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Report

to the Ukrainian Government on the visit to Ukraine carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

from 21 to 30 November 2016

The Ukrainian Government has requested the publication of this report.

Strasbourg, 19 June 2017

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Copy of the letter transmitting the CPT's report

Ministry of Justice
13, Horodetskogo street
01001 Kyiv
Ukraine

Strasbourg, 27 March 2017

Dear Sir/Madam,

In pursuance of Article 10, paragraph 1, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, I enclose herewith the report to the Ukrainian Government drawn up by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) following its visit to Ukraine from 21 to 30 November 2016. The report was adopted by the CPT at its 92nd meeting, held from 6 to 10 March 2017.

The various recommendations, comments and requests for information formulated by the CPT are highlighted in bold type in the body of the report. As regards more particularly the CPT's recommendations, having regard to Article 10, paragraph 1, of the Convention, the Committee requests the Ukrainian authorities to provide within **three months** a response giving a full account of action taken to implement them. The CPT trusts that it will also be possible for the Ukrainian authorities to provide, in their response, reactions to the comments and requests for information formulated in this report.

The CPT would ask, in the event of the response being forwarded in Ukrainian, that it be accompanied by an English or French translation.

I am at your entire disposal if you have any questions concerning either the CPT's report or the future procedure.

Yours faithfully,

Mykola Gnatovskyy
President of the European Committee for
the Prevention of Torture and Inhuman or
Degrading Treatment or Punishment

EXECUTIVE SUMMARY

Law enforcement agencies

Since the CPT's 2013 periodic visit, major reforms in the field of law enforcement have taken place. With the adoption in July 2015 of the Law on the National Police (LNP), all Militia and other Internal Affairs structures were transformed into a unified police service – the National Police – under the authority of the Minister of Internal Affairs. The LNP places particular emphasis on the principles of rule of law and respect for human rights and freedoms. One of the cornerstones of the reform is the creation within the National Police of a new Patrol Police, which is being progressively introduced throughout the country. Further, many sub-standard police detention facilities have been (temporarily) withdrawn from service, pending refurbishment, health-care procedures for detainees revised and initial steps taken to introduce a comprehensive computerised detention custody system (ARMOR). The CPT welcomes these developments.

The majority of persons who were, or recently had been, in police custody indicated that the police had treated them correctly. Further, no allegations of physical ill-treatment were received in respect of officers of the State Security Service of Ukraine (SSU), or of police officers performing custodial tasks in temporary holding facilities (ITTs). However, the delegation received a considerable number of credible allegations from detained persons (including juveniles) of recent physical ill-treatment by police officers, consisting mainly of slaps, punches, kicks or blows with a truncheon or a plastic bottle filled with water. In a few cases, the ill-treatment alleged was of such severity that it could be considered as amounting to torture. Most of the allegations concerned ill-treatment during initial questioning by operational police officers in an attempt to obtain confessions or other information. In a number of cases, the delegation gathered medical evidence (including injuries directly observed by the delegation's doctors) consistent with the allegations made. Overall, the delegation gained the impression that, compared to the findings of the 2013 visit, the severity of ill-treatment alleged had diminished. However, the frequency of allegations remains at a worrying level. The CPT calls upon the Ukrainian authorities to pursue a policy of "zero tolerance" of police ill-treatment, taking into account various precepts set out in the report.

Unrecorded detentions seem to persist, despite specific recommendations repeatedly made by the Committee after previous visits. In different regions, the delegation once again received a number of allegations from detained persons that they had been held in local police stations handcuffed to fixed objects in the offices of operational police officers, without being offered anything to eat or drink, for periods ranging from a few hours to two days. In addition, the persons concerned were allegedly subjected to informal questioning without benefiting from the safeguards provided for by law.

In previous reports, the CPT has stressed the importance of the effective investigation of any information indicative of police ill-treatment and, where appropriate, the imposition of a suitable penalty. However, several detained persons met by the delegation claimed that they had lodged a formal complaint with prosecutors weeks or even months before the visit, but had received no information on any investigative action taken by prosecutors and had not benefitted from a forensic medical examination.

Regarding the fundamental safeguards against ill-treatment (namely, the right of notification of custody and the rights of access to a lawyer and a doctor), persons deprived of their liberty by SSU officers appeared usually to benefit from all the above-mentioned fundamental rights. However, this was far from being always the case as concerns the police. The CPT calls upon the Ukrainian authorities to ensure that all persons detained by the police effectively benefit from all of these rights as from the very outset of their deprivation of liberty (that is, from the moment when they are obliged to remain with the police). Steps should also be taken to ensure the confidentiality of all medical examinations of persons detained by law enforcement officials.

In all the ITTs visited, as well as in the SSU Detention Facility in Kyiv, material conditions of detention were generally satisfactory for up to 72 hours (the statutory maximum police custody period).

That said, the CPT expresses misgivings about the continued practices of holding persons remanded in custody in police detention facilities beyond the statutory limit of 72 hours (pending their transfer to a pre-trial establishment – SIZO) and of returning remand prisoners from a SIZO to a law enforcement establishment for the purpose of investigative work. In the CPT's view, persons remanded in custody should as a matter of principle not be held in law enforcement establishments. Such facilities are not designed for lengthy stays. Moreover, prolonged detention on the premises of law enforcement agencies increases the risk of intimidation and ill-treatment.

Prison reform

The delegation was informed by senior officials of the Ministry of Justice about the ongoing re-organisation of the prison system and of measures taken to reduce the prison population, especially as regards sentenced prisoners in correctional colonies. The CPT welcomes these developments and urges the Ukrainian authorities to pursue their efforts to further reduce the remand prisoner population, in particular by making more use of the available alternatives to remand detention.

The CPT acknowledges the Ukrainian authorities' ongoing efforts to revise the legislative framework for imprisonment with a view to reinforcing the rights of prisoners. In this regard, the Committee stresses that all prisoners (both sentenced and those on remand) should be entitled to the equivalent of at least one hour of visiting time per week and that both categories of inmate should be able to make telephone calls.

The delegation was provided with details of the Ukrainian authorities' plans regarding the prison estate. The CPT calls upon the Ukrainian authorities to attach the highest priority to these plans and to add the SIZOs in Khmelnytskiy and Odesa to the list of establishments to be closed and replaced by new remand prisons. In the meantime, urgent steps should be taken to address the deficiencies in material conditions observed at the SIZOs visited.

Unfortunately, the above-mentioned reforms have not yet impacted upon the situation of remand prisoners. In particular, the old inadequate norm of living space per inmate in SIZOs (2.5 m^2) was still in force, complex rules on separation of different categories of remand prisoners continued to result in localised overcrowding, there had been no change to the regime for remand prisoners based on the concept of "isolation" and, last but not least, restrictive provisions on remand prisoners' contact with the outside world continued to be applied. The CPT calls upon the Ukrainian authorities to take decisive steps to revise the legislation and regime for remand prisoners.

Prison health care is another area of long-standing concern to the CPT. Representatives of the Ministry of Justice affirmed to the delegation that intense multi-stakeholder work to address all existing shortcomings was underway, as were efforts to improve the co-ordination and co-operation with the Ministry of Health. The CPT calls upon the Ukrainian authorities to pursue these initiatives energetically; it also wishes to stress again that it supports, in principle, the clear policy trend in Europe to place prison health-care services under the responsibility of the Ministry of Health.

