisonment or from custody and who have again committed any of the listed crimes, for which they are sentenced to imprisonment” (Part 1 of Article 140).*

The inflexible approach also applies to the distribution among colonies with different levels of security. In particular, inmates are divided according to the level of security depending on

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<sup>22</sup> Naturally, the Committee understands that there may be a reasonable justification for withholding specific security details from a convict.

<sup>23</sup> On the positive side, the prisoners were provided with hard copies of the relevant decision, which also contained information on their ability to appeal against such a decision in court.

the type of crime committed by them (Article 18 of the CEC of Ukraine), and more precisely depending on the sentence length for the crime, because it is the length of the sentence that determines the legal classification of severity of crimes.

### 3.2 Work by inmates

#### Recommendations

The Committee regularly recommends that Ukraine create as many occupation opportunities for inmates as possible. At that, occupation means work, preferably with vocational value; education; sport; recreation/association (2000, 61).

Recommendations on occupation in pre-trial detention centres were mentioned above. They were considered separately, as there are specifics of occupation in the pre-trial detention centre<sup>24</sup>.

As for the colonies, during its first visit, the CPT stated:

*"... With regard to the lack of work for prisoners, a problem highlighted by the authorities, the CPT wishes to stress that the provision of appropriate work to sentenced prisoners is a fundamental part of the rehabilitation process. ... It follows that the employment situation within the prison system should not be dictated exclusively by market forces. The CPT recommends that the Ukrainian authorities introduce special measures to provide more work for prisoners."* (1998, 113, semi-bold saved).

In 1999, The Committee continued to develop this recommendation in the context of the under-occupation of inmates in Bucha Correctional Facility No. 85:

*"...the number of [inmates who had jobs] fluctuated depending on the contracts that the institution could enter into, and this was becoming increasingly more difficult due to the economic situation. ... Job opportunities should not depend solely on market economy factors. Active state policy should be initiated, if necessary, it should be based on special incentives"* (1999, 42).

Later, these recommendations were also supplemented by the clarification that this refers to special incentives in the form of placing of orders for prison production (2000, 61). In the context of financial difficulties, the Committee also recommended improving the self-sufficiency of institutions, for example, by encouraging their agricultural production (2000, 60).

From the Committee's point of view, involvement in work and other types of occupation is not only an essential part of rehabilitation and resocialisation, but it also contributes to the establishment of a more secure environment within prisons (2017, 73). Therefore, all inmates who can and want to work should have such an opportunity (2009, 114).

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<sup>24</sup> See Section "2.2 Occupation of detainees".

At the same time, there should be a plan for serving a sentence, including a programme of purposeful activities tailored to individual needs (2012, 26; 2017, 73).

The work of inmates should not be subordinated to the financial interests of penitentiary institutions (2012, 26). In making this recommendation, the Committee referred to Rule 26.8 of the European Prison Rules:

*“Although the pursuit of financial profit from industries in the institutions can be valuable in raising standards and improving the quality and relevance of training, the interests of the prisoners should not be subordinated to that purpose. “*

As stated in the official Commentary to the European Prison Rules, this Rule is aimed at ensuring that the motives of economic gain do not lead to ignoring the positive impact of work on the education of inmates and the normalization of their lives<sup>25</sup>.

### Implementation

In recent years, the provision of labour for inmates has become increasingly difficult. This is due to a number of factors:

- Complex regulations pertaining to the involvement of inmates in labour. They stipulate that inmates may work under an employment or civil contract (Article 118 of the CEC of Ukraine). In turn, this entails a number of guarantees and tax obligations that make the work of inmates more expensive (minimum wage, income taxes, social security contributions, etc.);
- Dependence of the penitentiary system on the availability of business that wants to involve inmates to work;
- Difficulties in winning tenders from the state, because penitentiary enterprises have to compete with other enterprises on equal terms.

Other factors that make penitentiary enterprises uncompetitive:

- Fee for the use of inmates' labour, which stipulates that for the involvement of inmates in work entrepreneurs must pay a fee equal to 50% of their salary for the use of labour<sup>26</sup>;
- Legal separation of the penitentiary management and the enterprise management in the penitentiary, which complicates the mechanism of interaction and development of economic activity;

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<sup>25</sup> Commentary on Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules, p. 56.

<sup>26</sup> Paragraph 7 of the Resolution of the Cabinet of Ministers of Ukraine No. 653 "About Measures to Ensure Activity of the State Criminal-Executive service".

- Low level of qualification of inmates;
- Insufficient incentives that can motivate inmates.

In addition, public procurement legislation deprives the penitentiary institution of the opportunity to purchase products made by other penitentiary institutions without completing a full procurement procedure. This means that the provision of labour to inmates depends on whether the penitentiary enterprise is able to make a better offer than other economic entities operating in the market. Given that the penitentiary system is not competitive on the market, this reduces the opportunities for job creation for inmates.

Thus, the CPT's recommendations on stimulating the economic activity of the prison system in order to create jobs for inmates remain unfulfilled. In fact, the prison system enterprises carry out economic activities on equal terms with other business entities, in particular as regards taxation. Moreover, certain conditions are more burdensome, for example, with regard to the extra fee to involve inmates' labour.

### 3.3 Contacts with the outside world

#### 3.3.1 Frequency of visits

##### Recommendation

In 2016, the Committee recommended that all prisoners (both convicted and on remand) be entitled to at least one one-hour visit per week (2016, 37). It later pointed out that no changes had taken place in this area (2017, 101).

##### Implementation

Part 4 of Article 110 of the Criminal-Executive Code of Ukraine establishes the following frequency of visits:

*"inmates in the maximum security section are provided with one short-term visit per month and one long-term visit in three months;*

*inmates in the re-socialization section are provided with one short-term visit per month and one long-term visit in two months;*

*inmates in the social adaptation and social rehabilitation section are provided with short-term visits without restrictions and long-term visits on a monthly basis".*

Thus, the CPT's recommendation was implemented only for inmates held in the social adaptation and social rehabilitation section. Note that the recommendation for these inmates is even "overfulfilled", as there are no restrictions on their short-term visits.

By the way, the Committee has previously called for more active accommodation of inmates in social rehabilitation units (2009, 157).

### 3.3.2 Visits fee

#### Recommendations

The Committee has repeatedly called on the Ukrainian authorities to ensure that inmates and their relatives do not pay for visits.

In 2002 The CPT stated:

*“... the imposition of a financial contribution is an obstacle to visits for a number of prisoners and their relatives. For its part, the CPT considers that the opportunity to receive visits should never be dependent on such a contribution. Therefore, it recommends that the Ukrainian authorities ensure, without delay, that short visits are exempt from all financial contribution on the part of the prisoners or their relatives. It also invites the authorities to abolish, as soon as possible, the practice of charging for “long” visits.” (2002, 136).*

Recommendations in this regard were made later as well (2005, 147; 2009, 153).

#### Implementation

Visits in Ukrainian penitentiaries are still paid.

At the same time, if the fee for a short-term visit is moderate and ranges from 5 to 20 hryvnias depending on the heating season, the fee for long-term visits can reach several hundred hryvnias per day. Payment for long-term visits varies significantly depending on the institution and material conditions in the premises for prolonged visits. This is due to the fact that the administration's discretion in setting the payment is not clearly regulated.

The legal basis for establishing payment is the Decree of the Cabinet of Ministers of Ukraine No. 1017 dated 08.08. 2007, which approved the "List of paid services that can be provided by penitentiary bodies and institutions, pre-trial detention centres (their workshops) and other institutions of the State Criminal-Executive Service, which are maintained at the expense of budget funds." Paragraph 7 of this Decree states that such services include "provision of places in visit rooms for inmates and their relatives."

### 3.3.3 Conditions for short-term visits

#### Recommendations

The Committee criticizes the organization of short-term visits for inmates in specially equipped booths through a transparent partition. It recommends that visits take place in a more open environment:

*“The CPT calls upon the Ukrainian authorities to: ... modify the facilities for short-term visits in order to enable prisoners to receive visits under reasonably open conditions. Open visiting arrangements should be the rule and closed ones the exception, such exceptions to be based on wellfounded and reasoned decisions following individual assessment of the potential risk posed by a particular prisoner. Further, the capacity of the short-term visiting facilities should be increased to meet the prison population’s needs” (2009, 153).*

This recommendation applies to both convicted and remand prisoners (1998, 169; 2000, 123; 2002, 136).

Recently, the Committee also recommended amending the relevant by-laws to allow “open” visits and to make “closed” visits the rule for both remand and sentenced prisoners (2017, 102).

#### Implementations

The new Internal Prison Rules, adopted in 2018, partially implemented this recommendation. Pursuant to Paragraph 1 of Section XIV of these Rules:

*"Taking into account the inmate’s behaviour while serving his sentence, violations of the rules of conduct during previous visits, as well as the psychologist’s recommendations, short-term visits can be provided either in open (without a solid partition glass and intercom) or closed conditions (through a solid partition glass and intercom).*

*Short-term visits in closed conditions take place in cases of a high risk of violation by the inmate of the established visiting procedure, as well as in the case provided for in Paragraph 1 of Section XV of these Rules”<sup>27</sup>.*

However, this rule does not fully comply with the recommendations of the CPT. In particular, it provides for wide discretion on the part of the administration as to the conditions under which short-term visits should take place. This discretion is expressed in the stated wording: *"taking into account the behaviour of the convict while serving his sentence, violations of the rules of conduct during previous visits, as well as the recommendations of a psychologist, short-term visits may be provided..."*.

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<sup>27</sup> The referenced rule provides as an exception the case when the person who came to visit refused to have his/her things and clothes inspected by the institution staff.

In order to fully implement the recommendations, it is necessary that open visits be provided as a rule and closed visits as an exception. Therefore, visits could be closed, only if justified by a risk assessment.

By the way, risk assessment has not yet been implemented in prisons. As human rights advocates point out, “there is no methodology for conducting these assessments. Different institutions have different approaches to making these decisions. As a rule, this is done at the discretion of intelligence officers or psychologist.”<sup>28</sup> At the same time, pilot assessments of risks and needs are currently being piloted in some institutions<sup>29</sup>.

The situation with the implementation of the CPT's recommendations with regard to remand prisoners is similar. In accordance with the SIZO's Internal Prison Rules, the decision of the administration to hold a visit in open or closed conditions is made on the following grounds:

*"In determining the open or closed conditions of visits, the SIZO administration takes into account the behaviour of the sentenced or reman prisoner during his stay in the SIZO, violations of the rules of conduct during previous visits, as well as the recommendations of a psychologist" (paragraph 1.3 of Section VII of the SIZO IPR).*

Thus, the CPT's recommendations are not fully implemented with regard to open visits "as a rule" and closed visits "as an exception."

Further, visits at pre-trial detention centres are allowed by the decision of the investigator or court conducting criminal proceedings, which also contradicts the recommendations of the CPT<sup>30</sup>.

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<sup>28</sup> Ye. Zhupanov, Ye. Nietsvietaiev Analytical report on the results of monitoring visits to the SCES institutions in 2019. - Kyiv: Ukrainian Institute for Human Rights, 2019. - P. 34 // <https://ukrajina.fnst.org/sites/default/files/uploads/2020/02/12/analitichnyyzytmonitvity2019.pdf>

<sup>29</sup> Piloting a tool for assessing the risks of re-offending and individual planning of social and educational work with convicts in penitentiaries // <https://www.kvs.gov.ua/peniten/control/main/uk/publish/article/903641>

<sup>30</sup> See Section 2.3 “Contacts with the outside world of remand prisoners (correspondence, visits and telephone calls)”.



### 3.4. Disciplinary isolation

#### 3.4.1 DIZO, PKT and DPK placement procedure

##### Recommendations

In its recommendations, the Committee assumes that additional isolation within the institution has serious negative consequences for the psychological state of prisoners<sup>31</sup>. Such isolation has a particularly devastating effect on the mental, physical and social health of inmates<sup>32</sup>.

In this regard, the CPT pays special attention to the procedure of application of disciplinary sanctions. Such an application should provide for appropriate procedural safeguards.

In particular, the Committee recommends that inmates placed in the DIZO and PKT:

- Be informed in writing about the charges against them;
- Have sufficient time to prepare their defence;
- Have the right to call witnesses to their defence, as well as the right to directly examine the evidence against them;
- Receive a copy of the decision, which contains the grounds for placement and clear information about their rights, including the right to legal aid and available ways to appeal decisions to an independent authority (e.g. a court) (2009, 147).

Similar recommendations were made for sentenced and remand prisoners (2013, 174), as well as inmates placed in the DPK (2012, 57).

