

# KNOW YOUR RIGHTS

## Programmatic Cooperation Framework for Armenia, Azerbaijan, Georgia, Republic of Moldova, Ukraine and Belarus

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# KNOW YOUR RIGHTS

This handbook was developed in the framework of implementation of the European Union and Council of Europe Programmatic Cooperation Framework for Armenia, Azerbaijan, Georgia, Republic of Moldova, Ukraine and Belarus Project «Further Support for Penitentiary Reform in Ukraine».

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Layout and cover design : SPDP, Council of Europe.

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Printed in Ukraine by Event Envoy LLC

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## INTRODUCTION

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Article 21 of the Constitution of Ukraine states that all people are free and equal in their dignity and rights. Human rights are inalienable and inviolable. There is no difference between imprisoned and non-imprisoned persons, as Article 63 clearly states: “that each citizen, even when freedom is restricted as the result of a court sentence, **enjoys all human and citizen's rights with the exception of the restrictions determined by law and established by a court verdict.** The same is stated in Article 7 of the Criminal Executive Code of Ukraine.

Especially attention should be paid to the following provisions of the Constitution: “No one shall be subjected to torture, cruel, inhumane, or degrading treatment or punishment that violates their dignity (Article 28); No one shall be arrested or held in custody except under a substantiated court decision and on the grounds, and in accordance with, the procedures established by law” (Article 29).

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## SECTION 1. GENERAL PROVISIONS FOR SERVING A TERM OF IMPRISONMENT

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### ■ What kinds of correctional facilities are there?

Under the Criminal Executive Code of Ukraine (CECU) correctional facilities are divided into:

- ▶ General Correctional Facilities (for adults);
- ▶ Colony for juveniles.

There are no correctional facilities of different security levels for juvenile offenders. Correctional facilities for adults can be at a low, medium or maximum security level. Correctional facilities at a low level of security can be categorized as facilities with general conditions of imprisonment and facilities with benign conditions (so called minimum security prisons). Special facilities are in place for women, but they do not include any with maximum security.

The Law provides for the establishment of certain sectors within a facility with a security level different to the overall security level. For example, a facility with medium security may incorporate a maximum security unit on its territory.

### ■ Who determines a facility's security level and the appropriate secure facility for a specific convict?

The Regional Allocation Commission does. To assign a person to a given penal regime, it considers different aspects such as the seriousness of a crime, previous criminal record, was the crime premeditated or spur-of-the-moment, etc. The Commission determines the correctional facility at which the sentence is to be served. The decision of the Regional Commission can be challenged by appealing to the Head of territorial unit of the State Penitentiary Service (SPS) of Ukraine. In the event that the appeal to the Head is thought unsatisfactory, the Commission's decision can be challenged at the SPS of Ukraine Appeal Commission. Furthermore, a decision can be challenged not only by the prisoner themselves, but by other persons as well. To challenge a decision on the allocation of a security level and the particular institution, one can also apply to a court of law.

### ■ What types of units are there in correctional facilities?

Most facilities have 4 unit types. They are:

- ▶ quarantine, diagnostics and assignment unit (for further information see below in this handbook);
- ▶ resocialisation unit;
- ▶ social rehabilitation unit;
- ▶ high security unit.

Exceptions to this are correctional facilities, where there is no high security unit and instead of a social rehabilitation unit there is a transitional adaptation unit. There are no high security units in women's and juvenile facilities. Maximum security-level facilities have no social rehabilitation unit.

### ■ Who undertakes the admission process for prisoners in a correctional facility?

The procedure of prisoners' admission to the facility depends on whether they arrive individually or in a group. If there is a group, admission is carried out by a committee under the management of the institution's Governor. Their Deputy, staff of operational subunits, supervision and security subunits, controllers enforcing court decisions, rehabilitation and psychological work, quartermaster's services and the health care unit are also included on the committee.

Admission of prisoners arriving individually is carried out by the Governor of the institution together with staff of the control unit of enforcing court decisions, formerly known as the “special unit”. Outside normal working hours, the admission of prisoners is carried out by the Duty Assistant of the Prison Governor, and the Chief of the prison guards.

■ **What actions should the facility's administration take when admitting you to an institution?**

You have to be strip searched. You are also subject to a comprehensive sanitary disinfection that includes, specifically for men, a haircut, shaving under the chin, and removal of a beard or a moustache. You have to be examined by a medical professional, to whom you need to tell of any health issues. If during your stay at a Detention Centre or transfer to facility or before, you were beaten or subjected to other physical suffering, the medical professional is obliged to record it in your medical history. Subsequently, a decision on when to send you to the quarantine, diagnostics and assignment unit will be made.

■ **Whom shall the facility's administration notify about your arrival at an institution?**

The administration shall notify the court that you have arrived, as well as about the location of where you will serve the sentence. Within three days from the date of your arrival, the administration shall send a notice to your family stating the address of the institution and explaining your rights to correspondence, receiving parcels, their handover and that of packages, visits and telephone calls.

■ **What does the unit for quarantine, diagnostics and allocation do subsequently (QDAU)?**

All newly arrived prisoners are detained for 14 days in this unit. A psychologist will work with you there, and a comprehensive medical check for any infections and other illness is carried out. Prisoners in the QDAU are completely isolated from other prisoners and have no contact with them. While in the QDAU inmates can only work on the care and maintenance of the unit. During your stay in the unit, you have the right to take outdoor exercise and use the bathhouse. Work with prisoners will be organized in accordance with the procedures arranged in the induction programme for newly arrived prisoners under the rules and conditions of serving your sentence.

■ **What are the reasons for transferring a prisoner from one unit into the other?**

As stated above, a prisoner at the QDAU can be transferred to any unit of the facility. The resocialisation unit is the main unit of a facility, where most prisoners are held and, depending on your behaviour you can be transferred to either the social rehabilitation unit under favourable conditions, see below) or to a high security unit, if it is determined that you are not yet ready for "self-controlled socially appropriate behaviour". Note that you can be transferred to a high security unit not only from the reintegration unit but also from the social rehabilitation unit.

■ **What is a social psychological service unit and what is a team?**

A social psychological service unit is one of the main organisational elements in the structure of a penitentiary. Not more than 100 inmates are allocated to a unit. It is managed by the Head of the unit, an officer. Prisoners may freely move across the grounds of the unit.

A team is a number of prisoners who work together. The team is formed by the administration. Standards are established for the output of the team which determine what work they do and the wages received by the prisoner.

■ **What are the special conditions for prisoners in a social rehabilitation unit and how can a prisoner be assigned there?**

In this unit prisoners are not guarded but supervised, with less control from administration and fewer restrictions. Prisoners may freely move across the grounds of the unit within during daylight hours. With the consent of the facility's administration, they may freely move unsupervised outside the unit but within the nearby populated area if required by the type of the work they do or their study. Such prisoners are allowed to wear civilian clothes, have mobile telephones registered to them, and have money and valuables. Once a month they are granted long-term visits and short-term visits are granted without restrictions. Such prisoners may work outside the facility. Having served six months of their sentence in the unit without any violation of the prison regime, inmates may reside within the facility's locality together with their families. But you have to remember that prisoners actually have to work in this unit to fully provide for themselves.