The situation of prison staff continues to be very problematic in the entire prison system. Inadequate staffing levels, meagre wages (exposing prison staff to the risk and temptation of corruption), additional stress due to ongoing reforms and the perceived lack of information about the reform's impact on their professional future – all these factors contributed to staff demotivation and large-scale departures from the prison service. The Committee calls upon the Ukrainian authorities to take urgent steps to increase both custodial staffing levels and presence in order to ensure that there is an adequate presence of staff at all times.

Situation observed at Correctional Colonies Nos. 25 and 100

The CPT is pleased to note that, contrary to the situation observed during previous visits, the delegation received no recent, direct allegations of ill-treatment by custodial staff and inter-prisoner violence at Colony No. 25. There was no longer a general climate of fear and intimidation as described in the report on the September 2014 visit.[1] The entire management of Colony No. 25 (the Director and all his deputies) had been replaced after the CPT's September 2014 visit. This might in part explain the change of atmosphere (for the better) at the establishment, which was also confirmed by many of the inmates interviewed.

Nonetheless, it remained the case that Colony No. 25 was ruled by iron discipline. The CPT considers this approach to be grossly excessive. Most prisons sometimes have to cope with disruptive, challenging prisoners who systematically refuse to obey lawful rules and orders. The proper approach to them – rather than subjecting them to repeated disciplinary sanctions with an increasing severity (let alone an additional term of imprisonment) – is to place them in administrative segregation. The Committee recommends that the Ukrainian authorities review the practice of disciplinary isolation and segregation at Colony No. 25 (and, as appropriate, in all other penitentiary establishments). Section 391 of the Criminal Code should be abolished. Further, the current practice should be changed so that a prisoner is not subjected to successive disciplinary sanctions, without an appropriate interruption (of several days) in the solitary confinement regime.

Similarly to Colony No. 25, the Director of Colony No. 100 had been replaced after the CPT's September 2014 ad hoc visit, and the delegation heard no recent, direct allegations of ill-treatment and inter-prisoner violence from inmates interviewed in the general accommodation blocks. Nor did the delegation gain the impression that formal disciplinary sanctions were applied excessively. However, the delegation received a number of recent and credible allegations of physical ill-treatment (consisting mainly of punches and kicks) of life-sentenced prisoners by some of the custodial staff. Apparently this was an informal punishment for the slightest violations of the internal rules and for failing to obey staff orders immediately. Furthermore, there was a palpable climate of fear in the lifers' unit, with prisoners being visibly frightened to speak with the delegation. The unit was almost like an "institution within an institution", governed by its own set of informal rules.

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[1] See paragraph 35 of CPT/Int (2015) 21, https://rm.coe.int/16806985fd.

The CPT calls upon the Ukrainian authorities to take urgent and decisive steps to prevent ill-treatment and intimidation of life-sentenced prisoners at Colony No. 100. The Colony's management must assert full control over the unit for prisoners sentenced to life imprisonment and take appropriate measures vis-à-vis custodial staff engaging in any such misconduct. Further, the CPT recommends that a thorough and independent inquiry be carried out into the situation at the above-mentioned unit.

Material conditions at Colony No. 25 remained very good, and overcrowding was no longer an issue. Further, the CPT has no major concerns as regards the material conditions in the general accommodation blocks of Colony No. 100. That said, in both establishments, the delegation observed a decrease in the number of prisoners involved in organised activities (especially paid work).

As regards the special unit for life-sentenced prisoners at Colony No. 100, the number of prisoners has been reduced since the 2014 visit, reportedly due to the transfer of several inmates to establishments closer to their homes. As a result, the remaining prisoners benefited from more living space. These are welcome developments. However, it is a matter of serious concern that hardly any of the specific recommendations made in the report on the 2014 visit have been implemented. This concerns in particular the continued practice of routine handcuffing of life-sentenced prisoners, other excessive and degrading security measures, the lack of organised purposeful activities, prohibition of any contact and association between the cells, segregation from the rest of the prisoner population, and constant CCTV surveillance inside the cells. Consequently, the CPT calls upon the Ukrainian authorities to implement without further delay the long-standing recommendations made after the visit to Colony No. 100 in September 2014.

The Committee also urges the Ukrainian authorities once again to amend the relevant legislation in order to integrate life-sentenced prisoners into the general prison population as soon as possible following their conviction. Further, the Committee recalls the basic principle that, in order to reduce the harmful effects of imprisonment and to promote the safe resettlement of prisoners, the law should offer a realistic prospect of conditional release to all sentenced prisoners, including life-sentenced prisoners.

Situation observed at the SIZOs visited

The delegation received no direct allegations of ill-treatment by staff at any of the SIZOs visited. That said, inter-prisoner violence appeared to be a problem; this was hardly surprising given that the accommodation was based on large-capacity cells and staff's relied on the informal prisoner hierarchy to help them control the situation. The Committee reiterates its recommendation that the management of Kharkiv and Odesa SIZOs, as well as of all other SIZOs in Ukraine, make use of all the means at their disposal to counter the negative impact of the informal prison hierarchy and prevent inter-prisoner intimidation and violence.

The most striking feature of the SIZOs visited were the appalling material conditions, in particular at Odesa, Khmelnytskiy and Kyiv SIZOs (with the notable positive exception of the juvenile units at Khmelnytskiy and Kyiv SIZOs). Those in Kyiv and Odesa had further deteriorated since the CPT's last visits in, respectively, September 2014 and October 2013 and could now easily be considered inhuman and degrading. The above-mentioned situation was made even worse by the fact that the heating was either completely switched off or barely working.

Conditions were somewhat better at Kharkiv SIZO although they remained quite poor due to the age and infrastructure of the buildings. The Committee recommends that the ongoing renovation of Kharkiv SIZO be continued and that, to the extent possible with the existing infrastructure, it comprise the transformation of large-capacity cells into smaller living units. Such transformation should also be the objective for all the other SIZOs (and, as applicable, all the other penitentiary establishments) in Ukraine.

Further, it is a matter of serious concern that, in all the SIZOs visited, remand prisoners were usually not offered any out-of-cell activities other than outdoor exercise for one hour per day.

There was systematic medical screening on arrival at the SIZOs visited (at the latest the day after arrival) which included screening for injuries. However, the confidentiality of the screening was still not respected (except in Odesa), injuries were not always well described and, sometimes, doctors or feldshers failed to record inmates' explanations as to the origins of their injuries in a correct and accurate manner.

I. INTRODUCTION

A. Dates and context of the visit and composition of the delegation

1. In pursuance of Article 7 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as "the Convention"), a delegation of the CPT visited Ukraine from 21 to 30 November 2016.[2] The visit was one which appeared to the Committee "to be required in the circumstances" (cf. Article 7, paragraph 1, of the Convention).

2. One of the objectives of the visit was to examine the treatment and safeguards afforded to persons detained by law enforcement agencies. For this purpose, the CPT's delegation interviewed many persons who were or had recently been in the custody of the National Police and the Security Service of Ukraine (SSU). Another objective of the visit was to review the treatment of prisoners in two correctional colonies in the Kharkiv region, namely Colonies Nos. 25 and 100, where the CPT had received a significant number of allegations of severe physical ill-treatment and/or torture by prison officers during previous visits.[3] In the context of its visits to penitentiary establishments, the delegation also examined the conditions of detention of remand prisoners (in pre-trial establishments – SIZOs) and the situation of prisoners sentenced to life imprisonment (mainly at Colony No. 100 and, to a lesser extent, at Kharkiv SIZO).

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

- George TUGUSHI, Head of delegation
- Marzena KSEL, 1st Vice-President of the CPT
- Djordje ALEMPIJEVIĆ
- Alexander MINCHEV
- Ilvija PŪCE.