The Committee later drew attention to the partial implementation of these recommendations. However, it noted that the prisoners interviewed did not receive free legal aid when placed in disciplinary detention (although they were entitled to it). Inmates did not receive a copy of the decision to impose a disciplinary sanction on them either (2017, 104).

In addition, the Committee has repeatedly recommended for the doctors not to certify that the inmates' state of health allows their placement in a DIZO/PKT. In the Committee's view, such certification undermines the positive relationship between inmates and doctors (2005, 144; 2009, 151). In addition, it is contrary to Rule 43.3 of the European Prison Rules.

With regard to placement in the DPK, the Committee noted the following comments:

*“A large number of the prisoners interviewed by the delegation were subject to this regime for extensive periods of time (e.g. several years) and did not see any prospect of being moved back to a normal location. Some saw their continued placement as a*

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<sup>31</sup> 21<sup>st</sup> General Report of the CPT (CPT/Inf(2011)28)

<sup>32</sup> In its statements, the Committee refers to a specialized study: Sharon Shalev A Sourcebook on Solitary Confinement, Mannheim Centre for Criminology, London, 2008 // [www.solitaryconfinement.org](http://www.solitaryconfinement.org)

*retaliation measure for having made complaints. Most prisoners stated that they had not been heard before the relevant decisions had been taken and had not been informed in writing of the reasons for their placement in conditions of enhanced control. It also appeared during the visit that certain inmates had been placed in such conditions on account of their mental disorder.*

*The Committee must stress that placement in conditions of enhanced control should not be a purely passive response to the prisoner's attitude and behaviour. Instead, reviews of placement should be objective and meaningful, and form part of a positive process designed to address the prisoner's problems and permit his (re-)integration into the mainstream prison population. The prisoner concerned should always be offered the opportunity to express his views on the matter and should be informed in writing of the reasons for the measure and, if necessary, its renewal (it being understood that there might be reasonable justification for withholding from the prisoner specific details related to security); this should, inter alia, enable him to make effective use of avenues for challenging that measure before an independent authority. Further, placement in conditions of enhanced control should not be imposed for any longer than is necessary in each individual case. Moreover, the CPT must stress that placing inmates with mental disorders in such conditions for prolonged periods amounts to a denial of adequate care; where necessary, such persons should be transferred to specialised facilities. The Committee recommends that the Ukrainian authorities review the procedure for placement in conditions of enhanced control, in the light of the above remarks." (2009, 96).*

### Implementation

In 2016, these recommendations were partially implemented<sup>33</sup>. In particular, in accordance with the then amended Article 135 of the CEC of Ukraine, inmates who are subject to disciplinary action have the right to:

*"receive information on disciplinary action against them, including documents related to the case, not later than one day before the disciplinary commission meeting begins;*

- be present at the disciplinary commission meeting when the issue of disciplinary action against him is being considered;*
- get acquainted with the materials of disciplinary proceedings and personal file, make extracts, make copies of them;*
- provide explanations, objections and petitions orally and in writing, provide evidence;*
- submit a request no later than twenty-four hours before the appointed time of the hearing to involve in the disciplinary commission meeting persons whose presence is appropriate to establish the circumstances of the offence and determine the degree of responsibility" (Part 5 of Article 135).*

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<sup>33</sup> Please note that these CPT recommendations remain unfulfilled with regard to detainees.

Prisoners have the right to use the services of a lawyer or a specialist in the field of law of his choice during the preparation for the disciplinary commission meeting, who will represent his interests during the commission meeting. They also were included in the list of persons entitled to free legal aid (Paragraph 7, Part 1 of Article 14 of the Law of Ukraine "On Free Legal Aid").

In addition, placement into the PKT since 2016 belongs to the jurisdiction of the court (Part 6 of Article 135 of the CEC of Ukraine).

The mentioned remarks of the CPT regarding the non-participation of lawyers in the disciplinary commissions are not related to the legislative regulation, but to the practice of non-compliance with the mentioned norm of the CEC of Ukraine. One of the reasons for such practice is the lack of procedure for involvement of lawyers who provide free legal aid to participate in the disciplinary commissions. Such a procedure is not enshrined in regulations. There are no effective agreement of cooperation between the penitentiary system and free legal aid centres either.

Along with that, these recommendations of the Committee were not implemented with regard to the placement of inmates in the DPK.

### 3.4.2 Period of detention in the DIZO, PKT and DPK

#### Recommendations

The Committee recommends that measures in the form of placement in the DIZO, PKT and DPK be always applied for the shortest time possible (2012, 57).

In the case of repeated application of disciplinary action in the form of placement in disciplinary isolation, such isolation must be interrupted for a sufficient time every 10-15 days<sup>34</sup>. With regard to placement in the DPK and PKT, such decisions should be reviewed no later than one month after the first application (2012, 57).

In 2013, the CPT recommended reducing the maximum length of juvenile inmates' detention in DIZO from 5 to 3 days (2013, 168). However, due to the adoption of the UN Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules), in 2017 the CPT recommended the complete abolition of this type of punishment for minors (2017, 110).

As far as detention in the DPK concerned, it is recommended to be reviewed on a regular basis, but at least every two months. In addition, inmates should be fully informed about the reasons for the application and continuation of this measure (2016, 46).

#### Implementation

These recommendations have not been implemented. In Ukraine, the repeated, continuous use of the DIZO/PKT/DPK in various combinations is still practiced, as it is not prohibited by law. However, it is prohibited to re-apply a penalty of the same type (Part 10 of Article 134 of the CEC of Ukraine).

As for the duration of juvenile inmates' placement in the DIZO, such placement can still last up to 5 days (Part 1 of Article 145 of the CEC of Ukraine).

Contrary to the CPT's recommendation, detention in the DPK does not provide for a regular review of the necessity of such a measure. According to the law, such a measure shall be terminated, if the inmate implemented a "special individual program that provides for measures of individual educational, psychotherapeutic, psychocorrective nature" (Parts 3-4 of Article 97 of the CEC of Ukraine). As human rights advocates point out: "the analysis of the CEC of Ukraine and the Internal Prison Rules confirms that these documents do not specify for how long this program should be drawn up, whether this term can be extended and under what conditions, whether the program can be changed, implemented early and so on. Such legal uncertainty creates grounds for abuse by correctional officers"<sup>35</sup>. In practice, this leads to long-term detention of inmates in these sections, sometimes for years<sup>36</sup>.

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<sup>34</sup> In its Report regarding the visit in 2016, The Committee stated that such a break should last for "a few days" (2016, 46).

<sup>35</sup> Ye. Zhupanov, Ye. Nietsvietaiev Analytical report on the results of monitoring visits to the SCES institutions in 2019. - Kyiv: Ukrainian Institute for Human Rights, 2019. - P. 50 // <https://ukrajina.fnst.org/sites/default/files/uploads/2020/02/12/analitchnyyzvitmonitvizyty2019.pdf>

<sup>36</sup> Same.

### 3.4.3 Restrictions on disciplinary detention

#### Recommendations

As noted above, the Committee considers detention of inmates in disciplinary isolation to be particularly detrimental to the mental and other health of inmates. For this reason, the CPT has developed some guidelines with regard to restrictions that apply during such additional isolation. For example, the requirements of proportionality and necessity must be met<sup>37</sup>:

- **Proportionality.** Any additional restriction of prisoners' rights must be related to the actual or potential harm that the prisoner caused or will cause in the prison through his actions. The level of actual or potential harm must be at least as serious as the harm caused by the application of the restriction. The longer the measure, the more justified the motive for its application should be;

- **Necessity.** Only restrictions that are necessary for safe, orderly detention and for justice are allowed. Accordingly, there should be no automatic deprivation of the right to visits, telephone calls, correspondence, or access to resources that are normally available (such as access to printed materials). Similarly, the treatment should be flexible enough to allow for the relaxation of any restrictions that are not necessary in individual cases.

Based on these principles, the Committee has repeatedly criticized the restrictions that automatically apply to inmates in the DIZO and PKT.

For example, with regard to contacts with the outside world, it indicated:

*"... inmates placed in DIZO/kartzer and PKT cells are, as a rule, automatically deprived of contact with the outside world (i.e. visits, letters and phone calls). The CPT recommends that the Ukrainian authorities take steps to ensure that placement of prisoners in a DIZO/kartzer and PKT does not include a total prohibition on family contacts (see also Rule 60 (4) of the European Prison Rules). Any restrictions on family contacts as a form of punishment should be used only where the offence relates to such contacts." (2009, 150; see also 2013, 108 and 2017, 109).*

Besides, the Committee recommended that inmates not be prohibited from receiving parcels/packages during their detention in the DIZO/PKT (1999, 52; 2002, 133; 2005, 143). Inmates in the DIZO and PKT should be able to keep reading materials (2005, 141; 2013, 108-109).

In addition, inmates held in the PKT and DPK should have the same access to activities as other inmates, on the basis of a specially designed program for the period of detention in these facilities and taking into account the risk assessment (2000, 100, 119; 2009, 98; 2013, 131).

#### Implementation

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<sup>37</sup> Paragraph 55 of the 21st General Report (21st General Report on the CPT (CPT/Inf (2011) 28).

The restrictions criticized by the Committee are still applied on the basis of legislation. Thus, the above-mentioned recommendations have not yet been implemented. In particular, Part 11 of Art. 134 of the CEC of Ukraine provides:

*"During detention in a Detention Cell, solitary confinement cell or a cell-type room (single-cell), inmates are prohibited from having visits, with the exception of lawyers ..., purchasing food and basic necessities, receipt of parcels (packages) and wrappers, use of board games "(semi-bold added - author).*

Inmates are also prohibited from taking reading materials with them to the DIZO and PKT, as the Internal Prison Rules of penitentiary institutions provide for an indirect prohibition in this regard:

*"Inmates are not allowed to take food and **personal belongings** with them to the DIZO or solitary confinement, except for towels, soap, toothpaste (powder), toothbrush, toilet paper, pencils, pens, notebooks, postage stamps, envelopes, tobacco products and matches (disposable lighter), and in institutions for women, in addition to the above list, special hygiene products. Tobacco products and matches (disposable lighters) are issued to inmates only during daily walks.*

*Inmates are prohibited from taking with them to the PKT (solitary cells) food, personal belongings, except for basic necessities (a watch, **textbooks**, pencils, fountain pens, notebooks, postage stamps, cards, envelopes, toothpaste (powder), toothbrush, toilet paper), tobacco products and matches (a disposable lighter). Tobacco products and matches (disposable lighters) are issued to inmates only during daily walks" (Paragraph 6 of Section XXI, italic added).*

Thus, inmates placed in the DIZO and PKT are prohibited from taking reading materials with them, except for "textbooks", which are allowed to be taken only in the PKT.

The recommendation that inmates placed in the PKT and DPK have the same access to activities as other inmates is not followed either. First of all, inmates placed in the PKT must work separately from other inmates (Paragraph 12 of Article 134 of the CEC Code of Ukraine). As for inmates placed in the DPK, their involvement in work is not practised, despite the possibility of allowing them to work (Section XXXII of the penitentiary institution IPR). This is due both to the insufficient amount of work and the requirement of their isolation from other inmates during such work and to the fact that such inmates often refuse to work for "subcultural reasons".

### *3.4.4 Article 391 of the CC of Ukraine*

#### Recommendation

In 2016, The Committee noted that in some colonies disciplinary practices were used to further prosecute inmates under Article 391 of the Criminal Code of Ukraine (malicious disobedience to the requirements of the penitentiary administration). As a result, the Committee recommended to abolish this Article (2016, 46).

This recommendation was repeated later, calling for abolishment of Article 391 "without further delay" (2017, 103).

#### Implementation

This recommendation has not yet been implemented, despite the existence of relevant bills<sup>38</sup>. According to court statistics for 2019, 86 people were convicted under this article<sup>39</sup>.

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<sup>38</sup> See, for example: the Draft Law on Amendments to Certain Legislative Acts of Ukraine (concerning the removal of Article 391 of the Criminal Code of Ukraine) No. 9228 dated 19.10.2018, which was withdrawn due to non-adoption during the previous convocation of the Verkhovna Rada of Ukraine.

<sup>39</sup> [https://court.gov.ua/inshe/sudova\\_statystyka/rik\\_2019](https://court.gov.ua/inshe/sudova_statystyka/rik_2019)

## 3.5 Basic needs of inmates

### 3.5.1 Hygiene of inmates

#### Recommendations

For more than 20 years, the Committee has recommended to Ukraine to provide sufficient amount of hygiene products for inmates. In particular, inmates should be provided with key hygiene items free of charge, as well as with products for cleaning their cells (1998, 125, 130; 1999, 33, 41; 2000, 83; 2009, 106, 113, 121; 2017, 70). In addition, the Committee criticizes situations where inmates have to wash and dry clothes in living premises (2000, 83).