■ **What are the conditions in enhanced security units and why might a prisoner be assigned to one?**

In high security units prisoners are kept in conditions of strict isolation from other prisoners. In high security units of maximum security facilities, prisoners are kept in cells, while in other facilities, they are allowed to live in ordinary residential premises.

Prisoners kept in high security units have no right to leave the unit except for going to work and taking scheduled exercise, and also if a visit is granted, health examinations and in-patient care, or attending of work training.

Being admitted to a high security unit reduces the chance for parole. The conditions under which a sentence is served and opportunities for contact with the outside are worsened.

Prisoners are not sent to such units automatically. They may be sentenced to one for contempt and showing antisocial behaviour, or continued unlawful conduct.

### ■ **Are you obliged to work in a correctional facility?**

There are two types of work:

**First category:** - work to which you have a right (not an obligation) and for which you get paid. You can work only in places and on tasks defined by the facility's administration. Usually, you can work at the facility's enterprises and workshops, or on the running and maintenance of the facility. When your workplace is designated your gender, age, work ability, condition of health and type of occupation are taken into consideration. You have a right to choose whether to work at the facility's enterprises or in a workshop. No one can force you to work at any places you don't want to.

**Second category:** - unpaid work which you are obliged to do as requested by the facility's administration. Such work can be ONLY to maintain the facility and its grounds, to improve prisoners' living conditions or additional work on food provision for the facility. You can be engaged in such work during otherwise non-working hours and for no more than for two hours a day, usually in rotation with other prisoners.

### ■ **What are the working hours?**

Your working hours shall not exceed 40 hours a week, although for inmates aged 15-16, no more than 24 hours a week and for prisoners aged 16-18, no more than 36 hours a week, whether have a five or six day working week or whether you work in shifts. Legislation envisages working hours from 7.00 to 17.00 or from 6.00 to 16.00. The facility's administration defines actual working hours (shift hours) specifically for that institution.

For night shift work (from 22.00 to 6.00), the duration of work shall be shortened by one hour (this rule shall not be applied to prisoners engaged on work under harmful working conditions). The duration of work can be the same as day work at an enterprise with a nonstop manufacturing process and with working in shifts for six days a week with one day off.

### ■ **What are the deductions from your wages?**

From your salary or pension you will need to pay personal income tax, alimonies, and pay for clothes, shoes, underwear (except for special work clothing); costs for food, utilities and other services provided, other than for special nutrition; deductions as stated in court enforcement letters to either individuals or legal entities, or should you have caused material damage while serving your sentence, to the State.

### ■ **What sum must the prison administration transfer to your account regardless of any circumstances?**

According to Regulations, wages are not handed over directly to prisoners and all money earned will be transferred to your personal account (after deductions).

Regardless of any deductions, at least twenty-five percent of the monthly wages earned by a prisoner shall be transferred to the prisoner's personal account. Male prisoners older than sixty, female prisoners above fifty five years of age, disabled persons of group I and II, prisoners with an active form of tuberculosis, pregnant female prisoners and female prisoners whose children are cared for at the facility's children's houses, shall have transferred at least fifty percent of their monthly wages.

### ■ **What opportunities do you have to receive medical care while serving your sentence?**

The administration of the penal institution bears responsibility for your health while you are serving a sentence, however the administration has no right to force you to receive medical services. Therefore, you have two options:

▶ to receive medical assistance from the correctional facility's administration at the health care unit or at a special hospital at another correctional facility, or if no correctional facility can provide the necessary assistance, at civilian health care institutions within a pre-defined list);

▶ to receive treatment, including paid medical services at your own expense at a hospital licensed by the Ministry of Health of Ukraine and not under the control of the Penitentiary Service.

### ■ **You have the right to freely choose your physician!**

To receive medical services at your expense, you or your family have to invite an appropriate specialist and, on receiving their agreement, notify the correctional facility's administration as to the date and time of the doctor's visit. Their access to the institution cannot be limited, but examination and treatment should take place at the health care units at the place of detention under the supervision of the staff of the institution's health care units.

If you are admitted to a special prison hospital, then you have to apply to your doctor for permission to see an outside specialist. The prison hospital doctor must within one day prepare a medical certificate describing the condition of your health and issue a request to the administration of the penitentiary. The institution's authorities are obliged to provide access for the external doctor to the prisoner within three working days. The external doctor has to provide: citizen's identification, their degree certificate and a certificate defining their medical specialization.



If necessary, you can be provided with urgent external medical assistance at the health care unit. Upon written request, you can be provided with relevant extracts from your medical records and have them passed to your family.

#### ■ **Do you have the opportunity to receive deliveries and packages with medical items?**

Yes, in cases when you want to use particular drugs to continue prescribed treatment, they can be received from your family subject to the approval of the health care unit of the institution where you are serving your sentence.

Medical preparations and drugs may not be sent directly to you since all such parcels and packages must be delivered to the health care unit of your institution. You may only take such drugs in the presence of medical staff. Exceptions are life supporting drugs that can be handed over directly. Drugs will be accepted only in standard, undisturbed, factory packaging.

#### ■ **What you can do if your health suffers as a result of violence inflicted on you?**

While serving your sentence you may be subjected to violence, both lawful and unlawful. Unlawful is an application of measures of physical restraint if they are more than necessary to appropriately discharge the duties imposed on the administration of the facility. Measures of physical restraint shall be such that there is minimal risk to health.

If you violate established regulations while serving your sentence and even if restraint applied by the correctional facility's staff was justifiable, in any such case a medical examination is obligatory. Medical assistance shall be also provided if necessary. Examination results shall be recorded in your medical records.

If any violence you are subjected to is unlawful you should address the nearest officer of the correctional facility, or indeed any staff you can reach unassisted and promptly (doctor, unit management, operational officer, etc.). Medical control over your health must be taken by medical staff following your request. If there is no such request from you, you may not receive necessary medical assistance.

A doctor sees outpatients at the health care unit on a daily basis at scheduled times. The schedule is arranged such that time is dedicated to each unit, shift or several units with each having their own dedicated time for outpatient reception by appointment, recorded in a special journal. For exceptional cases no appointment is needed – the physician himself decides whether to see and examine a patient immediately.

#### ■ **What are the restrictions on receiving deliveries and packages?**

All prisoners may receive an unlimited number of parcels and packages. There are limitations as to the weight of parcels and packages – packages exceeding 30 kilograms in weight cannot be sent through the post. The same applies to parcels – they must not exceed 30 kg.