They were supported by Michael NEURAUTER and Borys WÓDZ, Heads of Division in the CPT's Secretariat, and assisted by:

- Michael KELLETT, former Detective Chief Inspector in the Lancashire Constabulary, United Kingdom (expert)
- Denys DANYLENKO (interpreter)
- Vadim KASTELLI (interpreter)
- Dmytro KOPYLOV (interpreter)
- Larysa SYCH (interpreter).

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2 All reports on the CPT's previous visits and responses of the Ukrainian authorities are available on the Committee's website (http://www.coe.int/en/web/cpt/ukraine).

3 See, in particular, paragraphs 34 to 39 of the report on the September 2014 ad hoc visit (CPT/Inf (2015) 21), https://rm.coe.int/16806985fd.

4. The delegation visited the following places of deprivation of liberty:

Law enforcement establishments

Kyiv region

- Kyiv Temporary Holding Facility (ITT)
- Kyiv-Shevchenkivskyi District Police Division
- Detention Facility of the SSU

Kharkiv region

- Kharkiv ITT
- SSU Regional Headquarters

Khmelnytskiy region

- Kamianets-Podilskiy ITT
- Kamianets-Podilskiy District Police Division
- Kamianets-Podilskiy City Police Station
- Khmelnytskiy ITT
- Khmelnytskiy-Zarichansky District Police Division
- Krasyliv District Police Division

Odesa region

- Odesa ITT

Penitentiary establishments

- Colony No. 25
- Colony No. 100
- Kyiv SIZO
- Kharkiv SIZO
- Khmelnytskiy SIZO
- Odesa SIZO.

B. Consultations held by the delegation and co-operation received

5. In the course of the visit, the delegation had consultations with Ms Natalia SEVOSTYANOVA, First Deputy Minister of Justice, Mr Denys CHERNYSHOV, Deputy Minister of Justice on Prison Matters, Mr Sergiy PETUKHOV, Deputy Minister of Justice on European Integration, Ms Anastasiia DIEIEVA, Deputy Minister of Internal Affairs, and Mr Vitaliy MALIKOV, First Deputy Head of the SSU, as well as with senior officials of the Ministries of Justice and Internal Affairs.

Further, the delegation held consultations with senior prosecutors of the Office of the General Prosecutor and Kyiv City Prosecutor's Office. The delegation also met Ms Valeriya LUTKOVSKA, Parliamentary Commissioner for Human Rights (Ombudsperson) in her capacity as Head of the National Preventive Mechanism (NPM), and representatives of various International Organisations and non-governmental organisations active in areas of concern to the CPT.

A full list of the national authorities and organisations with which the delegation held consultations is set out in the Appendix to this report.

6. The co-operation received during the visit – both from the national authorities and from management and staff at the establishments visited – was very good. The delegation enjoyed immediate access to the places visited (including those which had not been notified in advance) and was able to speak in private with persons deprived of their liberty, in compliance with the provisions of the Convention. Further, the delegation had access to all the necessary documentation.

Particular words of thanks should go to the CPT's liaison officer, Ms Liudmyla SUGAK, Deputy Head of the International Law Department of the Ministry of Justice, for the assistance provided before, during and after the visit.

7. As has been stressed by the Committee in previous visit reports, the principle of co-operation is not limited to steps taken to facilitate the task of visiting delegations. It also requires that decisive action be taken in response to the CPT's recommendations.

In this regard, particular reference is made to the phenomena of ill-treatment and intimidation of prisoners by staff in two prison establishments in the Kharkiv Region, namely Colonies Nos. 25 and 100, which had been visited by the CPT several times in the past.[4] Due to the persistent failure of the relevant authorities to take effective measures to eradicate these phenomena, despite the specific long-standing recommendations made by the Committee, the CPT had decided in March 2013 to set in motion the procedure under Article 10 (2) of the Convention.[5] In the light of the information provided by the Ukrainian authorities after the 2014 visit to Colonies Nos. 25 and 100, the CPT reached the conclusion that decisive action was being taken by the relevant authorities to combat the phenomena of ill-treatment and intimidation of prisoners in both establishments. Consequently, the Committee decided to close the procedure under Article 10 (2) of the Convention, and to continue to monitor closely the situation of prisoners in the two colonies.

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4 See paragraph 8 of the report on the 2012 visit (CPT/Inf (2013) 23), paragraphs 9 to 13 of the report on the 2013 visit (CPT/Inf (2015) 3) and paragraphs 34 to 44 of the report on the September 2014 visit (CPT/Inf (2015) 21).

5 Article 10 (2) reads as follows: "If the Party fails to co-operate or refuses to improve the situation in the light of the Committee's recommendations, the Committee may decide, after the Party has had an opportunity to make known its views, by a majority of two-thirds of its members to make a public statement on the matter".

8. The CPT is pleased to note that the findings of the 2016 visit indicate significant improvements in both establishments since 2014 regarding the manner in which prisoners are treated by staff (see, however, paragraph 49).

Further, the Committee acknowledges the efforts made by the Ukrainian authorities to carry out comprehensive reforms of the police service and the prison system (see, in particular, paragraphs 9, 35, 37 and 38).

That said, the CPT remains very concerned by the fact that a number of key recommendations made after previous visits (in particular, as regards ill-treatment by police officers, safeguards against ill-treatment, conditions of detention in SIZOs and the situation of life-sentenced prisoners)[6] remain to a large extent unimplemented.

The Committee urges the Ukrainian authorities to take decisive action to implement the above-mentioned recommendations without any further delay.

[6] See e.g. paragraphs 23, 29, 48, 54, 59, 64, 66, 68, 71, 72, 74 to 77, 79 to 81, 83, 85 to 87, 89, 99 to 102, 135, 136 and 138 to 140 of the report on the 2013 periodic visit (CPT/Inf (2014) 15), https://rm.coe.int/1680698465.

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Persons detained by law enforcement agencies

1. Preliminary remarks

9. Since the 2013 periodic visit, major reforms in the field of law enforcement have taken place. With the adoption in July 2015 of the Law on the National Police (LNP), all Militia and other Internal Affairs structures were transformed into a unified police service – the National Police – under the authority of the Minister of Internal Affairs, with the Head being appointed by the Council of Ministers. This transformation was completed on 7 November 2015. The LNP places particular emphasis on the principles of rule of law and respect for human rights and freedoms.

One of the cornerstones of the reform is the creation within the National Police of a new Patrol Police (composed of mostly newly-recruited and trained officers), which is being progressively introduced throughout the country. Further, many sub-standard police detention facilities have been (temporarily) withdrawn from service, and the responsibility for the detention of criminal suspects in temporary holding facilities (ITTs) has been transferred from the local command to the level of the Regional Police Headquarters. The permanent presence of police health-care staff in ITTs has been abolished; instead, a new procedure has been introduced, according to which detained persons are routinely subjected to a medical examination in a health-care facility, prior to their placement in an ITT.[7] Moreover, initial steps have been taken to introduce a comprehensive computerised detention custody system (ARMOR).

The CPT welcomes the above-mentioned developments and would like to receive updated information on the implementation of the police reform, as well as copies of by-laws to the LNP, which were still being prepared at the time of the visit.