The Committee also recommends that inmates have the right to take a shower at least twice a week (2009, 89; 2017, 70). Upon that, the reference is made to Rule 19.4 of the European Prison Rules, which provides:

*“Adequate facilities shall be provided so that every prisoner may have a bath or shower, at a temperature suitable to the climate, if possible daily but at least twice a week (or more frequently if necessary) in the interest of general hygiene.”*

In addition, the Committee recommends that inmates suffering from tuberculosis have the right to take shower daily (2009, 135).

#### Implementation

Despite numerous CPT recommendations in this regard, Ukrainian prisoners still do not receive hygiene items as a rule.

The situation was expected to be remedied by the recently updated Internal Prison Rules of penal colonies. However, despite proposals to enshrine the obligation to provide inmates with key hygiene products (shampoo, toothbrush and toothpaste, shaving products, women's hygiene products)<sup>40</sup>, this issue has not been properly regulated. At the same time, inmates are obliged to observe sanitary and hygienic norms and have a “neat appearance”.

However, the mere presence of a regulation does not guarantee the implementation of the relevant norm in practice. For instance, the Internal Prison Rules contain a rule on the provision of these items to inmates, although they are not issued on general terms, but only upon request of the prisoner and if he has no funds. However, funding for purchasing these items is not foreseen<sup>41</sup>:

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<sup>40</sup> V. Chovgan O. How to Eradicate Sovietism from the Ukrainian Prison. Changes to the Internal Prison Rules of the Penal Colonies and Pre-trial Detention Centers in the Light of International Standards / V. O. Chovgan; NGO "Kharkiv Human Rights Protection Group". - Kharkiv: Human Rights, 2017. - P. 133.

<sup>41</sup> D. Zhupanov Analytical Report on the Results of Monitoring Visits to the Institutions of State Criminal-Executive Service of Ukraine in 2018. – Kyiv: Ukrainian Institute of Human Rights, 2018. - P. 43.



The issue of providing hygiene items is also separately regulated by the norms on bathing and laundry<sup>42</sup>. However, these Norms do not provide for the provision of a basic range of hygienic products to inmates. For example, only provision of soap is obligatory.

As for the frequency of taking a shower in penitentiary institutions, the norm provides that inmates can take a shower at least once a week. A separate order sets the frequency of washing<sup>43</sup>. It stipulates that men can wash once a week and women twice a week. Also, cooks and bakers of institutions, in addition to the obligatory weekly washig, shall take a shower every day (Paragraphs 3.1-3.2).

Thus, the Committee's recommendation on the frequency of showering has been implemented only for women and remains unfulfilled for men.

Contrary to the Committee's recommendations, inmates suffering from tuberculosis are not entitled to daily showers<sup>44</sup>.

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<sup>42</sup> Regulation on the Rrganization of Bath and Laundry Services for Persons Held in Penal Colonies and Pre-trial Detention Centres (Order of the Ministry of Justice of Ukraine No. 849/5 dated 08.06.2012).

<sup>43</sup> Ibid.

<sup>44</sup> Ibid.

### 3.5.2 Nutrition of inmates

#### Recommendations

The Committee draws attention to the poor quality of food served to inmates and recommends it be improved (2002, 87; 2009, 106; 2017, 70).

#### Implementation

On December 27, 2018, the Cabinet of Ministers adopted a Resolution on new food standards that apply to persons held in penitentiary institutions<sup>45</sup>. The entry into force of this Resolution was **postponed until 2021**.

Initially, the rules were to allow the purchase of food services for all categories of inmates, arrested persons and remand detainees. In essence, this would mean the possibility of outsourcing food services. That is, private companies could be authorised to provide full range of food services in penitentiaries, as opposed to just supplying certain food products. However, even before the entry into force, the possibility of outsourcing was abolished<sup>46</sup>.

However, the specified rules have several positive aspects. They diversify the menu and slightly increase nutritional standards. Milk and eggs should be included in the diet, which was not the case before.

However, the rules also contain provisions that have consolidated the old problems:

- Discrimination in portions remains, depending on where the person is imprisoned and his/her status. For example, the portion of bread in a colony is 500 grams a day, and in a pre-trial detention centre - 450 grams a day. Two eggs a week are allowed in the colony, and one in the pre-trial detention centre. In the colony prisoners shall be provided with 500 grams of potatoes, and in the pre-trial detention centre – with 400 grams;
- The Soviet punishment through "cut rations" is still in effect. Inmates placed in the DIZO and PKT are provided with less bread and meat than other inmates. No milk or eggs is provided for them at all. The same applies to lifers and those sentenced to solitary confinement.
- Lack of fruits. They have to be provided only to juveniles, while in adult colonies, only dried fruits shall be provided.

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<sup>45</sup> Resolution of the Cabinet of Ministers of Ukraine "On food standards for persons detained in penitentiaries and pre-trial detention centres of the State Criminal-Executive Service, temporary detention centres of the State Border Guard Service, temporary detention centres, reception centres for children and other detention facilities of the National Police and specially designated places for temporary detention (temporary detention centres) of the Security Service" (No. 1150 dated December 27, 2018).

<sup>46</sup> On amendments to the Resolution of the Cabinet of Ministers of Ukraine No. 1150 dated December 27, 2018 (Resolution of the Cabinet of Ministers of Ukraine No. 1063 dated December 11, 2019).

The problem of norms is also the ability to substitute food norms. For instance, meat can be substituted with byproducts, eggs or fish. Fish can be substituted, for example, with milk. And milk with fish. An egg can substituted with 10 grams of butter. 100 grams of fruit can be substituted with 20 grams of jam. Dried fruit can be substituted with tea. In general, the rules provide many opportunities for this type of food products substitution.

Given the above, food supply, even at the official level, is inadequate and contains discriminatory norms.

### 3.6 Privacy

#### Recommendations

The Committee draws attention to certain aspects of ensuring the right of inmates to privacy. For example, in 2012, it criticized excessive intrusion into privacy by installing video cameras in inmates' living premises:

*“The CPT appreciates that videosurveillance in cells can be a useful safeguard in particular cases, for example when a person is considered to be at risk of self-harm or suicide or if there is a concrete suspicion that a prisoner is carrying out activities in the cell which could jeopardise security. However, any decision to impose videosurveillance on a particular prisoner should always be based on an individual assessment of real risks and should be reviewed on a regular and frequent basis. Steps should also be taken to ensure that prisoners subject to CCTV surveillance are guaranteed reasonable privacy when using the toilet/sanitary annexe.*

*Videosurveillance is a gross intrusion into the privacy of prisoners and renders the whole regime even more oppressive, in particular when applied for prolonged periods. Accordingly, the Committee is opposed to the routine installation of CCTV cameras in cells and considers that the resources devoted to such schemes can more usefully be deployed by having staff interact with prisoners who pose high risks. When CCTV cameras are installed, prisoners must be fully informed of this. In addition, it is important that the recordings are kept for at least 48 hours in all cases and indefinitely when a reportable incident has occurred.*

*The CPT recommends that the Ukrainian authorities review the use of videosurveillance in cells in penitentiary establishments and adopt detailed regulations, in the light of these remarks.”(2012, 52).*

The Committee made this recommendation mainly for those sentenced to life imprisonment due to their confinement in cells and more frequent use of video cameras in these premises (2014, 53; 2016, 62). However, it is broader in nature and concerns the use of video surveillance of inmates in general.

In this context, it is worth mentioning the CPT's recommendations that artificial lighting in cells should not be on at night except when required in a particular case (1998, 123; 2000, 73; 2002, 100; 2005, 108).

## Implementation

The relevant Order of the Ministry of Justice<sup>47</sup> stipulates that video cameras in colonies may be installed in living premises, as well as in the DIZO, PKT and DPK (para. 8 of Section V). However, this Order does not provide a guarantee against excessive use of video surveillance, as required by the Committee's recommendations. In particular, it stipulates that video cameras are installed taking into account their functional purpose and technical characteristics, as well as the need to perform tasks to ensure the security, prevent escapes and other crimes, violations of the procedures of serving a sentence. The place of installation and the type of a camera are determined by a commission formed pursuant to the Order of the colony head or a person performing his duties (Paragraph 2 of Section VII).

Contrary to the Committee's recommendations, the Order does not provide for an individual risk assessment in the case of video surveillance of specific prisoners. It has a wide discretion, which allows to continue the systematic use of video surveillance in living premises without proper justification.

At the same time, the Order follows the recommendations of the Committee on the inadmissibility of video surveillance of the sanitary annex and on the period of storing recordings from cameras on the server.

As for the permanent night lighting, the new Internal Prison Rules of pre-trial detention centres no longer provide for this requirement. However: *“at night time (between 22:00 and 06:00) the staff of the duty shift during the cells inspection in order to prevent remand or sentenced prisoners from committing suicide, causing injuries or preparing to escape from custody turns on the after-hours (night) lighting. The level of the lighting shall not interfere with the rest and sleep of prisoners and inmates”* (Paragraph 1.2 of Section III). However, this rule is often not followed in practice, and the light stays on at night.

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<sup>47</sup> Procedure for the use of technical means of supervision and control in correctional colonies and juvenile correctional facilities of State Criminal-Executive Service of Ukraine (Order of the Ministry of Justice of Ukraine No. 2025/5 dated June 26, 2018).

## 4. Lifers

### 4.1 Prospects of release from life imprisonment (LI)

#### Recommendations

The CPT has twice recommended for Ukraine to create a realistic prospect of release from life imprisonment (LI) (2016, 40; 2017, 81).

It pointed out:

*“... the Committee must recall the basic principle that, in order to reduce the harmful effects of imprisonment and to promote the resettlement of prisoners under conditions that seek to guarantee the safety of the outside community, the law should offer a realistic prospect of conditional release to all sentenced prisoners, including life-sentence prisoners<sup>48</sup>. This is still not the case at present<sup>49</sup>.”*

***The CPT once again calls upon the Ukrainian authorities to amend the legislation with a view to making conditional release (parole) available to all life-sentenced prisoners, subject to a review of the threat to society posed by them on the basis of an individual risk assessment. Reference is also made here to the CPT’s 25th General Report<sup>50</sup>”*** (2017, 81, bold text as in the original).

#### Implementation

The recommendation remains unfulfilled, despite a number of initiatives in this regard. For example, in recent years the relevant Draft Laws have not been adopted (Draft Law No. 7337 “On the Penitentiary System”, as well as No. 6334 “Draft Law on Amendments to Certain Legislative Acts of Ukraine on Adaptation of the Procedure for Applying Certain Institutions of Criminal Law to European Standards”). The Constitutional Court continues to consider the relevant constitutional complaint<sup>51</sup>.

On March 12, 2019, the European Court ruled in the case of Petukhov v. Ukraine (No. 2), which found violation of Article 3 of the Convention by Ukraine due to the lack of a realistic

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<sup>48</sup> See Recommendation Rec (2003) 22 of the Cabinet of Ministers with regard to conditional release (early release) dated September 24, 2003. See in this connection, the judgment of the Grand Chamber of the European Court of Human Rights in the case of Vinter and Others v. the United Kingdom. See also decision in the case of László Magyar v. Hungary (Application No. 73593/10), adopted on May 20, 2014.

<sup>49</sup> Lifers are entitled to parole only after life sentence has been substituted with a term of at least 20 years by a presidential pardon. It was alleged that the draft legislative changes provide for the reduction of this requirement to 15 years and was forwarded to the Rada, but it is unclear when this draft will be considered and adopted.

<sup>50</sup> See Paragraphs 67-81 of CPT/Inf Report (2016) 10 (<https://rm.coe.int/1680696a9d>) i, in particular, Paragraph 73.

<sup>51</sup> See in detail Chovgan Vadym Constitutional Complaint against Life Imprisonment // <http://khp.org/index.php?id=1522760522>

prospect of release for lifers. Moreover, the ECHR called upon Ukraine to establish the mechanism for early release, which would solve this problem.

According to a recent study on the use of life imprisonment in the world, Ukraine is at the top of the ranking of countries with the highest number of life sentences. In addition, Ukraine ranks first among 50 European countries in the number of lifers without the possibility of release<sup>52</sup>.

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<sup>52</sup> Dirk van Zyl Smit, Catherine Appleton, *Life Imprisonment: A Global Human Rights Approach*, Harvard University Press, 2019, Table B1 (annexes).