Packages delivered to prisoners confined to the disciplinary unit, a punishment cell or in a solitary confinement cell shall be given deliveries after serving their punishment. The correctional facility's administration shall preserve contents of packages, but in the case of natural products spoiling over a duration, the staff can bear no liability. Delivery of food products after storage over a long period shall take place in the presence of medical staff.

#### ■ **Can you make telephone calls from your penal institution?**

You can make an unlimited number of calls under the supervision of the administration. To make a call you have to submit an application. You may call to either a landline or a mobile phone. You can use either a landline or a mobile phone. To use your mobile phone you have to obtain a SIM card from the Head of the unit and that then shall be given to you when you would like to make a call. The call is charged by your operator. A landline call shall be paid for by the prisoner from their personal account. You may make calls only during the day; in your off-duty time and not during the time allocated for eating and uninterrupted sleep. The call duration may not exceed 15 minutes.

If you dial a number not stated in your application or use abusive language, the call shall be interrupted. For prisoners confined in a disciplinary security, a phone call is allowed only in exceptional circumstances. It is forbidden to call any person who is also serving a sentence in a correctional facility.

#### ■ **Do you have a right to correspondence by mail and use of the internet?**

Yes, you may receive and send letters and telegrams at your own expense without any limitations as to their number. Your letters shall be subject to checking, so they need to be left open. There are cases when the administration does not check letters. This is when you write to:

- ▶ The Ukrainian Parliamentary Commissioner for Human Rights;
- ▶ The European Court of Human Rights;
- ▶ Other relevant bodies of international organisations;
- ▶ A court of law;

- ▶ The Public Prosecutor;
- ▶ Your defence attorney.

In all these cases your letters will not be subject to checking and shall be sent to the intended address within a day of being handed in. Correspondence received by prisoners from the bodies and officials specified above shall not be subject to checking.

You can use the Internet under the supervision of the administration. For this purpose, computer classes will have stations appropriately equipped outside the social psychological service units. Prisoners shall cover their use of the Internet from their own account.

### ■ How many visits can you have?

This depends on the unit where you are serving your sentence:

In the high security unit you are allowed to have 1 short visit per month and 1 longer visit each 3 months; in the resocialisation unit you may have 1 short visit per month and 1 longer visit each 2 months; in social adaptation and social rehabilitation units, you can have an unlimited number of short term visits and one longer visit each month.

The maximum duration of a short visit is 4 hours under the supervision of the facility's staff; the duration of longer visits is up to 3 days with the right for families to live together.

You have to pay a fee for the use of visit rooms.

You can have visits to receive legal assistance.

### ■ Can relatives transfer money to you?

Yes, you can receive unlimited money transfers from your family. You can also transfer money to your family. Subject to the approval of the administration, you can transfer money to other persons as well. Money transferred to you shall be accrued on your personal account.

### ■ What things can you buy, and how, in a correctional facility?

You are not allowed to carry cash with you, but you can have money on your personal account and use it to buy food in special shops on the premises of the institution.

You can buy goods only with money earned at the correctional facility, and not with any cash transferred to your account. This rule is not applied to male prisoners over 60 years of age, female prisoners over 55 years of age, disabled persons of category I and II, pregnant female prisoners, female prisoners whose children are kept in children's lodgings at the penitentiary institution, and juveniles. Also to those admitted to medical facilities under penitentiary supervision.

These categories of prisoner may buy goods at the facility using money transferred as a pension or other such income. The same conditions shall be applied to prisoners who due to reasons beyond their control cannot work or can only work part-time.

### ■ Do I receive my identification and passport back upon my release?

Yes. In accordance with the procedure passports are subject to confiscation at the stage of detention and kept in your personal file. But it may be the case that passports are seized at the stage of investigation or during court hearings. This is why clause 4 of Article 153 of the Criminal Code of Ukraine envisages that if a passport is not included in a prisoner's file, the administration of the penal institution shall in due course take measures to procure the passport. It would be appropriate before your release to apply to the administration to check if there is a passport in your file. If it is absent, you should request the process to obtain it, and this should be initiated in time.

### ■ What incentives can I have applied?

Incentives are awarded for good behaviour, attitude to work and study, and active participation in societies and clubs can be considered.

There are the following types of incentives: commendations; letters of commendation; financial bonuses, gifts; additional short-term and long-term visits; early release from previously imposed sanctions; the authorization to spend additionally up to fifteen percent of your minimum salary to buy food and essentials; an increase in the duration of exercising up to two hours for prisoners kept in high security units and isolation cells in correctional facilities at a high security level.

### ■ Does the administration have a responsibility to ensure your safety?

Yes, the law clearly states that you have the right to personal safety while serving your sentence. In the event that there is a threat to your life and health, you may apply to any official or officer of the penal institution with a request to provide personal safety. Every member of staff is obliged to take immediate action in order to procure your safety.

The administration of your correctional facility shall first of all take measures to transfer you to a safe place and any other measures necessary until the threat is lifted, and shall then determine where the prisoner will continue to serve their sentence. Legislation does not envisage a specific list of measures that may be applied, they are selected taking into consideration specific circumstances.

Among other actions, the following measures may be applied: relocation to an isolation cell, solitary confinement or transfer to another penal institution.

Solitary confinement shall be applied if there is a need to protect you from violence by other prisoners due to your personal declaration (even if you didn't violate the prison regime), and when it is necessary to isolate you for the time necessary to prepare materials for your transfer to another penal institution.

Under such circumstances, you may be held in an isolation cell, disciplinary cell or a lockup on a general basis until an investigation ends, the threat is deemed to have been removed, there is a complete resolution of any conflict or once a transfer order has been issued, but no longer than ninety days.

Grounds to put you in isolated confinement must be as the result of a decision issued by the Governor of the penal institution. It shall not be considered as disciplinary measure and during confinement you shall enjoy all the rights envisaged by law.

## SECTION 2. RELEASE AND COMMUTATION OF YOUR SENTENCE

### ■ What is needed for commutation of the remaining part of a sentence to a more lenient punishment?

The law envisages two circumstances for commutation:

- ▶ formal – on serving positively a certain part of your sentence;
- ▶ by evaluation – proof that you are demonstrating rehabilitation.

Formal: The remaining part of your sentence may be commuted after you have actually served:

- ▶ no less than one-third of a prison sentence imposed by a court for a minor or medium seriousness of offence, except for offences involving corruption and for accidental serious crimes;
- ▶ no less than half of a prison sentence imposed by a court for corruption offences of medium seriousness, premeditated serious offences or non-premeditated but very serious offences, and in the case of a person having already served a sentence of imprisonment for a premeditated offence and before their criminal record was revoked, had been sentenced for a similar intentional offence;
- ▶ no less than two-thirds of a prison sentence imposed by a court for a premeditated especially serious offence, or of a term imposed on a person who had been previously paroled but committed another intentional offence **before the expiry of the remaining part of their sentence.**

**By evaluation:** by being recognized as showing signs of rehabilitation, you must not have outstanding or unrevoked sanctions (the last sanction must have been levied no later than 6 months before the date of applying for commutation of sentence). Having a number of incentives awarded would be a plus, as well as an active participation in events which took place within the institution. Your attitude to work shall be also be taken into consideration. That is demonstrated by how careful and conscientious you are towards your duties, how you have fully carried out assigned work, how you treat equipment, and whether you took part in unpaid voluntary work. The formal absence of outstanding or revoked sanctions shall not be considered as conscientious behaviour, given that obeying procedure and the conditions of imprisonment is considered your duty.