10. Notwithstanding the above-mentioned legislative changes, the legal framework governing deprivation of liberty by law enforcement agencies has remained largely unchanged since the 2013 visit. According to the Code of Criminal Procedure (CCP),[8] *criminal suspects* may be held in police custody (before being seen by a judge) for a maximum of 72 hours; persons remanded in custody are in principle transferred to a SIZO, but may be held, for logistical reasons, in an ITT for up to ten days. Under certain circumstances, a person remanded in custody or serving a prison sentence may be held – for as long as necessary – in a law enforcement establishment as a protective measure.[9]

Persons suspected of having committed an *administrative offence* may be deprived of their liberty by the police for up to three hours (in order to draw up a protocol) or for up to three days (when this is considered necessary to establish the identity of the person concerned or to clarify the circumstances of breaches of law); if found guilty the persons may be sentenced by a judge to up to 15 days of administrative detention in an ITT.[10]

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7 See paragraph 31.
8 Section 211.
9 See Section 19 (1) of the Law on the Safety of Persons involved in Criminal Proceedings.
10 See Sections 32 and 263 of the Code of Administrative Offences.

11. As was the case during previous visits, persons remanded in custody by courts were frequently held in police detention facilities for logistical reasons or investigative purposes beyond the statutory limit of 72 hours, pending their transfer to a SIZO. Whilst acknowledging that overstays were usually shorter than those observed in 2013 (in total, up to five days and, occasionally, more than a week), the CPT has serious misgivings about such practices. In this regard, it is of particular concern that a number of allegations were received from detained persons that they had been held in police detention facilities for more than 72 hours, so that injuries they had sustained as a result of police ill-treatment were no longer visible by the time they were transferred to a SIZO.

12. Further, particularly in the regions outside Kyiv, the delegation once again came across a number of cases in which remand prisoners had been returned from a SIZO to police detention facilities (or the SSU detention facility in Kyiv[11]) for the purpose of investigative work. In some cases, the persons concerned had been transferred back and forth multiple times between a SIZO and an ITT.[12] Further, despite the specific recommendation repeatedly made by the Committee, decisions on such transfers continued to be at the discretion of the police or SSU investigator in charge of the case.

13. The CPT must stress once again that, as a matter of principle, persons remanded in custody (and *a fortiori* sentenced prisoners) should not be held in law enforcement establishments.[13] Such facilities are not designed for lengthy stays. Moreover, prolonged detention on the premises of law enforcement agencies increases the risk of intimidation and ill-treatment. From the standpoint of prevention of ill-treatment, it is far preferable that further questioning of persons remanded in custody by investigators take place in a SIZO rather than in a law enforcement establishment.

The delegation was informed by representatives of the Ministry of Internal Affairs that it was planned that, in future, persons remanded in custody would systematically be transfer from the court house directly to a SIZO without a "transit stay" in an ITT. **The CPT welcomes these plans and recommends that the Ukrainian authorities take the necessary steps to ensure that persons remanded in custody are always promptly transferred to a SIZO.**

Further, **the Committee reiterates its recommendation that the Ukrainian authorities take steps – including at the legislative level – to ensure that the return of remand (and sentenced) prisoners to detention facilities of law enforcement agencies is sought and authorised only very exceptionally, for specific reasons and for the shortest possible time. Such a return should in each case be subject to the express authorisation of a prosecutor or judge.**

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

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11 See also paragraph 14.

12 Several persons interviewed by the delegation claimed that such transfers had been used by police officers as a tool to put pressure on them to confess to a criminal offence.

13 See also Rule 10.2 of the European Prison Rules.

14. As regards the deprivation of liberty of persons by the SSU, the delegation was informed that the SSU Detention Facility in Kyiv was the only establishment of this kind which was operational in the country at the time of the 2016 visit and that the Detention Facility in Kharkiv had been withdrawn from service after the 2014 visit.[14] According to SSU officials, persons detained by the SSU outside the Kyiv Region would always be held in a police ITT (and, subsequently, in a SIZO).

In 2016, the CPT received from various sources reports, which were also widely publicised, about alleged cases of incommunicado detention (including in unofficial places of detention) and ill-treatment of persons detained by SSU officers. **The CPT would like to be informed of the outcome of any inquiries which have been initiated into the aforementioned allegations.**

2. Ill-treatment

15. As indicated in paragraph 2, the delegation interviewed many persons who were, or had recently been, in police custody. The majority of these persons indicated that they had been treated by the police in a correct manner.

Further, no allegations of physical ill-treatment were received in respect of SSU officers, or of police officers performing custodial tasks in ITTs.

However, the delegation received a considerable number of credible allegations from detained persons (including juveniles) of recent physical ill-treatment by police officers, consisting mainly of slaps, punches, kicks or blows with a truncheon or a plastic bottle filled with water. In a few cases, the ill-treatment alleged was of such severity that it could be considered as amounting to torture (e.g. suspension by handcuffs; repeated and severe blows with hard objects such as a truncheon; and, in one case, placing a plastic bag over the head and spraying teargas inside).

Most of the allegations concerned ill-treatment during the initial questioning by operational police officers in an attempt to obtain confessions or other information. Several allegations were also received of excessive use of force at the time of or immediately following apprehension (e.g. kicks and truncheon blows after the apprehended person had been placed face down on the ground and handcuffed) and unduly tight handcuffing during transportation, as well as of death threats and threats to inflict pain or use violence (including rape with objects) during questioning.

In a number of cases, the delegation gathered medical evidence (including injuries directly observed by the delegation's doctors) which were consistent with the allegations made.

16. Overall, the delegation gained the impression that, compared to the findings of the 2013 visit, the severity of allegations of ill-treatment received had diminished. However, the frequency of allegations remains at a worrying level.

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[14] When visiting the SSU premises in Kharkiv, the delegation saw that the detention facilities in question had been transformed into offices and recreational rooms for SSU officers.

Determined action is therefore required on the part of the Ukrainian authorities to combat the phenomenon of police ill-treatment. In this connection, it is necessary to have a multi-faceted approach aimed at changing the culture within the police that views ill-treatment as acceptable and ensures that any allegations of ill-treatment are effectively investigated. An atmosphere must be created in which the right thing to do is to report ill-treatment by colleagues. This implies the existence of a clear reporting line as well as the adoption of whistle-blower protective measures. It is also essential that the philosophy of going "from the evidence to the suspect" rather than "from the suspect to the evidence" prevails in the daily practice of all those involved in the criminal justice process. In this regard, greater emphasis should be given to modern, scientific methods of crime investigation, through appropriate investment in equipment and skilled human resources, so as to reduce the reliance on confessions to secure convictions. Further, the importance of the above considerations should be highlighted throughout the entire process of initial and in-service training of police officers, including senior police officials who should also be reminded of their responsibility to take measures to prevent ill-treatment.

The CPT calls upon the Ukrainian authorities to pursue a policy of "zero tolerance" of ill-treatment of persons detained by the police, taking into account the above precepts.

Further, **police officers should be regularly reminded that no more force than is strictly necessary should be used when effecting an apprehension and that, once apprehended persons have been brought under control, there can be no justification for striking them.**

17. There is yet another issue which gives rise to particular concern, namely the practice of unrecorded detentions which seems to persist, despite specific recommendations repeatedly made by the Committee after previous visits. In different regions, the delegation once again received a number of allegations from detained persons that they had been held in local police stations in the offices of operational police officers, on a stool or chair, whilst being handcuffed to fixed objects and without being offered anything to eat or drink, for periods ranging from a few hours to two days. Some complaints were also heard about difficulties in having access to a toilet. In addition, the persons concerned were allegedly subjected to informal questioning without benefiting from the safeguards provided for by law.[15]

In the CPT's view, the practices described above are totally unacceptable and could in themselves easily be considered to amount to ill-treatment. Moreover, several of the allegations of physical ill-treatment heard by the delegation referred to this initial period of unrecorded police custody.