## 4.2 Separate detention from other categories of inmates

### Recommendations

The Committee made recommendations regarding the separate detention of lifers immediately after the appearance of this category of inmates in Ukraine as a result of the abolition of the death penalty.

For example, in 2000, The CPT stated:

*“The CPT wishes to stress that it can see no justification for keeping prisoners whose death sentences have been commuted to life imprisonment apart from other prisoners serving lengthy sentences. In many jurisdictions, life-sentenced prisoners are not viewed as necessarily more dangerous than other prisoners; many of them have a long-term interest in a stable and conflict free environment. Risk/needs assessment of life-sentenced prisoners should therefore be made on a case by case basis. Such an approach will also make it possible for the prisoners in question to be accommodated as close as possible to their homes, and will improve their contact with the outside world.”*(2000, 75).

The Committee later criticized the CEC of Ukraine for stipulating separate detention of lifers:

*“...the CPT must stress that it can see no justification for systematically segregating lifers<sup>53</sup>. Reference should be made in this regard to the Council of Europe’s Committee of Ministers’ Recommendation (2003) 23 of 9 October 2003 on the management by prison administrations of life-sentence and other long-term prisoners and the report accompanying the recommendation, which recalls that the assumption is often wrongly made that the fact of a lifesentence implies that a prisoner is dangerous. The placement of persons sentenced to life imprisonment should therefore be the result of a comprehensive and ongoing risk and needs assessment, based on an individualised sentence plan, and not merely a result of their sentence. The CPT recommends that the Ukrainian authorities review the legislation and practice as regards the segregation of life-sentenced prisoners, in the light of the above remarks.”* (2009, 93).

In 2012, The Committee again recommended that the relevant norms of the CEC of Ukraine be amended. At the same time, a number of interlocutors of the delegation during the visit in 2012 (including penitentiary staff) believed that there were no grounds for keeping many lifers separate from other inmates (2012, 54).

The CPT later called upon the Ukrainian authorities to integrate inmates sentenced to life in prison into the general population of inmates “as soon as possible after their sentencing” (2014, 53; 2016, 62; 2017, 79). At the same time, all inmates sentenced to life in prison should undergo risks and needs assessment at the very beginning of their sentence (2013, 139).

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<sup>53</sup> In accordance with Part 2 of Art. 150 of the CEC of Ukraine, convicts sentenced to life in prison must be kept separate from other convicts.



The Committee also states in its general standards that lifers should not be kept separate from other inmates, as the length of their sentence does not necessarily reflect the risk that the prisoner poses inside prison<sup>54</sup>. It emphasizes: the experience of various European countries shows that lifers are not necessarily more dangerous than other inmates<sup>55</sup>.

The inadmissibility of segregation also applies to remand detainees, who risk to be sentenced to life imprisonment (2013, 139).

### Implementation

Article 150 of the CEC of Ukraine, mentioned by the Committee, still stipulates that inmates sentenced to life in prison should be kept separate from other inmates. Exceptions are inmates who, after 10 years of serving a sentence, have been transferred to the general living premises of the maximum-security colony.

At the same time, those who were sentenced to life sentence can be transferred from cell-type premises for 2 persons to large-capacity cell-type premises after 5 years of actual serving in such cells (Part 2 of Article 151<sup>1</sup> of the CEC of Ukraine).

This approach does not comply with the Committee's recommendations, as it does not provide for the integration of inmates into the general prison population "as a rule". Instead, such possibility exists "as an exception", although in this case, proper integration of lifers into the general population does not happen either.

Today, the SCES is taking measures to transfer lifers after serving 10 years of imprisonment to so-called "common living premises", which in fact are not. Instead of being placed with the general population of inmates, lifers are accommodated in specialized large-capacity premises with other lifers, which are called "common living premises" (not to be confused with large-capacity cells, which are provided for accommodation after serving 5 years in a small cell). Thus, bringing together a large number of lifers, say 10 people, in one cell, not only fails to meet the international standards, but also can be dangerous.

Note also that the integration of inmates sentenced to life in prison in the general population of inmates after 10 years of imprisonment may be undesirable for the inmates themselves. After all, they are exposed to the danger of non-acceptance by other inmates. Therefore, a significant number of lifers today write refusals to being transferred to common living premises, because they feel more comfortable and safer to serve their sentences with the "proven by years" cellmates-lifers. Therefore, the integration of lifers into the total mass of inmates should take place from the very beginning of their sentence, except in cases that can be justified by individual inmates' risk assessment.

Such integration will enable life-sentenced prisoners to serve their sentences closer to home. By the way, such a recommendation was given by the Committee earlier (2009, 92). Existing

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<sup>54</sup> Paragraphs 77 and 78, Section "Situation of life-sentenced prisoners" of the CPT's annual report for 2015 (CPT/Inf (2016)10).

<sup>55</sup> Ibid, Paragraph 72.

approaches to the remote placement of lifers away from their homes have already led to ECHR judgements against Ukraine<sup>56</sup>.

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<sup>56</sup> For example, see judgment in the case of Vintman v. Ukraine (Application no. 28403/05) dated October 23, 2014.

### 4.3 Occupation

#### Recommendations

The Committee pointed to the problem of life-sentenced prisoners' occupation as soon as such inmates appeared in Ukraine:

*“...the CPT wishes to underline that long-term imprisonment is widely considered to have a number of desocialising effects upon inmates. In addition to becoming institutionalised, such prisoners may experience a range of psychological problems (including loss of self-esteem and impairment of social skills) and have a tendency to become increasingly detached from society. In the view of the CPT, the regimes to be offered to prisoners serving long sentences should seek to compensate for these effects in a positive and proactive way.*

*Prisoners serving long sentences should have access to a wide range of purposeful activities of a varied nature (work, preferably of a vocational value; education; sport; recreation/association). Moreover, they should be able to exercise a degree of choice over the manner in which their time is spent, thus fostering a sense of autonomy and personal responsibility. Additional steps should be taken to lend meaning to their period of imprisonment; in particular, the provision of individualised custody plans and appropriate psycho-social support are important in assisting such prisoners to come to terms with their period of incarceration. Further, the negative effects of institutionalisation upon prisoners will be less pronounced if they are effectively able to maintain contact with the outside world.*

***The CPT recommends that the Ukrainian authorities take due account of all the factors identified above in their policy on the management of life-sentenced prisoners and the regimes to be provided for them. It also recommends that prison staff be encouraged to communicate and develop positive relationships with this category of prisoner.***” (2000, 75, original italics preserved).

In all its subsequent recommendations with regard to lifers, the Committee has regularly highlighted the problem of lack of useful occupation for them (2002, 100; 2005, 130; 2009, 90; 2012, 48; 2013, 127; 2014, 53; 2016, 53, 62; 2017, 70).

In 2017, as a result of a visit to Kyiv SIZO, the Committee also recommended that lifers have access to the Internet (2017, 79).

#### Implementation

Despite the Committee's regular recommendations, lifers' activities remain minimal. This is due to several factors:

- Their separate detention from other inmates, which complicates or makes it impossible to engage them in joint work;
- Excessive security measures towards such inmates (such as the requirement to escort them with a dog through the territory of the prison, one by one and accompanied by at least two prison officers);

- Detention of lifers in cell-type premises, which often entails their detention not in colonies, but in pre-trial detention centres (where there is an appropriate type of accommodation), with no production area to provide them with a possibility to work on general terms.

In light of the above, lifers are at best involved in the small workshops of SIZOs, and only inside the cells. For the most part, such work has a limited professional value, such as glueing or sewing various items.

## 4.4 Security measures

### Recommendations

The CPT regularly criticizes excessive security measures applied to lifers. For instance, the following practices are considered unacceptable:

- The use of handcuffs each time when being taken out of the cell, if such use is not justified by individual risks (2000, 76; 2002, 102; 2005, 114; 2009, 91; 2012, 49; 2013, 136;; 2014, 53; 2016, 62 );
- Turning face to the wall when the personnel or other persons enter the cell (1998, 116; 2005, 116; 2014, 48; 2016, 61-62);
- Regular transfer from one cell to another (2000, 127; 2002, 105; 2009, 91);
- Communication through the window in the cell door (2009, 91);
- Being held in a specially equipped "cage" while communicating with personnel or lawyers (2005, 114; 2012, 51);
- Being escorted with dogs within the institution premises (2009, 91; 2012, 49; 2013, 136; 2017, 80);
- Medical examination or injection of drugs through the bars, use of handcuffs during dental care (2009, 129; 2012, 50-51);
- Detention in a cell under constant video surveillance (2013, 136; 2014, 52-53; 2016, 62).

These measures are incompatible with the concept of dynamic security, which is based on positive relationships between prison staff and inmates. The Committee insists that this very concept should become the basis for the approach towards treatment of lifers (2000, 75; 2009, 91). The Committee gives the following definition of security:

*“Dynamic security is the development by staff of positive relationships with prisoners based on firmness and fairness, in combination with an understanding of their personal situation and any risk posed by individual prisoners, as well as the provision of constructive activities.”*(2017, 59).

### Implementation

Recommendations on the inadmissibility of systematic use of handcuffs were reflected in the Internal Prison Rules of colonies (Paragraph 2 of Section XXXIII). However, handcuffs shall continue to be used during escorting such as inmates outside the facility. They can also be applied inside the facility to lifers who have risks to escape, hostage-taking, or assault on prison staff.

At the same time, escort by a service dog on the territory of prisons is still mandatory for men sentenced to life imprisonment (Paragraph 2 of Section XXXIII).

Permanent video surveillance is still practised in some institutions, which is related to the problems of the legal framework<sup>57</sup>.

Other mentioned practices do not have a legal basis and are related to the general problem of the personnel attitude towards lifers, as a consequence of the failure to implement dynamic security standards in the communication between the personnel and the inmates<sup>58</sup>.

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<sup>57</sup> See Section 3.6 "Privacy"

<sup>58</sup> See Section 6.1 "Personnel".

## 4.5 Contacts

### Recommendations

The CPT recommends that inmates sentenced to life imprisonment be entitled to the same number of visits as other inmates (2000, 73; 2002, 100; 2005, 114). This recommendation was later clarified that life-sentenced prisoners should have the same number of visits as inmates held in a minimum level of security (2009, 92; 2012, 53).

At the same time, like other inmates, lifers should have the right to have short-term visits in open conditions, i.e. without a partition (2009, 92; 2012, 53; 2014, 53). Exceptions to this rule are allowed on the basis of individual risk assessment (2009, 92; 2012, 53; 2016, 62).

In addition, life-sentenced prisoners should have the right to contact other lifers, including during daily walks (2014, 53; 2016, 62).

### Implementation

Today, inmates held in minimum security colonies are entitled to one short-term visit per month and one long-term visit in two months (Paragraph 4 of Article 110 of the CEC of Ukraine). Life-sentenced prisoners have the same rights. At the same time, inmates held in minimum-security facilities with facilitated conditions of detention have the right to short-term visits without restrictions, and long-term visits once a month (Paragraph 2 of Article 99, Paragraph 3 of Article 138 of the CEC of Ukraine). Given this, it is difficult to say which standard the frequency of visitations for lifers should comply with. However, as a general rule, inmates, including those sentenced to life imprisonment, should be entitled to at least one short-term visit per week<sup>59</sup>.

Contrary to the Committee's recommendations, short-term visits for lifers are usually held through a transparent partition. At the same time, they have the right to long-term visits, during which they may even live with their relatives (Paragraph 1 of Article 110 of the CEC of Ukraine).

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<sup>59</sup> See Section 3.3.1 "Frequency of visits"

## 5. Health protection

### 5.1 Integration of prison health care in the Ministry of Health

#### Recommendations

As early as 1998, the Committee drew attention to the European trend of increasing the role of general healthcare authorities in provision of prison healthcare. This approach was reflected in Recommendation R (98) 7 of the Committee of Ministers of the Council of Europe on the ethical and organizational aspects of health care in prisons<sup>60</sup>. The CPT pointed out that greater involvement of the health care authorities in prison health care would ensure optimal medical care for prisoners, as well as the principle of equivalence of prison medicine with that at large. In this context, the CPT invited the Ukrainian authorities to a dialogue on enhancing the powers of the Ministry of Health in the field of prison health care (1998, 141).

Almost 20 years later, in 2016, the Committee already pointed out:

*“...The CPT wishes to stress once again that it supports, in principle, the clear policy trend that can be observed in Europe, favouring prison health-care services being placed, to a great extent or entirely, under the responsibility of the Ministry of Health<sup>61</sup>. In any event, the Committee is convinced that a greater participation of the Ministry of Health in this area (including as regards recruitment of health-care staff, their in-service training, evaluation of clinical practice, certification and inspection) will help to ensure optimum health care for prisoners, as well as implementation of the general principle of the equivalence of health care in prison with that in the wider community” (2016, 42).*

In 2017, the Committee directly called on the Ukrainian authorities to transfer responsibility for prison health-care to the Ministry of Health of Ukraine (2017, 84).