### ■ Who decides on commuting the remaining part of a sentence? What is the procedure?

The decision to apply or deny a commutation of sentence shall be taken **only by the court** at the place where the sentence is being served. In most cases the court considers such questions at the request of the administration of the penal institution.

Whether to apply for a motion on commutation is decided by a Commission headed by the Governor of the institution. The Commission's hearing shall be held in a specially designated room **in your presence**. Commission hearings are held no fewer than twice per month.

If commission rejects a motion to commute the remaining part of sentence to more lenient punishment it should indicate the reasons for rejection. The Commission's decision shall be presented to you with a signature. If the commission decides to commute the remaining part of the sentence for more lenient punishment, the correctional facility's administration shall apply the court's resolution appropriately.

### ■ Can you personally apply to a court for commutation of the remaining part of your sentence to a more lenient one or is a motion from the institution's administration mandatory?

You can personally apply for a motion to commute your sentence at a court at the place where you serve your sentence. Such a right is foreseen by Articles 537 and 539 of the CPC of Ukraine. Thus, Article 539 of the CPC of Ukraine states that: "Matters arising during and after a sentence is served shall be considered by the court under a motion submitted by a public prosecutor, prisoner, their defense attorney, legal representative or body, or the penitentiary as well as other persons, institutions or bodies as provided for under the law".

#### ■ **What duration is allowed for the facility's administration to consider commutation?**

On receiving a formal motion of application for commutation or for replacing a large part of your sentence by a less strict regime, the penitentiary's administration is obliged to consider the matter within one month. A further term of one month is also established for sending documentation to the court in the event of a positive decision being taken by the commission of the penitentiary. Thus, the whole process of considering matters of commutation shall not exceed two months.

#### ■ **If a court of law rejects your request for commutation, when can you or the institution's administration reapply?**

If your commutation application was rejected, the matter can be reconsidered:

- ▶ in the case that you are imprisoned for a serious or especially serious offense for a term **not less than five years – not earlier than one year** from the date of rejection;
- ▶ if you are serving a sentence for other offences or you are a juvenile prisoner – **not earlier than in six months**.

#### ■ **What is needed to apply for parole?**

The Law envisages two grounds for changing a part of a non-served sentence to lenient punishment:

- ▶ formal – serving an appropriate part of your sentence;
- ▶ by evaluation – demonstrating your rehabilitation. Both grounds are examined explicitly in the Commutation subsection (see above)

#### ■ **What period is considered for any past violations and from what period can you be considered eligible for parole?**

If within six months from the date of a sanction being served you have not violated any regulations, you are considered as sanction-free. If, for example, you were given a reprimand, the period is counted from the date it was imposed; if you were placed in solitary confinement, then from the date of release.

In evaluating your behaviour, the court or the institution's administration shall consider only sanctions that were imposed in the facility itself. In other words, punishments that had been imposed during the time of being in detention shall not be considered.

When considering parole, usually your behaviour during the whole period of the sentence is taken into account.

#### ■ **When could you be discharged from prison on medical grounds?**

You can be discharged if:

- ▶ during serving your sentence a mental illness has developed which renders you incapable of understanding your actions or controlling them;
- ▶ after committing a crime or delivery of judgement you develop a serious illness preventing you from serving the sentence.

A comprehensive list of such illness is published in the additional checklist approved by the Ministry of Justice of Ukraine. So release is possible if diagnoses correspond to the list, as well as to certain stages of illnesses envisaged by the document.

You should know that in the event of mental illness as envisaged by the list, the court is obliged to make a decision on your release. At the same time it can enforce compulsory medical measures, such as providing with outpatient psychiatric assistance, admission to a psychiatric institution with standard, increased or maximum level of oversight.

If you have another illness that precludes you from serving your sentence, then your release is the court's right, not duty.

**Important:** if it is found that your serious illness is a consequence of self-inflicted bodily harm caused during serving your sentence, you shall lose any right to be released.

#### ■ **What is needed to apply for discharge from prison on medical grounds?**

The law provides for different grounds for discharge depending on different kinds of illness. Therefore, if you are shown to have developed a mental illness the law considers **two aspects**:

- ▶ **medical** – presence of mental illness (chronic mental illness, temporary mental disturbance, dementia, or other psychiatric condition);
- ▶ **legal** – stipulating that due to illness you are not able to understand your actions or control them.

If you were diagnosed with another illness that prevents you from serving your sentence, there also could be **two grounds**, although quite different:

- ▶ **medical** – presence of an illness as defined in the Ministry list of illnesses;
- ▶ **legal** – suffering from an illness that prevents you from serving your sentence.

### ■ **What are the procedures for diagnosing ill health as the grounds for discharge from punishment?**

Should you be seen to have an illness defined in the Ministry List of illnesses, enabling you to apply to the courts with documentation for release from further serving of your sentence, and your condition needs permanent medical care and assistance, you'll be sent to a specialised hospital for medical examination. Following the results of your examination, a special medical commission may issue a report on the presence of an illness using a special template. The Head of the commission will deliver a copy of the report to you for which you need to sign.

The report will be immediately forwarded to the correctional facility from where you were sent, and the institution's Governor must, within one day of the receipt of the report, prepare a motion for the court to decide on the matter of your release. The motion must, within three days, be agreed with the Head of the SPS of Ukraine territorial office, and then delivered to the court.

You yourself, or your defence council or legal representative, can personally apply to the court at the place where you are serving your sentence for a motion to release you on medical grounds. You will need to stay in hospital until the court decides on your release.

If the court rejects the motion, that does not prevent you from reapplying should your health condition worsen.

### ■ **How and for whom does a day of preliminary detention count as two days of imprisonment?**

The rule of "one day for two" shall be applied **ONLY** in the context of a single set of criminal proceedings. What counts as preliminary detention includes the following circumstances:

- ▶ detention without a decision by the investigating judge or court;
- ▶ detention due to the decision of the investigating judge or court to grant detention;
- ▶ detention on remand as a preventive measure, following a decision by a judge during a pre-trial investigation or during court hearings;
- ▶ a stay at an in-patient medical treatment facility in order that forensic medical or forensic psychiatric examinations are performed;
- ▶ a stay at a pre-trial detention facility while investigative action is being taken or participation in court hearings during criminal proceedings.