The CPT once again calls upon the Ukrainian authorities to take decisive and energetic action to ensure that whenever a person is taken or summoned to a police establishment, for whatever reason (including for interviews with operational officers), his/her presence is always duly recorded. In particular, the records should specify who was brought in or summoned, by whom, upon whose order, at what time, for what reason, in which capacity (suspect, witness, etc.), to whom the person concerned was handed over and when the person left the police premises.

Further, **the Committee calls upon the Ukrainian authorities to take immediate measures to ensure that offices are not used as a substitute for proper detention facilities.**

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[15] See also paragraphs 25, 27 and 29.

18. Medical examinations of persons who have been taken into police custody or who have been admitted to a SIZO are an important tool for preventing police ill-treatment. In this regard, the visit revealed major deficiencies which are described in detail in paragraphs 31 and 69.

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

The above-mentioned precept is set out in Section 206 of the CCP.[16] In this regard, it is noteworthy that some persons interviewed by the delegation indicated that they had complained about police ill-treatment to a judge and that the latter had promptly informed the competent prosecutor. One person stated that the judge had also requested a forensic medical examination.

That said, the CPT is very concerned that the delegation once again met a number of detained persons who claimed that they had complained about police ill-treatment to the judge before whom they had been brought after apprehension, but that the latter had simply ignored their complaint, despite the fact that they displayed visible injuries. If true, this constitutes a flagrant disregard by judges of the relevant legislation.

The Committee recommends that a firm message be delivered by the High Council of Justice to judges reminding them of their legal obligations under Section 206 of the CCP.

3. Investigations into possible cases of ill-treatment by law enforcement officials

20. In previous reports, the CPT has stressed the importance of the effective investigation of any information indicative of police ill-treatment and, where appropriate, the imposition of a suitable penalty. In order to be qualified as effective, investigations should be thorough and should be conducted in a prompt and expeditious manner and the persons responsible for carrying out the investigation should be independent of those implicated in the alleged instances of ill-treatment.

During the 2016 visit, the delegation did not examine individual cases of complaints about ill-treatment by law enforcement officials. That said, several detained persons met by the delegation claimed that they had lodged a formal complaint with prosecutors about police ill-treatment weeks or even months before the visit, but that they had received no information on any investigative action taken by prosecutors since the complaint and that they had not been subjected to a forensic medical examination.

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[16] According to Section 206, whenever a person states that he or she has been subjected to ill-treatment during apprehension or detention by public officials, the investigative judge is required to record such a statement or accept a written statement from the person concerned and in particular: (1) to ensure a prompt forensic medical examination of this person; (2) to assign the investigation of the facts to the appropriate investigating authority; (3) to take the necessary measures to ensure protection of the person concerned in accordance with the law. The judge should act in the above-described manner whatever the person states or if his/her appearance or condition, or any other information known to the judge, gives grounds for him or her to believe that the person concerned has been ill-treated during apprehension or subsequent detention. The judge is not required to act in this manner if the prosecutor provides evidence that such action has already been taken or is being taken.

The CPT recommends that the Prosecutor General remind all relevant prosecutors to take the necessary measures to ensure that allegations of ill-treatment by law enforcement officials are always investigated in a prompt and expeditious manner and that the persons concerned are always immediately physically examined by a forensic doctor. Alleged victims of ill-treatment should be duly informed of the procedural steps taken.

21. Further, from discussions held with the management of the SIZOs visited, as well as with a supervisory prosecutor and senior police investigators, it transpired that, whenever newly-arrived prisoners displayed visible injuries and made allegations of ill-treatment by police officers, their cases were notified not only to the supervisory prosecutor of the prison but also to the police department of the district where the alleged ill-treatment had taken place, either directly (e.g. in Khmelnytskiy) or through the local police station having territorial competence for the SIZO (e.g. in Kyiv). The delegation was told that subsequent investigations against police officers would be conducted exclusively by investigators of the competent prosecutor's office and not by police investigators. Notwithstanding that, **the Committee recommends that the practice of reporting allegations of police ill-treatment to the implicated police establishment be discontinued.**

22. In order to obtain an up-to-date and nationwide picture of the situation concerning the treatment of detained persons by law enforcement officials, **the CPT would like to receive the following information, in respect of the period from 1 January 2015 to the present time:**

- **the number of complaints of ill-treatment made against law enforcement officials per year and the number of criminal/disciplinary proceedings which have been instituted as a result;**

- **the outcome of the above-mentioned proceedings, including an account of criminal/disciplinary sanctions imposed on the law enforcement officials concerned;**

- **the number per year of investigations into cases of possible ill-treatment by law enforcement officials initiated *ex officio* pursuant to Section 206 of the CCP and the outcome of such investigations.**

23. Further, **the Committee would like to be informed of the outcome of the investigations carried out into the allegations of ill-treatment of persons detained during the "Maidan" events, referred to in paragraphs 24 and 32 of the report on the September 2014 ad hoc visit.**

24. At the outset of the visit, the delegation was informed of the progress made in setting up the State Bureau of Investigation (SBI) which will be tasked *inter alia* with the carrying out of criminal investigations into possible cases of ill-treatment by law enforcement officials. The procedure for the selection and appointment of the SBI Head was underway, and it was said that the SBI would become operational in the course of 2017, while the recruitment of investigators and other staff would continue.

The CPT wishes to receive updated information on this matter.

4. Safeguards against ill-treatment

25. The Committee recalls that three fundamental rights (namely, the right to have the fact of one's detention notified to a relative or another third party and the rights of access to a lawyer and a doctor) should apply from the very outset of a person's deprivation of liberty.[17] These safeguards should apply not only to persons detained by the police in connection with a criminal or administrative offence, but also to those who are obliged to remain with the police for any other reasons (e.g. for identification purposes).

26. The information gathered during the visit suggests that persons deprived of their liberty by SSU officers usually benefited from all the above-mentioned fundamental rights. Further, the CPT is pleased to note that, since the 2013 visit, free legal aid centres have been established on a nationwide scale (see, however, paragraph 29 regarding the drawbacks observed by the delegation regarding the system of free legal aid).

27. The Committee welcomes the fact that information sheets setting out the above-mentioned rights were available in Ukrainian, Russian and English in the law enforcement establishments visited and that most of the detained persons met by the delegation stated that they had been informed of their rights.

However, as was the case during previous visits, many persons detained by police officers claimed that they had received information on their rights only verbally and this not at the outset of their deprivation of liberty but only several hours after their arrival at a police establishment (often in the context of the first formal questioning by a police investigator and, in a number of cases, after informal questioning by an operational officer[18]). Further, a number of allegations were heard, in particular, in Khmelnytskiy and Odesa, that no information at all on the rights of detained persons had been provided by police officers to persons in police custody.

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

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17 That is, from the moment when a person is obliged to remain with law enforcement officials, including during any informal questioning; see also paragraphs 17, 27 and 29.

18 See, in this regard, also paragraphs 15 and 17.

28. As regards the right of notification of custody, the situation appeared to be more or less the same as the one described in the report on the 2013 visit. Most of the detained persons interviewed by the delegation indicated that their detention had been notified to a family member. However, once again, many allegations were received that, contrary to the relevant legislation, notification of custody had been delayed by police officers for several hours (e.g. until their arrival at an ITT) and in some cases until the following day. In addition, several detained persons claimed that they did not know whether their relatives had actually been informed of their detention.