The authors of the Handbook "Organization and Management of Health Care in Prison" point at the following features of a separate prison health care system:

- Insufficient competence in the whole complex of health care issues;
- Worse professional monitoring by external bodies;
- Prison management is not always able to properly assess prisoners' complaints;
- Improper record keeping;
- Problems of unifying documentation with medical institutions at large;

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<sup>60</sup> <https://rm.coe.int/09000016804fb13c>

<sup>61</sup> See Rules 40.1 and 40.2 of the European Prison Rules and the Commentary to these Rules, as well as the Rule

24 (1) of the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) and Principle 24 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (A / RES / 43/173) . See also the document published in 2013 by the United Nations Office on Drugs and Crime and the WHO Regional Office for Europe entitled "Good governance for prison health in the 21st century: a policy brief on the organization of prison health", [http://www.euro.who.int/\\_data/assets/pdf\\_file/0017/231506/Good-governance-for-prison-health-in-the-21st-century.pdf?ua=1](http://www.euro.who.int/_data/assets/pdf_file/0017/231506/Good-governance-for-prison-health-in-the-21st-century.pdf?ua=1)



- Difficulty to ensure the continuity of treatment after release, etc.<sup>62</sup>.

### Implementation

The Committee unequivocally recommends that the Ministry of Health be responsible for health care in prison.

However, efforts in this respect were stopped upon the establishment of the State Institution “Health Care Center of State Criminal-Executive Service of Ukraine” on November 1, 2017. Earlier, these efforts were prompted by the Office of Prosecutor General, which insisted on switching subordination of prison health care to the Ministry of Health. It seems that this was linked with the personal experience of the former Prosecutor General Yu. Lutsenko<sup>63</sup>, who came across the realities of medical service during his time in prison.

The issue of switching subordination of prison health care has not been resolved. In his letter to the Prime Minister of Ukraine, the former Prosecutor General R. Riaboshapka stated:

*"the process of the planned transfer of medical care of prisoners from the Ministry of Justice of Ukraine to the Ministry of Health of Ukraine has not yet been completed. The creation of a separate independent network of health care facilities of the State Criminal-Executive Service of Ukraine (SCES) is provided by the Concept of reforming the penitentiary system of Ukraine, the implementation of which was designed for the period until 2020.*

*Recently, the responsible central executive bodies have not been properly active and in fact slowed down the process, which has had an extremely negative impact on the observance of the constitutional rights of prisoners to health care and has led to systematic violations of legislative requirements in this field"*<sup>64</sup>.

At the same time, the creation of an autonomous prison health care management structure (Health Care Center) has led to a number of problems. Medical care turned out to be disorganized due to administrative problems. This is referring to a shortage, and sometimes the lack of medical personnel, and about (non) provision of medicines and equipment<sup>65</sup>. The issue of interaction between medical units and administration of penitentiary institutions still remains uncertain and leads to various, sometimes distorted, practices of cooperation and coordination.

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<sup>62</sup> J. Pont, T.W. Harding Organization and Management of Health Care in Prison. – K.: Council of Europe, 2019. - P. 41-44.

<sup>63</sup> Prosecutor General of Ukraine from 2016 to 2019.

<sup>64</sup> The Office of Prosecutor General addressed the Prime Minister with regard to the need of reforming criminal-executive medicine // <https://www.gp.gov.ua/ua/news? m=publications& c=view& t=rec&id=264711>

<sup>65</sup> See in detail: D. Zhupanov Analytical report on the results of monitoring visits to the institutions of State Criminal-Executive Service of Ukraine in 2018. – Kyiv: Ukrainian Institute of Human Rights, 2018. - P. 37-43.

## 5.2 Recording bodily injuries

### Recommendations

As the key mandate of the Committee is to prevent torture, it pays particular attention to procedures for recording and reporting injuries to doctors in penitentiary institutions.

In 2017, the Committee made a detailed recommendation in this regard:

*“The CPT once again calls upon the Ukrainian authorities to ensure at all penitentiary establishments that:*

- all medical examinations are conducted out of the hearing and – unless the health-care professional concerned expressly requests otherwise in a given case – out of the sight of staff not carrying out health-care duties;*
- the record drawn up following the medical examination of a prisoner contains: (i) an account of statements made by the prisoner in question which are relevant to the medical examination (including his/her description of his/her state of health and any allegations of ill-treatment), (ii) a full account of objective medical findings based on a thorough examination; (iii) the healthcare professional’s observations in the light of i) and ii), indicating the consistency between any statements made and the objective medical findings; this record should take fully into account any attestation of injuries observed upon admission during the procedure of handover of custody;*
- the record also contains the results of additional examinations performed, detailed conclusions of specialised consultations and a description of treatment given for injuries and of any further procedures performed;*
- the recording of the medical examination in cases of traumatic injuries is made on a special form provided for this purpose, with “body charts” for marking traumatic injuries that will be kept in the medical file of the prisoner. If any photographs are made, they should be filed in the medical record of the inmate concerned. This should take place in addition to the recording of injuries in the special trauma register;*
- the results of every examination, including the above-mentioned statements and the health-care professional’s conclusions, are made available to the prisoner and his/her lawyer;*
- special training is provided to health-care professionals working in prisons. In addition to developing the necessary competence in the documentation and interpretation of injuries, as well as ensuring full knowledge of reporting obligations and procedures, the training should cover the technique of interviewing persons who may have been ill-treated;*
- custodial staff having no health-care duties only have access to medical information strictly on a need-to-know basis, with any information provided being limited to that necessary to prevent a serious risk for the prisoner or other persons. There is no justification for giving staff having no health-care duties access to information concerning the diagnoses made or statements concerning the cause of injuries.*

*As for the reporting procedures, which should be part of the duties of prison healthcare staff, the Committee reiterates its long-standing recommendation that a “fast-track” procedure be introduced in the health-care services of all penitentiary establishments for the systematic and direct communication to a competent prosecutor (and, in due course, SBI official)138 of reports on injuries whenever those injuries are consistent with allegations of illtreatment made by a prisoner or, even in the absence of allegations, are indicative of illtreatment; this communication should be made regardless of the wishes of the inmate concerned. Prisoners and, upon request, their lawyers should be entitled to receive a copy of the report at the same time.*

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

*It would also be advisable for the health-care staff concerned to receive, at regular intervals, feedback on the measures taken by the prosecutor following the forwarding of their reports. This could help to sensitise them to specific points in relation to which their documenting and reporting skills can be improved and, more generally, will serve as a reminder of the importance of this particular aspect of their work" (2017, 88).*

This recommendation summarized a number of recommendations in this regard made in previous years (1998, 151; 2000, 110; 2002, 126; 2005, 104; 2009, 84; 2012, 30, 151; 2013, 151-157; 2014, 43; 2016, 70 ;

In addition, the Committee also called on the Ukrainian authorities to adopt further regulations so that:

*“health-care professionals are as a rule<sup>66</sup>, not directly involved in the administrative procedure of handover of custody of detained persons to a penitentiary establishment;*

*persons found to display injuries on their admission are not questioned by anyone about the origin of those injuries during the above-mentioned handover procedure;*

*any record made, and any photographs taken, of injuries during the handover of custody procedures are forwarded without delay to the penitentiary establishment’s health-care service;*

*all persons admitted to a penitentiary establishment are properly interviewed and thoroughly examined by qualified health-care staff as soon as possible, and no later than 24 hours after their admission; the same approach should be adopted each time a prisoner returns to a penitentiary establishment after having been taken back to the*

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<sup>66</sup> Naturally, for a medical employee to be called immediately whenever a newly arrived prisoner needs urgent medical attention or if there are doubts as to the compatibility of a prisoner's health with his detention in a penitentiary institution.

*custody of a law enforcement agency for investigative purposes (even for a short period of time).*

*... whenever a prisoner presents injuries indicative of ill-treatment or makes allegations of ill-treatment to health-care staff, he or she must be promptly seen by a doctor with recognised forensic training.” (2013, 155).*

The Committee also called to encourage the practice of photographing bodily injuries (2013, 156).

In 2012, the CPT recommended to increase professional independence of doctors in prisons by reviewing their existing administrative subordination to the institution's administration (2012, 30).

### Implementation

It is worth paying tribute to the management of prison healthcare in 2017, which included the Committee's standard on the confidentiality of medical examinations in a specialized Order<sup>67</sup>. In particular, Paragraph 10 of the Order provides: "Medical examinations (check-ups) of inmates are conducted with the observance of confidentiality and (if the medical employee does not wish otherwise in each particular case) out of sight of non-medical personnel".

Thus, this rule almost literally repeats a part of the CPT standard. However, it does not apply to pre-trial detention centers, which is a shortcoming that needs to be addressed.

Along with that, a significant part of the recommendations of the standard for recording, doctor's records, reporting, etc. still do not comply with the mentioned CPT standards.

Human rights advocates point at other problems with the standard of recording misconduct in the prisons. They are talking about the lack of a clear algorithm for detecting and recording bodily injuries in prison not at the stage of admission to the institution and conducting the initial medical examination, but during the stay in the institution. There are also a number of shortcomings in detecting psychological signs of misconduct<sup>68</sup>.

In 2019, we were involved in a study on the recording of injuries, including in prisons. We found that the mechanism of detection, recording and reporting of injuries in the penitentiary system is characterized by the following negative features<sup>69</sup>:

- **Failure to ensure the confidentiality of the examination.** It follows from the materials of the study that at least part of the examinations of injuries takes place in

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<sup>67</sup> Order of the Ministry of Justice and the Ministry of Health "On Approval of the Procedure for the Organization of Medical Care for Convicts" No. 1348/5/572 dated 15.08.2014 (as amended from 20.12.2017).

<sup>68</sup> Yu. Bielousov, O. Hatiiatullin, K. Zaporozhtsev, M. Tarasova, V. Shurduk Recording and investigation of torture in places of detention (analysis of legislation). - P. 64-66. Online: [http://www.irf.ua/knowledgebase/publications/fiksatsiya\\_ta\\_rozsliduvannya\\_katuvan\\_u\\_mistsyakh\\_nesvobodi\\_analiz\\_zakonodavstva/](http://www.irf.ua/knowledgebase/publications/fiksatsiya_ta_rozsliduvannya_katuvan_u_mistsyakh_nesvobodi_analiz_zakonodavstva/)

<sup>69</sup> Yu. Bielousov et al (coll. authors) The practice of recording torture in places of detention: A report on the results of the study. Under the general edition V. Sushchenko // <https://zmina.ua/content/uploads/sites/2/2020/02/fixingtorture-web.pdf>

the presence of non-medical personnel. In such circumstances, the influence of the prison administration on prisoners to conceal injuries or their origin cannot be ruled out;

- **Detection of injuries.** In addition to detecting injuries during examinations, there are other ways of "active" detection: in the bath house, during cells inspection, inspection of living areas, and so on. However, these methods are mostly formal or not used at all. They rarely help to detect injuries. There is also no clear mechanism of interaction with the medical unit in order to record bodily injuries in the case of the use of force on prisoners by security staff;
- **Improper documentation.** We have found that the documentation in which injuries are recorded is often non-standardized. For example, this applies to certificates describing injuries and logs of injuries inflicted during their stay in prisons. As a result, the content and form of this documentation vary significantly between institutions. This problem stems primarily from inadequate legislative regulation at the level of bylaws;
- **Improper documenting.** Records made by medical personnel are superficial and do not meet international standards. They also do not contain proper records of the origin of these injuries and the doctor's reasoning about the likelihood that the injuries are of the origin alleged by the prisoner. In addition, for the most part, there is no photographing and schematic marking of the injuries location;
- **Insufficient resources.** Doctors are not provided with resources for proper recording of torture. They are not provided with cameras, photo printing equipment, copying equipment (for making several copies of certificates of bodily harm). In addition, in some pre-trial detention centres, the detection of injuries is regular, which requires significant human resources to register them ("processing" of one person can take several hours). This situation is exacerbated by a shortage of medical units, even for their primary purpose – treatment. In addition, there is duplication of content of documents that need to be filled out in case of injuries detection, which leads to unnecessary paper work of medical personnel;
- **Lack of a proper mechanism for informing law enforcement agencies.** The study shows that the system of informing law enforcement authorities does not meet international standards. In particular, medical employees only pass information to the assistant of the prison director, who must pass the information to the police or the prosecutor's office. Thus, when the injuries were inflicted by the penitentiary institution personnel or by other prisoners (through the fault of such personnel), the possibility of manipulation to conceal their crime cannot be excluded. There are no sufficient safeguards to prevent failure to inform law enforcement about identified injuries in order to delay and avoid liability;
- **Denial of the role of medical personnel.** Medical employees deny their significant role in preventing misconduct. They do not consider it their task either to record the bodily injuries in detail ("we are not forensic experts"), or to question and assume the origin of the injuries ("we are not investigators or operatives"), or to inform law enforcement agencies ("this is the task of the duty officer"). They limit their role only to recording the fact of bodily injuries, because, in their opinion, their main role is to

provide treatment. Therefore, medical personnel does not play a proper role in preventing ill-treatment by both penitentiary staff and other prisoners. This view of medical personnel runs counter to the key role of health workers in preventing ill-treatment, which is regularly emphasized by the European Committee for the Prevention of Torture.