**IMPORTANT:** The date when the court's judgment is delivered ends the term of preliminary detention, and the duration of your transfer shall not be counted as preliminary detention.

### ■ **What is an amnesty and when is it grounds for release?**

Amnesty is a complete or partial discharge from criminal liability and punishment. The scope of the amnesty shall be announced by a special law on amnesty that can be put forward no more than once during a calendar year. The ratification of a law providing an amnesty is a right and not a duty of the Ukrainian Parliament. Each law on amnesty envisages categories which enable discharge from punishment as a result of the amnesty; the types of punishments from which prisoners may be discharged; amnesty extent i.e. its applicability only to punishment or also to criminal liability; categories of persons not subject to amnesty; bodies enacting amnesty and other issues.

The law may enable cutting the length of sentences served for certain punishments. At the same time, an amnesty law cannot provide for change of one punishment to another or removal of culpability of prisoners as they are freed from imprisonment.

Should an amnesty apply to you, you'll be discharged of serving the main and any additional sentence awarded by a court. But if your offence resulted in damage, you will still be obliged to pay compensation. Amnesty does not remove that responsibility from you.

Amnesty shall be applied by law to citizens imprisoned by the courts of Ukraine regardless of the location where their sentence is being served. Amnesty has some limitations – it does not apply to certain categories of prisoners as defined in the text of the law, as well as on prisoners who were awarded amnesty within the past 10 years.

If you are subject to an amnesty, the administration of your penal institution must send relevant documentation to the court. It is their direct duty. After the documentation has been examined by the court, you will be released on the day of receipt of the relevant appropriate documents and if the documents were received after the end of the working day, during the first half of the next day.

### ■ **What is a pardon and how can you be consequently released?**

A pardon is an Act issued by the President of Ukraine. Each Act of Pardon has an individual character since it only concerns a specific prisoner. Unlike amnesty, a pardon has no restrictions as to the category of prisoners to whom it can be applied. Furthermore, an Act of Pardon may substitute one punishment for another, more lenient.

You have the right to request a pardon regardless of the crime committed and the length of a sentence awarded by a court.

A motion to request a pardon has to be applied for through your correctional facility directly to the Administration of the President, with attachments comprising copies of the verdict, decisions and rulings of the court, and your circumstances, all of which have to be included by your penal institution's staff). You should not write a motion to any another address other than the Presidential Administration. Your motion must indicate that it is a motion for a pardon and must not make a broad request for a pardon or parole or commutation of sentence in one application. Initially, all documentation is examined by a Pardon Commission under the President of Ukraine's Office. It is formed of human rights advocates, lawmakers, and others. And only if the Commission finds grounds for a pardon will your documents be submitted to the President, who makes the final decision.

If a decision to award a pardon is made in your favour, you will be released on the day of receipt of the Presidential Decree; if the documents were received after the end of the working day, during the first half of the following day.

## **SECTION 3. FEMALE PRISONERS AND JUVENILE OFFENDERS**

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### ■ **What exactly is a Correctional Colony?**

Given that the inmates of colonies are juveniles, these institutions have more benign regimes and entitle prisoners to more rights as compared to adult inmates. Juvenile prisoners have higher standards for the conditions of imprisonment which are provided for generally, with increased nutrition standards, more options for sport activities, involvement in a range of events. The application of special safeguard measures and certain types of disciplinary punishments for such prisoners is prohibited.

Also in a colony you are entitled to the following:

- ▶ to spend monthly on food and essentials the money that you have earned in the centre to the value of 100% of the minimum wage (in 2016 the minimum wage is defined as follows: from January 1 – 1378 UAH, from May 1 – 1450 UAH, from December 1 – 1550 UAH);
- ▶ have short-term visits without any restrictions, and
- ▶ have long-term visits once a month;
- ▶ obtain secondary education free of charge.

Should the administration deem your behaviour to be conscientious and your attitude to work and studies to be good, once you have served  $\frac{1}{4}$  of your sentence you may be entitled to an improvement in the conditions of imprisonment and you may be allowed: to spend monthly an additional sum that equals 60% of the minimum wage, and following a ruling by the Governor to have one short-term visit outside the penal facility once every three months.

The range of incentives applied to you during imprisonment is much wider. Among such incentives are the following: the right to visit cultural performances and sporting events outside the penal facility accompanied by facility officers; a right to leave the territory of the penal facility accompanied by parents or any other close relatives.

At the same time you are obliged to study.

### ■ **On what grounds can you be transferred from a Colony for Juveniles to a general correctional facility? What is the procedure?**

According to the general rule you should serve your sentence in a Colony for Juveniles until you have attained the age of eighteen. After that you shall be transferred from the Colony for Juveniles to serve your sentence in a correctional facility of an open prison type – with a low level of security and general conditions of imprisonment.

The issue of your transfer is actioned by the State Penitentiary Service based upon the resolutions of the Educational Council following the submission of a motion by the Governor and then approved by the Department responsible for children's affairs.

However, the Law allows prolonging the duration of a stay at a penal facility for juveniles in order to achieve a better stabilization of the results of correction and completion of secondary education or vocational training for the inmate. In this case you may serve your sentence in a Colony for Juveniles until you have attained the age of twenty-two. You may remain in a Colony following a ruling by the Educational Council and a ruling by the Governor of the facility, approved by the Department responsible for children's affairs. Should you remain in a colony for juveniles, the imprisonment conditions and standards of nutrition and material allowance established for juvenile prisoners will still apply to you. However, labour conditions will be in accordance with labour laws.

#### ■ **What are the procedures for engaging juveniles to work?**

While serving your sentence in the Colony for juveniles you might be expected to work, however only at the enterprises belonging to the Colony. The conditions of work and terms of remuneration in this case are established according to labour laws. If you are 15 – 16 years old, the working week shall not exceed 24 hours, if 16 – 18 years old then 36 hours, and should you be older than 18 years, 40 hours. Your remuneration (if you are under 18 years old) even in the case of a compressed daily work schedule shall be paid in full and equal to the remuneration of workers engaged in a full daily work schedule.

#### ■ **What kinds of institution are there to which females can be sent to serve their sentence?**

Legislation provides for female prisoners to be detained under less strict conditions of imprisonment: female inmates are kept solely in correctional facilities of one of three types.

Thus you might be transferred to a penitentiary of:

- ▶ **low security level with mild imprisonment conditions** – in the case that you are sentenced to imprisonment for the first time for crimes committed by negligence, crimes of minor and medium seriousness, or if you are transferred from penal facilities with minimum security level with general imprisonment conditions or penal facilities with of medium security levels;
- ▶ **low security level with general imprisonment conditions** – in the case that you are sentenced for imprisonment for crimes of minor and medium seriousness, serious or especially serious crimes;
- ▶ **Medium security level** – in the case that your sentence of capital punishment or life imprisonment was replaced by imprisonment for a specific period of time as a result of clemency or an amnesty.