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

29. The information gathered during the visit suggests that detained persons were usually informed of their right of access to a lawyer, that free legal aid centres were in most cases informed in a timely manner and that lawyers were often present during formal police questioning. At first sight, the situation appeared to be generally satisfactory. However, the delegation found clear indications that, in practical terms, the effectiveness of the right of access to a lawyer as an essential tool for the prevention of ill-treatment was often significantly undermined, and that for a number of reasons:

Firstly, as already mentioned in paragraph 15, many allegations were received from detained persons that they had been subjected to informal questioning by operational police officers (often until they confessed to a criminal offence) without the presence of a lawyer and that the formal questioning carried out later in the presence of a lawyer was a mere formality. In a number of cases, the role of the lawyer was said to be limited to counter-signing the statement given by the detained person.

Secondly, many complaints were heard that an *ex officio* lawyer had arrived at the police establishment only after a considerable delay. Regrettably, the delegation was not in a position to verify these complaints, since the relevant registers often only indicated the time of notification of the free legal aid centre but not the time of arrival of the lawyer. Moreover, several allegations were received that detained persons saw their *ex officio* lawyer for the first time in court.

Thirdly, in a considerable number of cases, detained persons were allegedly prevented from having conversations with their lawyer in private, and several persons claimed that they had been denied access to their private lawyer.

Fourthly, a number of complaints were heard about the performance of *ex officio* lawyers, and many persons expressed doubts about their independence of law enforcement agencies.[19]

[19] For instance, in Khmelnytskiy, several detained persons met by the delegation claimed that their *ex officio* lawyer was a former police investigator.

In the light of the above, **the CPT recommends that the Ukrainian authorities take the necessary steps to ensure that detained persons effectively benefit from the right of access to a lawyer from the very outset of a person's deprivation of liberty. Other than in exceptional circumstances when the matter is urgent, police officers should delay the beginning of the questioning until the arrival of the lawyer.**

Further, **steps should be taken in consultation with the Co-ordinating Centre for the Provision of Legal Aid to ensure that *ex officio* lawyers appointed to represent persons in police custody perform their functions in a timely and diligent manner.**

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

31. Further, as indicated in paragraph 9, the practice of having health-care staff (feldshers) present in ITTs on a permanent basis has been discontinued in the context of the ongoing police reform. Instead, a new procedure has been introduced, according to which all persons detained by law enforcement officials were to be subjected to a medical examination (usually in a general hospital) prior to their admission to an ITT. If duly implemented, such examinations – coupled with proper medical screening on admission to SIZOs – constitute an important safeguard against ill-treatment by law enforcement officials.

That said, the information gathered during the visit suggests that persons detained by the police were not systematically subjected to a medical examination. Further, despite the specific recommendation repeatedly made by the Committee since its very first visit to Ukraine, it remained the case that law enforcement officials were systematically present during medical examinations (both in law enforcement establishments and in outside medical institutions). Such a state of affairs is unacceptable, and it severely undermines the positive impact which medical examinations may have for the prevention of ill-treatment. It is also a matter of concern that, in several of the police establishments visited, medical records/data were accessible to police officers.

The CPT recommends that the Ukrainian authorities take appropriate action without delay to ensure that the newly-introduced requirement of detained persons having to undergo a medical examination prior to their placement in an ITT is effectively implemented in practice.

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

- **all medical examinations of persons detained by law enforcement officials are conducted out of the hearing and – unless the health-care professional concerned expressly requests otherwise in a given case – out of the sight of police officers;**

- **medical data are no longer accessible to non-medical staff. Health-care staff may inform custodial officers on a need-to-know basis about the state of health of a detained person; however, the information provided should be limited to that necessary to prevent a serious risk for the detained person or other persons, unless the detained person consents to additional information being given.**

Reference is also made to the remarks and recommendations in paragraph 70, which apply *mutatis mutandis* to civil health-care facilities.

32. As regards juveniles, the delegation gained the impression that the legal requirements to systematically notify the parents and to appoint and ensure the presence of a lawyer during police questioning were generally respected.[20]

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

The CPT calls upon the Ukrainian authorities to take effective steps to ensure that detained juveniles are not questioned (and do not make any statements or sign documents related to the offence of which they are suspected) without the benefit of a lawyer and, in principle, of another trusted adult being present and assisting them.

33. The delegation was informed that video surveillance (CCTV) equipment had been installed in all ITTs (including in offices used for police questioning) and that all video-recordings would as a rule be stored for 30 days. Further, as part of a pilot project, audio-recording of police questioning would be introduced in the course of 2017 in selected police establishments in Kyiv.

The Committee welcomes these developments and would like to receive updated information on this matter. In this context, the CPT wishes to stress that full audio-visual recording of police interviews is an additional safeguard against ill-treatment.

5. Conditions of detention

34. In all the ITTs visited, as well as in the SSU Detention Facility in Kyiv, material conditions of detention were generally satisfactory for accommodating detained persons during the statutory police custody period (i.e. up to 72 hours), in terms of state of repair, access to natural light and artificial lighting, ventilation and equipment.

Further, conditions in holding facilities of district police divisions were on the whole adequate for the intended purpose (i.e. keeping persons for up to a few hours) and do not call for any particular comment.

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[20] See Sections 52 (2) and 213 (4) of the CCP.

B. Prison reform

35. At the outset of the visit, the delegation was informed by senior officials from the Ministry of Justice about the ongoing reorganisation of the prison system, which included abolishing the State Penitentiary Service (at the central level), transforming it into a department of the Ministry of Justice with one of the Deputy Ministers becoming head of the prison service, and reducing the administration at regional level (into six large regional directorates); according to the delegation's interlocutors, the aim of the reorganisation was, among other things, to demilitarise the prison service,[21] reduce the staff[22] and transfer some of the officials from the central and regional administration levels to the level of individual penitentiary establishments. Further, the prison health-care service had been detached from the structure of the prison service and set up as a separate (parallel and functionally independent) department at the Ministry of Justice, and a third department (of probation) was at the closing stage in the process of being set up. Another new department was to be in charge of juvenile justice.

36. As a result of the so-called "Savchenko Act",[23] instituting the rule of calculating every day spent in a SIZO as two days of sentence, the prison population had been significantly reduced,[24] especially as regards sentenced prisoners accommodated in correctional colonies. At the time of the visit, there were approximately 60,000 sentenced inmates accommodated in 148 establishments[25] with a combined official capacity of some 100,000 places calculated on the basis of the legal norm of 4 m² of living space per (sentenced) prisoner. **The CPT welcomes this positive development which should allow the freed resources to be used to improve the conditions of detention and regime for the remaining sentenced prisoner population.**

Albeit not to the same degree and with some regional variations (as illustrated by the SIZOs visited by the delegation, see paragraph 63), there had also been a continuing trend to reduce the remand prisoner population. This was more an ongoing effect of the new Code of Criminal Procedure (CCP), in force since November 2012,[26] than of the Savchenko Act which, as some of the delegation's interlocutors argued, had actually had the perverse effect of prolonging the duration of remand detention in certain cases.[27]

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21 Only junior custodial staff in direct contact with prisoners would continue wearing uniforms, which would not be military-style.

22 The plan was to release some 2,500 staff. Abolishing the State Penitentiary Service at the central (headquarters) level had resulted in releasing 121 staff (out of the previous 321), and reducing the administration at regional level had resulted in releasing approximately half of some 1,300 officials. In this context, see also paragraph 43.