With regard to increasing the professional independence of doctors in penitentiary institutions by reviewing the existing administrative subordination in the institution, this recommendation was implemented by establishing the SCES Health Care Center and having medical institutions located in the penitentiary directly subordinated to it. At the same time, human rights advocates point to the "misleading" character of such independence, because:

*“SCES healthcare institutions are located on the premises of the respective prisons and are thus required to obey the administrations’ rules regarding the regime, guarding of prisoners and security; the heads of these healthcare institutions must be present at meetings held by prison directors; they need to submit requests to the prison administrations in order to transfer prisoners to civilian hospitals or to use vehicles for this.”<sup>70</sup>*

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<sup>70</sup> The seventh periodic Report of Ukraine on the implementation of the provisions of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment / Ye. Yu. Zakharov, H. V. Tokariev: NGO "Kharkiv Human Rights Protection Group". - Kharkiv: 2019. - P. 60 // <http://khpg.org/files/docs/1578647698.pdf>

## 5.3 Access to healthcare

### Recommendations

The Committee regularly reminds Ukraine of the lack of doctors in prisons. The Committee also constantly points at the lack of provision of medicines to institutions and other organizational and financial problems. A detailed list of recommendations with regard to medical care and their implementation is beyond the scope of this analysis and requires a separate comprehensive study.

In addition, the Committee draws attention to the high mortality rate among prisoners (88 per 100,000 of the population). In its view, such a figure could be caused by an overly low level of prison healthcare. As a result, the CPT recommended to implement clear policies and procedures to determine the causes of inmates' death. Every death of a convict should be investigated to find out the cause of death, the circumstances that led to it and whether it could have been prevented (2017, 96).

### Implementation

Reports from human rights advocacy groups on monitoring visits to penitentiaries indicate that the state of healthcare in prisons remains poor.

For example, monitoring visits have revealed the following problems:

- Insufficiency or lack of medicines. Inmates often have to purchase those at their own expense (or with relatives' money);
- Doctors do not monitor the condition of their patients, do not perform daily rounds and do not even come at the request of inmates;
- If the prisoner needs additional examinations or treatment, which cannot be carried out in the institution environment, they are either not carried out at all, or are carried out with a huge delay (3-4 months);
- Prisoners suffering from incurable terminal diseases do not receive palliative care. Their release due to illness takes too long if it happens at all;
- Inadequate conditions for transportation of sick inmates;
- Handcuffing while guarding sick prisoners in civilian hospitals;
- Unsanitary conditions in the premises where sick prisoners are kept;
- Obsolete medical equipment, etc.<sup>71</sup>.

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<sup>71</sup> See: The seventh periodic Report of Ukraine on the implementation of the provisions of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment / Ye. Yu. Zakharov, H. V. Tokariev: NGO "Kharkiv Human Rights Protection Group". - Kharkiv: 2019. - P. 59-68 //

As for mortality, it has increased in recent years:

Year	2015	2016	2017	2019
Number of persons who died directly in the SCES prisons	166	172	197	225

It should be noted that the number of prison population from 2015 to 2018 decreased by about 15 thousand people. In addition, these statistics do not include prisoners and inmates who have died in civilian hospitals, which distorts the statistics.

In addition, according to human rights advocates, from 2014 to 2017, given the decrease in the number of prisoners in SIZO, the specific mortality rate in pre-trial detention facilities increased by at least 3 times<sup>72</sup>.

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<http://khpg.org/files/docs/1578647698.pdf>; Ye. Zhupanov, Ye. Nietsvietaiev Analytical report on the results of monitoring visits to the SCES institutions in 2019. - Kyiv: Ukrainian Institute for Human Rights, 2019. - P. 40-49 // <https://ukrajina.fnst.org/sites/default/files/uploads/2020/02/12/analitchnyyzvitmonitvizyty2019.pdf>

<sup>72</sup> Same. The seventh periodic Report. In addition, we received statistics for 2019 from the SCES Health Center. According to the response to the request, the death rate in 2019 was 225 people, which is a 1.7-fold increase compared to the figure per 1,000 prisoners in 2015.



## 5.4 Substitution therapy

### Recommendation

The Committee consistently reminds about its recommendation that drug-addicted inmates should have access to substitution therapy, as well as to other programs aimed at overcoming addiction.

In its most recent report on penitentiary institutions, the Committee stated:

*“The delegation gained the impression that very little was being done in the penitentiary establishments visited (apart a very limited methadone programme in two of the establishments visited<sup>73</sup>) to address the widespread drug addiction problem among prisoners<sup>74</sup> and the related health issues such as hepatitis.”<sup>75</sup>*

In the Committee's view, treatment options for prisoners when they stop using drugs, as well as opioid maintenance therapy, should be available in prison to the same extent as at large. This is also in line with the WHO Guidelines for the Treatment of Opioid Dependence developed in 2009.<sup>76</sup> The CPT emphasizes:

*“... the management of prisoners with drug dependence must be varied – eliminating the supply of drugs into prisons, dealing with drug abuse through identifying and engaging drug misusers, providing them with treatment options and ensuring that there is appropriate through care, developing standards, monitoring and research on drug issues, and the provision of staff training and development – and linked to a proper national prevention policy. It goes without saying that health-care staff must play a key role in drawing up, implementing and monitoring the programmes concerned and must co-operate closely with the other (psycho-socio-educational) staff involved.*

*The Committee calls upon the Ukrainian authorities to develop and implement a comprehensive strategy for the provision of assistance to prisoners with drug-related problems (as part of a wider national drugs strategy) including harm reduction measures, in the light of the above remarks.”(2017, 93).*

Earlier the Committee also pointed out:

*“There was a significant number of prisoners with drug-related problems in the penitentiary establishments visited<sup>77</sup>. However, as had been the case during the CPT's previous visits to Ukraine<sup>78</sup>, little action (other than traditional prison security and the*

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<sup>73</sup> Three prisoners were receiving methadone in Kyiv SIZO and two in the Chernivtsi SIZO.

<sup>74</sup> This was acknowledged by superiors and personnel (including medical personnel) at the facilities visited. For example, according to the chief physician of Ivano-Frankivsk SIZO, approximately 30% of prisoners were drug users. The medical personnel of colony No. 30 estimated that almost half of all prisoners had drug problems.

<sup>75</sup> Examination for hepatitis, as a rule, was not carried out. If the prisoner requested such examination, he was expected to pay (700 hryvnias, about 23 euros).

<sup>76</sup> See [http://apps.who.int/IPRis/bitstream/10665/43948/1/9789241547543\\_eng.pdf](http://apps.who.int/IPRis/bitstream/10665/43948/1/9789241547543_eng.pdf)

<sup>77</sup> For example, the delegation was informed by the head of the Dnipropetrovsk SIZO that about 20% of the prisoners in the institution had such problems.

<sup>78</sup> See, for example, Paragraph 140 of 2009 visit Report (document CPT / Inf (2011) 29).

*possibility – for a very limited number of prisoners – to continue methadone substitution treatment initiated prior to imprisonment<sup>79</sup>) was being taken to tackle this situation (in the form of, for example, prevention and the provision of psycho-social and educational assistance to the prisoners concerned). Further, none of the establishments visited had put in place any harm reduction measures (such as the provision of bleach and information on how to sterilise needles or needle-exchange programmes).*

*The CPT wishes to stress that the management of drug-addicted prisoners must be varied – combining detoxification, psychological support, socio-educational programmes, rehabilitation and substitution programmes – and linked to a real prevention policy. This policy should highlight the risks of HIV or blood-borne viral hepatitis infection through drug use and address methods of transmission and means of protection. It goes without saying that health-care staff must play a key role in drawing up, implementing and monitoring the programmes concerned and co-operate closely with the other (psycho-socio-educational) staff involved.<sup>213</sup> The Committee recommends that the Ukrainian authorities develop a comprehensive and coherent prison drug strategy, including the provision of assistance to inmates with drug-related problems. Specific training on this subject should be organised for the penitentiary health-care staff.” (2013, 164; see also: 2009, 140).*

## Implementation

Contrary to the Committee's recommendations, there is still no specialized prison strategy in Ukraine to combat drug addiction among prisoners.

The Committee has a clear position that prisoners should have access to substitution therapy to the same extent as free persons. This is in line with the general principle of medical care equivalence in penitentiary institutions and at large. However, the introduction of substitution therapy in Ukrainian colonies is still in its inception phase. A pilot project<sup>80</sup> on this issue was launched several years ago in Bucha Correctional Facility in Kyiv Region. However, so far, there is no information on its success and results.

There is a number of reasons that hinder the introduction of substitution therapy in Ukrainian prisons: legal obstacles, difficulties in a proper organization (licensing, organization of drug storage, ensuring continuity during the transfer), lack of political will, etc.

Despite the fact that the provision of substitution therapy was regulated for pre-trial detention centres and correctional centres in 2012<sup>81</sup>, to this day, the implementation of the therapy in

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<sup>79</sup> Substitution therapy was not available within penitentiaries. Delegations also reported that in Kryvyi Rih Correctional Facility No. 3 even those prisoners who had started methadone therapy before arriving at the facility were not allowed to continue the therapy in the correctional facility.

<sup>80</sup> With the support of the EU-ACT project ([EU Action against Drugs and Organized Crime](#)).

<sup>81</sup> The Order of the Ministry of Justice, the Ministry of Internal Affairs, the Ministry of Health and the State Drugs Control Service "On approval of the Procedure for interaction of health care institutions, internal affairs authorities, pre-trial detention centres and correctional facilities to ensure continuity of treatment with substitution maintenance therapy" No. 821/937/1549/5/156 dated October 22, 2012.

these institutions remains marginal. Similarly, as far as harm reduction concerned, the use of sterile needles and syringes has not yet been introduced or is even banned in prisons.

## 6. Other recommendations

### 6.1 Personnel

#### Recommendations

The Committee is of the opinion that a sufficient number of personnel is a prerequisite for proper supervision in the institutions, prevention of violence between prisoners and establishment of positive relationships between them and personnel. The insufficient number of personnel also hinders the implementation of the dynamic security concept, as personnel shortages reduce opportunities for direct contact with inmates and contribute to tensions between them (2012, 25; 2013, 165). In addition, it hinders the creation of activities opportunities for inmates outside living premises (2013, 165).

In view of this, the Committee has repeatedly pointed at the problem of the insufficient number of personnel in direct contact with inmates. For example, in 2009 it pointed out that the national legislation on the ratio of the SCES staff in the proportion of 1 to 3 inmates was not complied with; at least with regard to security staff (2009, 143).

The Committee recommended that vacancies for security officers be filled, in particular by introducing better working conditions and competitive salaries (2016, 43; 2017, 98). In addition, it is necessary to analyse in detail the number and positions of such personnel and, if necessary, amend the relevant bylaws (2012, 25; 2013, 165).

In addition, the CPT recommends for the staff not to serve 24-hour shifts (2012, 25; 2013, 165; 2016, 43; 2017, 98). Such changes *have “an inevitable negative effect on professional performance; no-one can perform in a satisfactory manner the difficult tasks expected of a prison officer for such a length of time.”* (2017, 100).

The Committee also drew attention to "militaristic" approaches among prison personnel. Personnel's contact with prisoners was kept to a minimum, and no effort was made to develop positive relationships with them (1998, 161-162; 2012, 22).