#### ■ **What special conditions are there for a pregnant woman or one with a baby, to serve their sentence?**

The law provides for special care for the health of pregnant women and nursing mothers. Should you fall into one of those categories you are entitled to:

- ▶ Spend more on food and essentials than male prisoners, as well as other female prisoners;
- ▶ Have improved imprisonment conditions and an increased standard of nutrition, supply of clothes, footwear, underwear and utility services;
- ▶ Be allowed to work at your own discretion based on a certificate issue by the medical commission of your correctional facility.

It is prohibited that you be kept in a disciplinary cell, a solitary confinement cell or that a restraint jacket be used.

#### ■ **Is it possible for your child to be with you while you serve your sentence?**

Yes, the law provides for the establishment of children's houses in penal facilities, where female prisoners may reside with their children if necessary. At present such children's houses have been set up in two penitentiaries – in Odessa Correctional Facility No. 74 (prisoners are assigned to this facility for first offences) and in Chernihiv Correctional Facility No. 44 (prisoners are assigned to this facility in the event of reoffending). You will also be assigned to these penitentiary facilities in the case that your pregnancy is more than 4 months. You are entitled to request that your children who are under three years of age stay with you at a children's house (including those children born outside of the penitentiary). Children's houses in correctional facilities are establishments intended for children. In children's houses, the children are under the guardianship of the administrative staff of these children's houses and have a full State allowance, conditions required for a normal life and their development is ensured. In these establishments you may even live together with your child. Should you not wish to live together with your child in a children's house, you are free to see your child without any limitations. The requirement to visit your child during free time from the duties given you shall not be deemed to be a limitation of communication with your child.

Once your child attains three years of age and the remaining part of your imprisonment term is not more than one year, and if you are diligently discharging your mother's duties, the child's stay in the children's house may be extended by the administration of the correctional facility until your release.

### ■ Is a prisoner entitled to child support benefits after childbirth?

You are entitled to the child support benefits payment after childbirth to the sum of 41,280 (forty one thousand two hundred eighty) UAH, which includes a one-time support payment after childbirth to the sum of 10,320 UAH and further monthly payments of 860 UAH during the next 3 years. To be paid child support benefit, you have to write an application, no later than within 12 months after the child's birth), which the administration of the penitentiary files with the labour and social welfare authorities along with a copy of the birth certificate of the child. You are not entitled to receive these payments personally, but the payments shall be transferred to a deposit account of your child that is opened with a bank by the administration of the penitentiary. If the child lives with you in the correctional facility, you are entitled to receive this sum of money upon release from the facility, and if the child resides with their father or guardian, the latter are entitled to these sums, or, in the case that these sums have not been spent by one of the parents or a guardian, they can be used by your child upon attainment of the age of eighteen.

## SECTION 4. CULPABILITY DURING A TERM OF IMPRISONMENT

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### ■ Which actions can result in disciplinary action being taken against you?

You are entitled to the child support benefits payment after childbirth to the sum of 41,280 (forty one thousand two hundred eighty) UAH, which includes a one-time support payment after childbirth to the sum of 10,320 UAH and further monthly payments of 860 UAH during the next 3 years. To be paid child support benefit, you have to write an application, no later than within 12 months after the child's birth), which the administration of the penitentiary files with the labour and social welfare authorities along with a copy of the birth certificate of the child. You are not entitled to receive these payments personally, but the payments shall be transferred to a deposit account of your child that is opened with a bank by the administration of the penitentiary. If the child lives with you in the correctional facility, you are entitled to receive this sum of money upon release from the facility, and if the child resides with their father or guardian, the latter are entitled to these sums, or, in the case that these sums have not been spent by one of the parents or a guardian, they can be used by your child upon attainment of the age of eighteen.

Failure to abide by the established regulations of imprisonment can result in disciplinary action being taken against you and the following sanctions may be imposed on you:

- ▶ a warning;
- ▶ a reprimand;
- ▶ a strict reprimand;
- ▶ a disciplinary fine equivalent to up to two minimum wages;
- ▶ cancellation of improved imprisonment conditions;
- ▶ placement of male prisoners kept in correctional facilities into disciplinary cells with release for work or studies, or without such a release for up to 15 days, or for up to 10 days in the case of female prisoners;
- ▶ placement of prisoners kept in prison cells of penal facilities of high security level into a punishment cell without release for work for up to 15 days;
- ▶ transfer of prisoners kept in correctional facilities, except for prisoners kept in correctional facilities of low security level with mild imprisonment conditions, to solitary confinement cells for up to 3 months.

### ■ What are the characteristics of detention in a disciplinary cell, a punishment cell or a solitary confinement cell?

The following sanctions may apply:

- ▶ prisoners may not:
  - ▶ have visitors (except for attorneys or other lawyers entitled to provide legal aid),
  - ▶ buy food and essentials,
  - ▶ receive parcels and packages,
  - ▶ play board games;
- ▶ prisoners shall be provided with individual beds and bed linen. Bed linen is provided only for sleeping, outerwear shall be provided for time spent out of the premises;
- ▶ solitary confinement of prisoners in punishment cells;
- ▶ parcels and packages shall be given to the prisoner upon completion of the term of their detention in a disciplinary cell, punishment cell or solitary confinement cell;
- ▶ prisoners who are kept in a disciplinary cell or solitary confinement cell and are released for work, shall work separately from other prisoners;



- ▶ All types of sanction with exception of repeated assignment to a disciplinary cell or punishment cell, or repeated transfer to a solitary confinement cell may be imposed on prisoners placed to a disciplinary cell or punishment cell or transferred to a solitary confinement cell;
- ▶ Pregnant female prisoners, female prisoners whose children are kept in children's houses at the correctional facility, and category 1 disabled prisoners may not be assigned to a disciplinary cell, punishment cell or solitary confinement cells.

### ■ **Can you appeal a disciplinary decision? Who can revoke a sanction?**

Yes, a prisoner may appeal a disciplinary decision imposed on them, however a complaint in itself will not terminate the sanction.

An official who imposed the sanction may, if there are due grounds, cancel that disciplinary action or substitute it for milder sanction. A high-level official may annul a sanction if the official who imposed it abused their authority, or if no offence was deemed to have been committed by the prisoner. A sanction in the form of a warning or a reprimand can be given in verbal or written form, while other sanctions may be imposed in written form only. If no new disciplinary actions are imposed on the prisoner within six months upon the expiry of the sanction, the prisoner shall be deemed to be not under conditional sanction.

When imposing a disciplinary action on the prisoner, the administration of the facility will permit them to duly notify this to close relatives, their defense attorney or other lawyers.