23 Act No. 838-VIII of 26 November 2015 amending the Criminal Code, in force as from 24 December 2015.

24 It was expected that a total of 34,000 sentenced prisoners would be released pursuant to the aforementioned Act by the end of 2016, see e.g. https://www.unian.info/society/1524629-9000-convicts-released-from-prison-under-savchenko-law-police.html.

25 This list did not include some 30 penitentiary establishments currently outside the Ukrainian Government's effective control (in Crimea and parts of Donetsk and Luhansk regions).

26 The CCP contains restrictive provisions governing the application of the preventive measure of remand detention, the automatic (with only limited exceptions possible) application of bail and a wide range of alternative measures. See also paragraph 98 of the report on the 2013 periodic visit (CPT/Inf (2014) 15), https://rm.coe.int/1680698465.

27 Reportedly, defence lawyers sometimes applied the tactics of delaying court proceedings because each additional day of remand imprisonment brought closer the prospect of liberation for their clients (after conviction).

Whatever the reasons, and especially in the light of the situation observed in the SIZOs visited (see paragraphs 63 to 68), **the Committee urges the Ukrainian authorities to pursue their efforts to further reduce the remand prisoner population, in particular by making more use of the available alternatives to remand detention.**

37. The delegation was also informed about further plans concerning the legislative framework for imprisonment. A new draft Penitentiary Code, elaborated taking into account the comments of numerous stakeholders (International Organisations and non-governmental organisations, independent experts, etc.) was under consideration in the Verkhovna Rada (the Parliament). It *inter alia* enlarged the catalogue of prisoners' rights including e.g. reinforcing the principle of serving the sentence close to one's home. Work was also ongoing in the Verkhovna Rada on the draft new Pre-Trial Detention Act, which would *inter alia* significantly increase the visiting entitlement for remand prisoners.

Recent amendments to the Act on Free Legal Aid extended access to such aid for prisoners, not only in criminal but also civil and administrative matters. Other recent legislative amendments had *inter alia* granted more visits[28] and telephone calls[29] to all categories of sentenced prisoners (including inmates sentenced to life imprisonment, see also paragraph 60), and improved internal and external complaints procedures (local courts now being obliged to hear inmates' complaints free of charge). Further amendments were forthcoming, including as regards disciplinary procedures.[30]

The CPT acknowledges the above-mentioned efforts and encourages the Ukrainian authorities to pursue them energetically. The Committee wishes to receive updated information on the implementation of these legislative plans.

As regards, more specifically, the visiting entitlement, **the CPT recommends that it be further increased so as to ensure that, as a minimum, all prisoners (both sentenced and those on remand) are entitled to the equivalent of at least one hour of visiting time per week.[31] Inmates of both categories should also have the effective possibility to make telephone calls.**

38. The delegation was provided with details of the Ukrainian authorities' plans regarding the prison estate. This included closing down 14 penitentiary establishments for sentenced prisoners[32] (including two for juveniles)[33] which had been identified as having particularly poor material conditions and an inadequate infrastructure for activities; it was planned to transfer inmates from these establishments – and some of the staff – to other prisons.

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28 Including long-term visits (up to three days) every two months and short-term visits (up to four hours) once or twice a month. Some categories of inmates (especially those whose families resided in territories of Ukraine currently beyond the effective control of the Ukrainian Government) had also been given the possibility of communicating with their relatives via a voice/video over Internet Protocol system.

29 At least one 15-minute call per week, with additional calls granted upon request and if technically possible.

30 E.g. as from the spring of 2017, only a judge would be allowed to place an inmate in segregation in "cell-type premises" (PKT) for up to three months. Further, inmates' procedural rights would increase in the context of disciplinary procedure (including better access to legal assistance, an express right to cross-examine witnesses, and an obligatory hearing – by a penitentiary commission in the case of placement in a "disciplinary isolator" (DIZO), by the court in the case of placement in a PKT).

31 See also paragraph 39.

32 Which would reduce the overall capacity of the prison system by approximately 10,000 places. Some of the establishments likely to be closed included Colonies Nos. 48 (in Lviv), 49 (in Kirovohrad region), 59 (in Vinnytsia region), 66 (in Sumy region), 84 (in Volhynia region), 95 (in Kyiv region), 122 (in Dnipro region), 128 (female colony in Ivano-Frankivsk) and 138 (in Mariupol).

33 In Dubno and Pryluky.

Further, the authorities planned to close down some of the old SIZOs located in the centres of major cities. The intention was to use the PPP (Public-Private Partnership) procedure, selling the old buildings and the land to private investors who would then build new remand prisons, using modern designs,[34] in the outskirts of the cities concerned. The initial plans concerned the SIZOs in Kyiv and Lviv, with the SIZO in Chernivtsi to follow later. In the light of what the delegation saw in the SIZOs visited, **the CPT calls upon the Ukrainian authorities to attach the highest priority to these plans and to add the SIZOs in Khmelnytskiy and Odesa to the list of establishments to be closed and replaced by new remand prisons. In order to increase the likelihood of success, the Committee invites the authorities to look for other sources of financing for these plans, in addition to the PPP procedure, e.g. from donors such as the Council of Europe Development Bank.**

Pending the implementation of these plans, urgent steps must be taken to address the deficiencies in material conditions observed at the SIZOs visited (see paragraphs 63 to 68).

39. Unfortunately, the above-mentioned reforms, both those already implemented and those still at the planning stage, had not yet impacted upon the situation of remand prisoners. In particular, the old inadequate norm of living space per inmate in SIZOs (2.5 m²) was still in force at the time of the visit, complex rules on separation of different categories of remand prisoners continued to result in localised overcrowding in the pre-trial facilities visited, there had been no change to the regime for remand prisoners based on the concept of "isolation" (with no association between cells and nothing even remotely resembling a programme of meaningful out-of-cell activities[35]) and, last but not least, the restrictive provisions on remand prisoners' contact with the outside world (with visits and telephone calls requiring authorisation by the competent investigator, prosecutor or court) continued to be applied.[36] **The CPT calls upon the Ukrainian authorities to take decisive steps to revise the legislation and regime for remand prisoners, taking into account the above remarks and the Committee's long-standing recommendations.[37]**

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34 The Polish prison service had reportedly provided free-of-charge blueprints of its most recently-built prison in Opole Lubelskie, which would be adapted and used for construction of the new remand prison in Kyiv.

35 E.g. only 25 inmates at Kharkiv SIZO had a job (out of a total of 1,640) and less than 30 at Odesa (population 1,146), and remand prisoners continued to spend 23 hours per day locked in their (multiple-occupancy) cells. Only juveniles (e.g. 13 at Kharkiv SIZO, 12 in Odesa) had some activities on offer (some schooling, sports, outdoor exercise for two hours per day, limited association, meetings with educators and psychologists).

36 And, in practice, visits and calls were rarely permitted.

37 See e.g. recommendations in paragraphs 100, 102 and 127 of the report on the 2013 periodic visit (CPT/Inf (2014) 15, https://rm.coe.int/1680698465). See also paragraphs 52 to 71 of the CPT's 26th General Report and the judgment of the European Court of Human Rights in *Muršić v. Croatia* (20 October 2016; application no. 7334/13).