The CPT's 11th General Report stated:

*“The CPT often finds that relations between staff and prisoners are of a formal and distant nature, with staff adopting a regimented attitude towards prisoners and regarding verbal communication with them as a marginal aspect of their work. ...*

*The real professionalism of prison staff requires that they should be able to deal with prisoners in a decent and humane manner while paying attention to matters of security and good order. In this regard prison management should encourage staff to have a reasonable sense of trust and expectation that prisoners are willing to behave themselves properly. The development of constructive and positive relations between prison staff and prisoners will not only reduce the risk of ill-treatment but also enhance control and security. In turn, it will render the work of prison staff far more rewarding.*

*Ensuring positive staff-inmate relations will also depend greatly on having an adequate number of staff present at any given time in detention areas and in facilities used by prisoners for activities. CPT delegations often find that this is not the case. An overall low staff complement and/or specific staff attendance systems which diminish the possibilities of direct contact with prisoners, will certainly impede the development of positive relations; more generally, they will generate an insecure environment for both staff and prisoners.”(CPT/Inf(2001)16), Paragraph 26).*

## Implementation

The staffing level continues to remain at a low level. The biggest shorting concerns the vacancies of lower level staff working in direct contact with prisoners. According to information as of July 01, 2019, the shortage of junior officers in charge of supervision and security constituted about 21%. At the same time, according to the observations of human rights advocates during monitoring visits, in some prisons, this figure reached almost 50%. The problem with the shortage of junior staff was noted by each head of the prisons they visited<sup>82</sup>. The reasons for this situation are the low salaries of such personnel, violations of their rights and difficult working conditions<sup>83</sup>. Thus, the implementation of the CPT's recommendations in this regard leaves much to be desired.

The Committee emphasizes the importance of dynamic security and the inadmissibility of "militaristic" approaches to communication between personnel and prisoners. The concept of dynamic security is still unfamiliar to prison personnel. It provides for the development by personnel of positive relations with prisoners on the basis of firmness and fairness, combined with an understanding of their personal situation and the risks faced by each individual prisoner, as well as the provision of useful occupation for prisoners. At present, only some steps can be highlighted in terms of practical implementation of this concept, such as teaching relevant thematic classes in the SCES educational institutions or the initiative to consolidate dynamic security as a criterion for the penitentiary assessment.

As regards the recommendation to put an end to 24-hour shifts for prison personnel, it has not yet been implemented. It should be noted that prison officers often support the existing work schedule, as it provides them with several days off after the 24-hour shift, which can be used for "part-time work" in other areas. In addition, 24-hour shifts are more convenient for personnel travelling to prisons from remote/rural locations.

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<sup>82</sup> Ye. Zhupanov, Ye. Nietsvietaiev Analytical report on the results of monitoring visits to the SCES institutions in 2019. - Kyiv: Ukrainian Institute for Human Rights, 2019. - P. 34 // <https://ukrajina.fnst.org/sites/default/files/uploads/2020/02/12/analitchnyyzvitmonitvizyty2019.pdf>

<sup>83</sup> Same. – P. 66-68.

## 6.2 Violence between prisoners

### Recommendations

As early as 1998 and 2002, the Committee pointed to the need to develop a strategy to combat violence and intimidation among prisoners (1999, 27; 2002, 65).

It regularly drew attention to the delegation of powers by prison administrations to individual prisoners. Such delegation is a “*waiver of one's responsibility for the safety and order imposed on penitentiary personnel, exposing weaker inmates to the risk of abuse by other inmates*” (2002, 92; 2012, 25).

In 2013, the Committee noted that in some pre-trial detention centres there was a prisoner leader who was clearly responsible for maintaining order among prisoners. To this end, he and other prisoners directly subordinated to him could even move freely around the institution. Giving a certain level of authority to the prisoner leader for security purposes was an acceptable practise where there was a shortage of personnel in living blocks (2013, 108).

In 2005, the Committee stated: “*In its report on the 2002 visit (paragraph 92), the CPT recommended that the Ukrainian authorities ensure that no duty prisoner (dnevalniy) was entrusted with tasks relating to the maintenance of good order and control. However, this was still the case in 2005, notably in Colony No. 61 where, in addition, duty prisoners also had a say as regards the disciplinary sanctions to be imposed. The CPT recommends that this practice be stopped forthwith*”.

In 2017 The Committee expressed a detailed recommendation in this regard:

*“inter-prisoner violence was a problem acknowledged by the Directors of all the establishments visited, especially at Kyiv SIZO<sup>84</sup>. This was hardly surprising given that the accommodation was mostly based on large-capacity cells<sup>85</sup> or dormitories<sup>86</sup> (see also paragraphs 62-67 below) and the staff, which was generally in insufficient numbers (see paragraph 97 below) relied on the informal prisoner hierarchy<sup>87</sup> to help them control the situation; this was especially conspicuous at Kyiv SIZO and, to a lesser degree, at Ivano-Frankivsk and Lviv SIZOs and Colony No. 30.*

*In this regard, the CPT must reiterate its view that keeping order and creating a safe environment in prison should not be based on a form of tacit agreement between inmate “leaders” looking to establish their authority among other inmates, and members of prison staff anxious to preserve the appearance of order in the establishment. Further,*

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<sup>84</sup> The Delegation also drew attention to several recent cases of injuries to prisoners recorded in the logbook of incidents in Lviv ITTSIZO (alleged “accident”), but which were of such a nature (e.g. hematoma under the eyes) that indicated possible violence among the prisoners.

<sup>85</sup> Up to 25 prisoners in a cell in Kyiv ITTSIZO, up to 20 per cell in Lviv ITTSIZO, up to 14 per cell in Ivano-Frankivsk ITTSIZO and up to 12 per cell in the Chernivtsi ITTSIZO.

<sup>86</sup> In Colony No. 30, there were up to 25 prisoners in each dormitory.

<sup>87</sup> Members of this hierarchy (the so-called “core group”) seem to have enjoyed a kind of semi-official position, including at least some elements of disciplinary authority, such as reporting to personnel on cellmates' behavior and instructing them on how to behave.

*the Committee considers unacceptable any partial relinquishment of the responsibility for order and security, which properly falls within the ambit of custodial staff. It exposes weaker prisoners to the risk of being exploited by their fellow inmates. It is also contrary to the European Prison Rules, according to which no prisoner should be employed, in the service of the institution, in any disciplinary capacity<sup>88</sup>. The development of constructive relations between staff and all the prisoners, based on the notion of dynamic security<sup>89</sup>, is a crucial factor in the effort to combat inter-prisoner intimidation and violence.*

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

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

*The CPT calls upon the Ukrainian authorities to implement its long-standing recommendation that the management of all penitentiary establishments make use of the means at their disposal to counter the negative impact of the informal prison hierarchy and prevent inter-prisoner intimidation and violence. No prisoner (in any penitentiary establishment in the country) should be put in a position (even de facto) to exercise power over other prisoners. More has to be done to ensure that staff are trained and motivated to be proactive and prevent inter-prisoner violence. The management of all penitentiary establishments should also be vigilant as to possible collusion between staff and prisoner "leaders"... " (2017, 59; see also 2016, 51).*

In addition, the CPT recommends ending the practice of using inmates as assistants in medical units of the penitentiary system (2005, 132; 2013, 151; 2017, 86).

### Implementation

Violence among prisoners carries particular danger. Unlike the ill-treatment on the part of penitentiary personnel, complaining about their cellmates or other prisoners poses a danger to life and health. Moreover, as the Committee notes, the administration is sometimes directly involved in informal agreements with "criminal leaders" to ensure a controlled environment

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<sup>88</sup> Rule 62.

<sup>89</sup> Dynamic security is the development by personnel of positive relations with prisoners on the basis of firmness and justice, combined with an understanding of the prisoner's personal situation and any risk faced by each individual prisoner, as well as with the provision of constructive activities.

in the institutions. This leads to ignoring the facts of oppression of some prisoners by others. As a consequence, prisoners are often afraid to seek protection from the administration or other government representatives, or society.

It should be noted that there has never been a strategy in Ukraine to combat violence among prisoners, which the Committee recommended to develop.

In the broader context of the problem of violence among prisoners, we believe there are two key reasons:

- Large-capacity cells. It is complicated to control cells holding even 5-10 prisoners. It is much more difficult to control the cells that hold 10-30 people, or more (in some colonies). A practical means of control is often the appointment of inmates in charge of the cell. Such inmates can have very different powers, ranging from the arrangement of cleaning up to responsibility for adherence to informal cohabitation rules. Solving this problem requires the transition of the national penitentiary system to a cell detention system with smaller cells<sup>90</sup>;
- Insufficient number of correctional and other employees working directly with prisoners. It is often the case that a large number of penitentiary personnel do not have direct contact with prisoners. On the other hand, employees who are directly responsible for internal order (security officers) are few. The same applies to employees of the socio-psychological service. This problem is also relevant for pre-trial detention.

As a consequence, proper control by a limited number of correctional officers is supplemented through the assistance of prisoners. In such circumstances, the dynamic security encouraged by the Committee is impossible.

However, a distinction should be made between informal and formal "leaders". Formal "leaders" have the power to maintain order (control) in accordance with the Internal Prison Rules (a person on duty and a senior person on duty), i.e. the powers on these persons are legal. However, in some cases, this may contradict a number of the Committee's recommendations, in particular, where some prisoners have control over others (e.g. 2005, 148). Activities to maintain order by informal leaders are illegal, but may be supported (directly or with tacit consent) by the prison administration.

It is possible to assume the influence of other factors on the growth of violence among prisoners: improper work of criminal intelligence units; corruption; prisoner subculture; lack of purposeful activities etc.

With regard to the involvement of inmates in health care, the Internal Prison Rules prohibit their involvement in work related to the provision of medical care, as well as in work related to the registration, storage and dispensing of medicines (paragraph 2, Section 17). Previous Rules contained such a prohibition as well. However, it is still widely violated. According to

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<sup>90</sup> See Section 1.1 "Types of premises"

the Government of Ukraine response to the CPT's 2017 Report, the issue of ending the practice of using prisoners as medical assistants is "under consideration" by the Ministry of Justice (paragraph 88)<sup>91</sup>.

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<sup>91</sup> Response of the Ukrainian Government to the report of European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Ukraine from 8 to 21 December 2017 (CPT/Inf (2019) 11) // <https://rm.coe.int/168093ab47>



### 6.3 Reception of information on inmates' crimes by criminal intelligence units

#### Recommendations

The Committee has repeatedly criticized the practice of obtaining evidence by intelligence officers from prisoners with regard to crimes committed prior to their imprisonment.

For example, after visiting Kyiv SIZO, the CPT noted:

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

*The CPT calls upon the Ukrainian authorities to take steps, including at the legislative level, to ensure that officers of prison operational divisions no longer investigate criminal offences committed by prisoners outside the prison and no longer take statements from prisoners in relation to such offences.” (2017, 61).*

Earlier, the Committee also made this recommendation and pointed out at the negative consequences of the following practices: abuse and violence among prisoners (2013, 117; 2016, 47).

#### Implementation

The Committee regularly reminds Ukraine of this recommendation. The outlined practice dates back to the time when the penitentiary system was under the Ministry of Internal Affairs. At that time, penitentiary staff and police investigators were colleagues. Today, this practice exists in a hybrid form.

It should be noted that, despite some calls to eliminate intelligence activities in the penitentiary system as such, this recommendation of the Committee does not require such measures. In fact, intelligence activities are carried out in prisons around the world. For example, its standards were collected in the UN publication "Dynamic Security and Prison Intelligence"<sup>92</sup>. These standards allow the exchange of intelligence information with investigative bodies in order to combat crime. However, this in no way implies forcing prisoners to testify, especially with regard to the events that took place before their imprisonment.

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<sup>92</sup> Handbook Dynamic Security and Prison Intelligence, United Nations, New York, 2015 // [https://www.unodc.org/documents/justice-and-prison-reform/UNODC\\_Handbook\\_on\\_Dynamic\\_Security\\_and\\_Prison\\_Intelligence.pdf](https://www.unodc.org/documents/justice-and-prison-reform/UNODC_Handbook_on_Dynamic_Security_and_Prison_Intelligence.pdf)

The law stipulates that criminal intelligence units, including the ones in prisons, are obliged to *"execute written instructions of the investigator, instructions of the prosecutor and decisions of the investigating judge, court and requests of authorized state bodies, institutions and organizations to carry out intelligence events"* (Paragraph 2 of Part 1 of Article 7 of the Law of Ukraine "Intelligence activities"). Apart from this, they *"carry out detective (investigation) activities and secret detective (investigation) activities in criminal proceedings by the instruction of an investigator, or a prosecutor pursuant to the procedure stipulated by the Criminal Procedure Code of Ukraine"* (Part 4 of the Law of Ukraine "On Intelligence Activities").