### ■ **When do you bear material liability?**

You bear material liability for material damage caused to the State. You are also obliged to reimburse damage caused to the facility and any additional costs related to any attempt to escape and your medical treatment in the event that you intentionally caused harm to yourself.

If the losses result during the process of discharge of labour duties, you shall bear material liability in the amount and on the grounds established by labour legislation. Otherwise, losses shall be reimbursed to the amount and on the grounds established by civil legislation.

If material losses are caused by a crime committed by you in prison, costs shall be reimbursed on general grounds.

### ■ **What is the difference between full and partial material liability?**

Full material liability can be applied only in the case that it is explicitly prescribed by law and in such a case you are obliged to reimburse the damage caused by you in full. Full liability is when, for example, losses are caused by a crime committed by you or you have caused losses due to alcohol abuse, etc. The losses shall be reimbursed from the wages earned by you and in full. When partial material liability is assigned, you pay a certain share of the losses that emerged in the process of your discharge of labour duties and this share cannot exceed your monthly remuneration.

You cannot be held liable for losses caused by normal manufacturing risks or for loss of profit, as well as for damage caused by you, during a state of emergency.

### ■ **In what instances can criminal culpability arise during imprisonment?**

Along with general grounds for criminal liability the Criminal Code of Ukraine provides for a number of specific crimes that can be committed only by a prisoner. Among such crimes are the following:

- ▶ Article 390 Avoidance of restraint of liberty and imprisonment;
- ▶ Article 391 Persistent disobedience to the authorities of a correctional institution;
- ▶ Article 392 Actions aimed at disorganizing the activity of correctional institutions;
- ▶ Article 393 Escape from a penitentiary or from custody.

### ■ **What are the grounds and sanctions for criminally culpable offences?**

The Criminal Code of Ukraine provides for different grounds for criminal liability for different actions.

In accordance with Article 390 – Avoidance of restraint of liberty and imprisonment - you may be liable for failure to return to the place where you are serving your sentence by the end of a short-term leave period. For these actions you can be punished by further imprisonment for a term up to three years.

Article 391 establishes the liability for persistent disobedience to the lawful requirements of the authorities of a correctional facility or any other resistance to the lawful actions of such authorities in discharge of their functions. However you can be held liable under the provisions of the said Article only if you had been penalized for your misconduct by assignment to a solitary confinement cells or a more restricted regime of imprisonment during the previous year. For this crime you shall be punishable by further imprisonment for a term of up to three years.

Article 392 -Actions aimed at disorganizing the activity of correctional institutions- provides for serious pun-

ishment for terrorizing inmates or attacks on the authorities of correctional institutions, as well as the creation of organized groups for any such purposes or active participation in that group, by persons who serve their sentence of imprisonment or are under restraint of liberty. Such actions are punishable by further imprisonment for a term of five to ten years.

For escape from a penitentiary or from custody you can be punished by further imprisonment for a term of three to five years (Clause 1 Article 393 of the Criminal Code of Ukraine). However, more severe consequences are also possible, namely further imprisonment for a term of five to eight years. Such an extended term applies if the escape is a repeated action or is committed by a group of persons following their prior conspiracy, or in a way that endangers the life or health of other persons, or if accompanied by the seizing or use of weapons, or violence, or threats of violence, or undermining and causing damage to technical security facilities (Clause 2 Article 393 of the Criminal Code of Ukraine).

#### ■ **What are the consequences of criminal culpability while serving your sentence?**

Should you be sentenced for a criminal offence while serving your sentence you face the following negative consequences:

- ▶ During the period of court hearings you will be systematically transferred under guard;
- ▶ There is a high probability that the term of your imprisonment will be extended by the term of the penalty for the new crime;
- ▶ The security level of the facility you are kept in can be changed and this might worsen your situation respectively;
- ▶ It will be harder to use “privileges” (release on parole, commutation of the outstanding part of the sentence);
- ▶ The chances increase that upon release from prison you will become subject to administrative supervision.

## **SECTION 5. NATIONAL AND INTERNATIONAL SYSTEMS FOR THE PROTECTION OF PRISONERS’ RIGHTS**

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#### ■ **What issues related to your detention can be dealt with by local courts?**

You have the right personally, or through your attorney, to address a court situated in the area where your prison is located regarding the following matters:

- ▶ Suspension of sentence;
- ▶ Release on parole;
- ▶ Substitution of the outstanding part of your sentence with a milder penalty;
- ▶ Release from imprisonment for pregnant female prisoners or female prisoners who have children of under three years of age;
- ▶ Release from punishment for health considerations;
- ▶ Termination of compulsory medical treatment;
- ▶ Imposition of penalties for a number of judgments;
- ▶ Release from punishment and substitution by a milder penalty in cases of decriminalization of offences or mitigation of a penalty in the provisions of the respective article of the Criminal Code of Ukraine;
- ▶ Other matters related to doubts and contradictions arising during the enforcement of a judgment.

The term “other matters” also can mean an appeal against illegal actions or inactivity of the facility’s administration. Should you consider that your rights are infringed by the officials of the administration (the conditions of imprisonment are not properly maintained, a sanction was illegally imposed against you, you were unlawfully declined a visit, etc.) you can lodge an appeal with the court either personally or through your attorney.

You are also entitled to free legal aid in this case (it should be explained to you how to write an appeal and where to file it – you should get assistance in writing for such an appeal, and you must be given an option to be represented at the court) if you address the regional or local centre for providing free secondary legal aid for the area where your correctional facility is located.

#### ■ **What is the scope of action of the Prosecutor’s Office in protecting your rights?**

The Public Prosecutor has a wide range of powers to determine any violation of your rights and respectively remedy such a violation. It should be said that the Public Prosecutor’s office holds the widest range of powers for such matters, and so the most efficient approach is usually to address the Public Prosecutor.

While supervising legal compliance in the course of enforcement of judgement in criminal cases, **the Public Prosecutor is empowered to:**

- ▶ visit the penitentiary where you are held at any time by presenting an identification document;
- ▶ **monitor the legality of orders given by the staff of a correctional facility and demand their cancellation in the event that a violation of law is established, as well as demand the remedy of violations caused by such illegal order, and annul illegal acts on an individual** (for example, illegal sanctions imposed on you).

### ■ **What can the Ukrainian Parliamentary Commissioner for Human Rights and the National Preventive Mechanism (NPM) do to secure your rights?**

To carry out its functions the Ombudsman's Office has the following authority:

- ▶ at any time to freely and without any additional authorization, visit a penitentiary for control and inspection purposes, as well as receive information on the conditions of imprisonment;
- ▶ address the appropriate bodies with requests from the Ombudsman to respond in cases of violations of the personal rights and freedoms of citizens being detected in order that those bodies take any necessary measures (for example, address the penitentiary where you are held).

At the same time the National Preventive Mechanism has the authority to:

- ▶ regularly visit correctional facilities where prisoners or prisoners are held without previous notification as to the time and purpose of such a visit and without any limitation on the number of such visits;
- ▶ interview prisoners regarding their conditions of imprisonment and the attitude towards them by the penitentiary, as well as interviewing other persons who may have information regarding these matters;

The National Preventive Mechanism aims at recording violations and informing the Ombudsman.

### ■ **What are these oversight commissions and where do they operate?**

An oversight commission is a collective body comprising members of the public and civil servants from every city district, district centre or area. Representatives of community organisations should constitute not less than 50% of the members of the commission.

The commissions operate at a Local Area State Administration level or through executive committees of city councils (excluding the councils of cities of regional subordination.) This is to say that there is an oversight commission for every city district or region irrespective of the fact whether that district does or does not have a correctional facility within its territory.

The commissions operate only on a pro bono basis and thus the commission members do not receive any remuneration. The main function of the oversight commissions is to:

- ▶ provide public control of the observance of the rights, main freedoms and lawful interests of prisoners, and persons following release after serving their sentence;
- ▶ assisting the penitentiary bodies and facilities in improving conditions and resocialization of prisoners and creating adequate prison standards,
- ▶ involving non-governmental organizations, executive bodies, local authorities, companies, institutions and organizations (both public and private), and individuals to these activities;
- ▶ organization of educational work with prisoners released on parole and organization of public control of their conduct during the outstanding part of the sentence;
- ▶ rendering assistance in terms of social integration of prisoners released on parole.

### ■ **What measures to protect your rights do Human Rights Organizations and other non-governmental bodies have?**

Usually non-governmental organizations represent the interests of certain groups of citizens, while Human Rights Organizations aim to protect the rights of individuals, that apply to all humans, in other words they aim to protect those standards of justice and those values that are recognized in a given society. Thus the mission of human rights organizations involves the protection of human rights from the State and at the same time involves assistance to the State in ensuring and safeguarding human rights.

Human rights organizations and non-governmental organizations can also deliver legal aid, as they can provide a lawyer or attorney to assist you or to represent you in court or before other bodies. The scope and type of the particular aid that you can receive depends on the type of the organization and its interests, as well as on its resources (both in terms of manpower and financial resources to remunerate the services of experts). In any case it is advisable to address several organizations and choose the one which can suggest the best possible means of protection of your rights under your circumstances.

### ■ **To what non-governmental bodies can you apply for help? What is the procedure?**

You have the right to address any non-governmental organizations without any limitations, given that you have the right to receive and send letters and telegrams (at your own expense) without any limitations in respect of the number of such letters and telegrams.

However such correspondence is subject to inspection by the administration of the penitentiary. The only exceptions to this rule are correspondence addressed to the Ukrainian Parliamentary Commissioner for Human Rights, to the European Court for Human Rights, as well as to other respective bodies of international organizations, of which Ukraine is a member, to the officials of such international organizations, to the courts and to public prosecutors. Such correspondence is to be dispatched within one day from filing.

Thus to address a non-governmental institution you have to find, or receive with the help of the administration of the penitentiary, the address of the appropriate institution, and then apply to this institution regarding your matter in a general manner. It should be noted that you can also make a phone call to such institutions after finding their contact information through its webpage.

### — **What legal protection do you have the right to, should you be criminally charged?**

Should criminal proceedings be opened against you while you are serving a sentence, you are entitled to make use of the general spectrum of procedural rights, including the right to legal aid. The fact that you are serving a sentence and have a criminal record does in no way limit your right to defence. You are entitled to both paid and free legal aid. You are also guaranteed the right to choose your attorney.

### — **Are you entitled to visits by a lawyer?**

To receive legal aid a prisoner can be granted a visit by an attorney or another lawyer upon a written application by the prisoner, his close relatives, or a non-governmental organization. Upon the request of the prisoner or their attorney, such visits can be face-to-face. The number and duration of such visits is not limited.

The prisoner may talk to their attorney or other lawyer in a room without a solid protective glass partition if they so agree.

Legal aid may also be provided to prisoners undergoing treatment in in-patient healthcare facilities.

### — **What is “free legal aid” and are you entitled to it?**

Yes, you are entitled to free legal aid. Free legal aid is guaranteed by the government and is fully or partially paid for from the National Budget of Ukraine, local budgets or other sources.

According to the law, legal aid can be primary or secondary. You are entitled to both primary and secondary legal aid.

Free primary legal aid is a type of State guarantee in the form of ensuring that a person is informed of their rights and freedoms, the means of their execution, remedy in the case of violation and the means of appealing against decisions, actions or inactivity of State bodies, or Local Authorities, their officials and staff. Free primary legal aid includes the following legal services:

- ▶ rendering legal information;
- ▶ rendering consultation and explanation of legal issues;
- ▶ drafting motions, appeals and other legal documents (excluding documents of a procedural nature);
- ▶ rendering assistance in matters of ensuring access to secondary legal aid and mediation.

Free secondary legal aid is a type of State guarantee in the form of providing equal opportunities for individuals to access justice. Free secondary legal aid includes the following legal services:

- ▶ protection;
- ▶ legal representation for individuals entitled to free secondary aid at courts, or governmental bodies, local Authorities, or before other persons;
- ▶ drafting documents of a procedural nature. You may apply for free secondary aid using the hotline on 0800 213 103

### — **Can you apply to the European Court of Human Rights to enforce your rights?**

Yes, you can. The European Court of Human Rights is an international body that has the jurisdiction to handle applications of individuals reporting violation of their rights. You may address the Court if you consider yourself to be a victim of a violation of the Convention for the Protection of Human Rights and Fundamental Freedoms. The main grounds for addressing the European Court are the following:

- ▶ use of excessive force or other means of illegal physical force, violence, and
- ▶ gross violation of the conditions of imprisonment,
- ▶ failure to render medical aid,
- ▶ application of illegal sanctions and
- ▶ illegal deprivation of visits or other contact with the outside world.

This list of grounds is by no means exhaustive.

The Court accepts applications for consideration after all national remedies have been exhausted. This means that at first you should address the national courts that have the jurisdiction to handle your case, including

the higher courts, to seek remedy for your infringed rights, after which you may wish to address the European Court of Human Rights. Furthermore, while addressing the appropriate national remedies, you must adhere to the terms prescribed by national law.

You can file an application with the Court within 6 months after the date of a final court judgment in your case has been rendered or the decisions of another State body has been made. The letters that you send to, and receive from, the European Court of Human Rights are not subject to inspection. The decision of the said Court is subject to obligatory enforcement in Ukraine.

This guide was translated to provide legal advice for foreign prisoners in Ukraine. It was prepared through the European Union and Council of Europe Programmatic Cooperation Framework for Armenia, Azerbaijan, Georgia, Republic of Moldova, Ukraine and Belarus, under the project « Further Support for Penitentiary Reform in Ukraine».

This guide also exists in Ukrainian.

The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, 28 of which are members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.

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