In practice, this means that criminal intelligence units are also required to conduct interrogations. It is not stated what these interrogations may relate to, but according to the CPT's observation, in practice, they may also relate to the events that took place before the detention. At the same time, the Ministry of Justice in its response to the CPT report indicates that conducting of investigative actions with regard to crimes committed outside the institution is not provided by law (paragraph 148 of the response)<sup>93</sup>. As indicated, although such measures are not expressly provided by legislation, they are implicit. In particular, the duty to conduct detective actions at the request of an investigator or prosecutor is the obligation of the criminal intelligence units of penitentiary institutions. The specific "content" of the investigative action is not regulated by the CPC, but this in no way precludes its conducting with regard to events prior to imprisonment.

In addition, some institutions still practice making inmates to confess about crimes they committed before conviction. Such confessions are recorded in the relevant logbook of crimes in prison.

One of the reasons for these practices may also be a distorted understanding of the existing reporting requirements by individual officers of the penitentiary criminal intelligence units . In particular, these officers should report on "assistance provided to other law enforcement agencies in solving crimes". In some cases, such "assistance" is understood as obtaining confessions from prisoners about crimes committed before imprisonment.

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<sup>93</sup> Response of the Ukrainian Government to the report of European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Ukraine from 8 to 21 December 2017 (CPT/Inf (2019) 11) // <https://rm.coe.int/168093ab47>

## 6.4 Transportation of inmates

### Recommendations

The Committee monitored the problems of transporting inmates back in 2000. It then recommended some standards in this regard:

- to reduce the maximum number of prisoners in a compartment of wagons: a compartment of 3.5 m<sup>2</sup> should not accommodate more than 6 people, and a compartment of 2 m<sup>2</sup> should have 3 people maximum;
- ensure that prisoners are provided with drinking water when being transported by train and, in the case of prolonged transportation, that measures are taken to ensure adequate nutrition;
- not to use a 0.5 m<sup>2</sup> compartment in cars for transporting inmates (2000, 131).

In 2002, the Committee was informed that a working group had been set up to consider the issue of transferring responsibility for escorting inmates from the Ministry of the Internal Affairs to the Department of Corrections (2002, 142). The Committee did not comment on such a transfer but recalled the above standards (2002, 142).

### Implementation

In 2015, the government approved an Action Plan to implement the National Strategy on Human Rights until 2020<sup>94</sup>, which provided for measures to address the problem of escorting prisoners. In particular, Paragraph 10 of the Plan enshrined the following measure: "*Ensuring compliance with international standards of escorting conditions*". Its implementation provided for 1) development and submission to the Cabinet of Ministers of Ukraine of a Draft Law on amendments to the legislation in order to humanize the conditions of escorting persons; 2) bringing regulations in line with the case-law of the European Court of Human Rights.

However, this measure has not been implemented, and there are still no clear standards for escorting.

In 2019, the Order of the Ministry of Internal Affairs of Ukraine "On approval of the Regulations on the organization of convoys by military units of the National Guard of Ukraine" was adopted<sup>95</sup>. It regulates in detail the procedural aspects of escorting, as well as certain issues related to transport vehicles. However, it does not contain standards for the size of transport facilities, food supply, convoy duration, etc.

The problem of convoying led to violations of the European Convention. For example, in the judgment in the case of "Taran v. Ukraine", <sup>96</sup>the Court found a violation of Article 3 of the Convention on account of inadequate conditions for transporting a prisoner from a pre-trial

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<sup>94</sup> Order of the Cabinet of Ministers of Ukraine No. 1393-p dated November 23, 2015.

<sup>95</sup> Order of the MIA No. 1090 dated December 24, 2019.

<sup>96</sup> <http://hudoc.echr.coe.int/eng?i=001-126909>

detention centre to a temporary detention centre for several days in order to conduct investigative actions. This took place on 45 occasions. Although the transportation itself lasted about two hours, the applicant had to wait for about 22 hours in a metal cage inside the car, with an area of 0.5 m<sup>2</sup>. They gave him no food or water during transportation and could not sleep. The cage was dirty, cold in winter and hot in summer, and not well ventilated.

Along with that, in a recent pilot judgment in the case of "Sukachov v. Ukraine"<sup>97</sup>, the ECHR stated regarding convoy standards:

*"... assessment of whether there has been a breach of Article 3 cannot be reduced to a purely numerical calculation of the space available to a detainee during the transfer. Only a comprehensive approach to the particular circumstances of the case can provide an accurate picture of the reality for the person being transported. Nevertheless, a strong presumption of a violation arises when detainees are transported in vehicles offering less than 0.5 square metres of personal space. The low height of the ceiling, especially of single-prisoner cubicles, which forces prisoners to stoop, may exacerbate physical suffering and fatigue. Inadequate protection from outside temperatures, when prisoner cells are not sufficiently heated or ventilated, will constitute an aggravating factor. The above presumption is capable of being rebutted only in the case of a short or occasional transfer. By contrast, the pernicious effects of overcrowding must be taken to increase with longer duration and greater frequency of transfers, making the applicant's case of a violation stronger."* (Paragraph 87).

The 2013 report of the National Preventive Mechanism pointed out the following shortcomings that were identified during the inspection of escort vehicles: the personal space in the cells of such vehicles was less than 0.5 m<sup>2</sup>; the height of the cell doors was less than 1.55 m; the cell doors did not have ventilation grilles; lighting in the cells was absent or inadequate; the cells did not have heating or air conditioning systems, or they were faulty; vehicles and cells were not cleaned, and the floor was covered with debris<sup>98</sup>.

As of now, the National Guard of Ukraine remains responsible for escorting of prisoners, although in some cases prisons provide separate transportation of prisoners by their own vehicles. There are no standards for this transportation either, taking into account the above-mentioned recommendations of the Committee and the decisions of the European Court of Human Rights.

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<sup>97</sup> <http://hudoc.echr.coe.int/eng?i=001-200448>

<sup>98</sup> [http://www.ombudsman.gov.ua/files/Dopovidi/Ukrainian\\_NPM\\_Annual%20Report\\_2013.pdf](http://www.ombudsman.gov.ua/files/Dopovidi/Ukrainian_NPM_Annual%20Report_2013.pdf)

## *6.5 Carrying special equipment within prisons*

### Recommendations

The Committee recommends that penitentiary employees working in direct contact with prisoners not carry special equipment (such as rubber truncheons, handcuffs and tear gas canisters) in front of prisoners. Such carrying prevents the establishment of normal relations between personnel and prisoners (2009, 85; 2012, 23; 2013, 166).

### Implementation

This recommendation is not reflected in the rules on special equipment. These rules provide only the grounds for their application and not the procedure of carrying (Paragraph 2.1 of the SIZO Internal Prison Rules). Practice in this regard varies from institution to institution.

## 6.6 Installation of boxes for confidential complaints

### Recommendations

The Committee recommended that the Ukrainian authorities set up complaint boxes, which could be accessed only by a specially authorized trusted body (2002, 138).

In its 27th General Report, the Committee also stated:

*"Direct and confidential access to complaints bodies should be secured (e.g. by installing locked complaint boxes accessible to complainants in appropriate locations, to be opened only by persons specially designated to ensure the confidentiality of the complaints). Staff who have persons deprived of their liberty directly in their charge should not be in a position to filter complaints"* (CPT / Inf(2018), Para. 84).

### Implementation

The Action Plan to implement the National Strategy for Human Rights until 2020<sup>99</sup> provided for:

*"Installation of a mailbox in each prison and pre-trial detention centre, to which only the entity responsible for collecting correspondence would have access (it is clear from other provisions of the Plan that this refers to Ukrposhta - author's note); preventing the administration of prisons and pre-trial detention centers from accessing the mailboxes and correspondence contained therein"* (Paragraph 7.8).

This measure has not been implemented yet.

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<sup>99</sup> Order of the Cabinet of Ministers of Ukraine No. 1393-p dated November 23, 2015.

## *6.7 Mandatory bold haircut*

### Recommendations

The Committee opposes the practice of compulsory bold haircuts for prisoners (1999, 55).

### Implementation

The Internal Prison Rules of prisons provide that the haircut should be "short" (Paragraph 4 of Section XXII), without specifying the length of hair provided by this rule. This allows for ambiguous interpretations.

## *6.8 Installation of defibrillators*

### Recommendations

The Committee recommends that all institutions have life-saving equipment (2017, 87).

### Implementation

This equipment is not a standard part of equipment in Ukrainian prisons.



## *6.9 Visiting terminally ill inmates*

### Recommendations

The Committee recommended that the legislation be revised so that inmates who are dying in prisons and unable to get visits in the designed premises according to the procedure could have visits regardless of where they are in prison (2005, 136).

### Implementation

The possibility of visiting dying inmates within institutions is still not directly provided by regulations. Nevertheless, such possibility lies within the discretion of the prison director, who has the right to issue a special visit permit to relatives (Part 2 of Article 24 of the CEC).

## Conclusion

The conducted analysis shows that Ukraine has not been following a number of strategic recommendations of the Committee for more than 20 years. For example, among them are the recommendations regarding:

- undesirable collective detention in cells and dormitories;
- the living space norm in pre-trial detention centres (it still is 2.5 m<sup>2</sup> instead of 4 m<sup>2</sup>), although often even the current norm is not observed;
- excessive isolation of detainees, both from the outside world and inside the institution;
- lack of occupation for remand detainees and lifers;
- lack of occupation for sentenced prisoners in colonies;
- systematic segregation of inmates sentenced to life imprisonment from other inmates;
- visits frequency and procedure;
- the procedure of application and conditions of disciplinary isolation (the DIZO, PKT and DPK);
- recording of bodily injuries;
- provision of hygienic means;
- nutrition quality;
- medical care.

The analysis also explores more "recent" outstanding recommendations. However, some of them have been expressed for over 10-15 years:

- to increase the frequency of inmates' showers to 2 times a week;
- to start to work with drug-addicted inmates, in particular, as regards substitution therapy;
- to change the procedure for video surveillance of inmates to ensure the right to privacy;
- to cancel the visits fee, make "open" visits the rule, and not the exception;
- to change the inmates' classification procedure so that it takes place on the basis of risk assessment and not the type of crime committed;

- to stop 24-hour shifts of personnel in prisons, improve their working conditions in order to provide the appropriate staffing of correctional officers;
- to change the design and size of walking yards;
- to abolish Article 391 of the Criminal Code of Ukraine;
- to subordinate prison healthcare to the Ministry of Health;
- to create the prospect of release for lifers.

In addition to the above recommendations, the implementation of which is relatively easy to analyse, there are recommendations of a systemic nature, the implementation of which is not one-time and takes decades:

- introduction of dynamic security in order to establish positive relations between personnel and prisoners, the introduction of risk assessment and sentence plan;
- overcoming violence among prisoners, preventing the administration from using prisoner leaders to control other prisoners;
- providing adequate medical care, medical equipment and medicines;
- ensuring a sufficient number of correctional officers and doctors in prisons;
- building new pre-trial detention centres or rebuilding/repairing the existing ones.

These lists are only some examples, the list of the analysed unimplemented recommendations is much longer.

Our analysis shows that **the number of unimplemented recommendations of the Committee has long exceeded the number of implemented ones**. The constant disregard for the Committee's recommendations can be attributed to the lack of a binding mechanism for their implementation (unlike it is the case with the ECtHR's judgements). The so-called "nuclear option", which the Committee may exercise in the form of a public statement under Article 10 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, has not yet been applied to Ukraine. However, the experience of other countries shows that the use of a public statement does not necessarily change the situation.

In addition, our experience is that the authorities are often not properly informed about the status of the Committee. Likewise, its reports are perceived solely as recommendations, and their knowledge by the responsible civil servants leaves much to be desired.

Unlike the decisions of the ECHR, in Ukraine, there is no body responsible for coordinating the implementation of the Committee's recommendations. The need to specify such a body in

order to implement CPT's "penitentiary" recommendations was pointed out in government documents<sup>100</sup>.

The combination of the above-mentioned factors does not inspire optimism about the future implementation of the Committee's recommendations. It is possible to envisage their slow, indirect implementation with the help of the ECtHR, which uses the reports of the Committee in its decisions. However, the reports point to a wider range of issues than those for which the ECHR has jurisdiction.

In conclusion, **the failure to implement** a number of the Committee's recommendations, sometimes repeated over decades, **highlights a fundamental problem in Ukraine's attitude to its international obligations to protect the rights of prisoners**. This problem tends to grow gradually. As is the case with the number of unfulfilled recommendations.

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<sup>100</sup> Paragraphs 8.10-8.12. The Action Plan to implement the National Strategy for Human Rights until 2020 (Order of the Cabinet of Ministers of Ukraine No. 1393-p. dated November 23, 2015)