40. As regards life-sentenced prisoners, **reference is made to the recommendations in paragraph 62**.

Further, the Committee must recall the basic principle that, in order to reduce the harmful effects of imprisonment and to promote the resettlement of prisoners under conditions that seek to guarantee the safety of the outside community, the law should offer a realistic prospect of conditional release to all sentenced prisoners, including life-sentence prisoners.[38] This is still not the case at present.[39] **The Committee would like to receive the remarks of the Ukrainian authorities on this matter. Reference is also made here to the CPT's 25th General Report.[40]**

41. Prison health care is another area of long-standing concern to the CPT – a concern that was shared by the delegation's interlocutors at the Ministry of Justice. As acknowledged by them, and again observed by the delegation in the establishments visited, health-care staffing levels continue to be insufficient[41] (moreover, many health-care workers are approaching retirement age, younger staff are either leaving the system or unwilling to work in it due to the unattractive conditions), the premises[42] and equipment are run down, outdated (some dating back to the Soviet times) and incomplete,[43] the supply of medication problematic (despite the assistance provided by the International Committee of the Red Cross, the Global Fund and the World Health Organization thanks to which there had recently been a slight improvement)[44] and the quality of care (including professional standards) leave much to be desired.

The Ministry of Justice representatives affirmed to the delegation that intense work to address all these shortcomings was underway, including with the support of the above-mentioned foreign stakeholders, as well as the European Union. **The CPT calls upon the Ukrainian authorities to pursue these efforts energetically and to provide the Committee with detailed information on the progress achieved.**

42. In this context, the delegation was also told about plans to improve the co-ordination and co-operation with the Ministry of Health which, according to the Ministry of Justice officials, continued to leave something to be desired.[45]

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

39 Life-sentenced prisoners are entitled to conditional release only after their life sentence has been commuted by Presidential pardon to a fixed-term sentence of no less than 25 years.

40 See paragraphs 67 to 81 of CPT/Inf (2016) 10 (https://rm.coe.int/16806cc447), and in particular paragraph 73.

41 E.g. at Colony No. 25 (population approximately 670) there were two doctors (but one of them focussed essentially on administrative tasks, as Head doctor), two feldshers and no nurses.

42 See, in particular, the so-called infirmary at Odesa SIZO, paragraph 63.

43 That said, some limited improvements could be noted e.g. a new surgery unit at Colony 100 (see below), a new dental surgery and an X-ray machine at Kharkiv SIZO, etc.

44 The delegation was particularly concerned by problems with the supply of second-line medication against the multi-drug-resistant tuberculosis (MDR-TB), observed at Kyiv SIZO (despite the presence of 13 inmates suffering from this form of TB).

45 For example, the Ministry of Health was reportedly not much involved in the professional training for prison health-care staff.

On this issue, 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.[46] 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. **The CPT reiterates its recommendation that the Ukrainian authorities review the provision of prison health care, taking into consideration the above remarks.**

43. The situation of prison staff continues to be very problematic in the entire prison system. Inadequate staffing levels[47] (too low to allow effective control, at least without the relying on certain inmates[48]), meagre wages (reportedly, a third of what patrol police officers receive[49]) exposing prison staff to the risk and temptation of corruption, additional stress due to ongoing reforms and the perceived lack of information about the reform's impact on their professional future – all these factors contributed (as openly acknowledged by senior officials at the Ministry of Justice) to staff demotivation and large-scale departures from the prison service.[50]

The Ministry of Justice had plans to increase salaries but the necessary budgetary resources were not available at the time of the visit; most likely, any such increase would only be achieved by keeping the salary budget unchanged while having fewer staff. **The CPT calls upon the Ukrainian authorities to take urgent steps to increase both custodial staff levels and presence at the establishments visited (and, as applicable, in other penitentiary establishments) in order to ensure that there is an adequate presence of staff at all times; for this, a recruitment strategy should be developed based on proper funding and enhanced conditions of service, including competitive salaries.** Further, **the Committee recommends that efforts be stepped up to fill all the vacant posts, especially as regards custodial staff.**

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46 See Rules 40.1 and 40.2 of the European Prison Rules and the Commentary on these Rules as well as Rule 24 (1) of the United Nations Standard Minimum Rules on the Treatment of Prisoners (*Nelson Mandela Rules*) and Principle 24 of the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (A/RES/43/173). Reference is also made to a document published in 2013 by the United Nations Office on Drugs and Crime and the WHO Regional Office for Europe, entitled "Good governance for prison health in the 21st century: a policy brief on the organization of prison health", http://www.euro.who.int/__data/assets/pdf_file/0017/231506/Good-governance-for-prison-health-in-the-21st-century.pdf?ua=1.

47 E.g. Colony No. 25 (population approximately 670) had 75 custodial staff working in three shifts; during working days (except for weekends), there were also seven educators. Colony No. 100 (population approximately 760) had some 50 custodial staff. Kharkiv SIZO had approximately 60 custodial staff per shift, who were supposed to supervise some 1,640 inmates. Odesa SIZO could mobilise 23 custodial officers per shift (instead of the regular 30) for the population of 1,146. As for Kyiv SIZO, the Director described the staff situation as "critical", with some 30% of vacancies amongst custodial staff. On any given shift, there were no more than 20 – 22 custodial officers, while there were supposed to be 35. Khmelnytskiy SIZO had 34 vacant posts of custodial staff for the total complement of 135.

48 The reliance on a prisoner hierarchy ("blatnye") was implicitly acknowledged by the management and staff at Kharkiv and Odesa SIZOs.

49 E.g. the junior custodial staff's starting monthly salary was approximately 2,500 to 2,800 UAH (90 – 100 EUR) at Colony No. 25 and 3,000 UAH (105 EUR) at Odesa SIZO.

50 Mr Chernyshov stated that prison staff were "leaving in droves", attracted by higher salaries in the police and private sector. For some staff, the loss of privileges attached to the previous military status (such as early retirement, higher number of holidays, etc.) was an additional contributing factor in staff deciding to leave the prison system.

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

C. Situation observed by the CPT's delegation in the prisons visited

1. Ill-treatment, inter-prisoner violence and related matters

a. Colony No. 25

45. The CPT is pleased to note that, contrary to the situation observed during previous visits, the delegation received no recent, direct allegations of ill-treatment by custodial staff or inter-prisoner violence at Colony No. 25. There was no longer a general climate of fear and intimidation as described in the report on the September 2014 visit.[51] The entire management of Colony No. 25 (the Director and all his deputies) had been replaced after the CPT's September 2014 visit. This might in part explain the change of atmosphere (for the better) at the establishment, which was also confirmed by many of the inmates interviewed.

The Committee trusts that the management of Colony No. 25 will remain vigilant and ensure that this positive state of affairs is indeed maintained.

46. Notwithstanding the above, it remains the case that Colony No. 25 was ruled by means of an iron discipline. Any disciplinary violations were mercilessly punished albeit – this time – in strict conformity with the existing substantive and procedural law. This affected primarily a relatively small group of particularly "difficult" and "recalcitrant" prisoners (most of whom obeyed the unwritten rules of prison subculture), who could find themselves relatively quickly and easily (in many if not most cases, for having repeatedly refused to clean the premises or accept other tasks imposed by the administration[52]) subjected to repeated and escalating disciplinary sanctions (placement in a disciplinary cell – DIZO – for up to 15 days, placement in disciplinary segregation – PKT – for up to three months),[53] that could eventually lead to being sentenced to an additional term of up to one year of imprisonment pursuant to Section 391 of the Criminal Code.

The CPT considers this approach to be grossly excessive. While most prisons may sometimes have to cope with disruptive, challenging prisoners who systematically refuse to obey the lawful rules and orders of the administration, the proper approach to them – rather than subjecting them to repeated disciplinary sanctions of increasing severity, let alone an additional term of imprisonment – should be to place them in administrative segregation.

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51 See paragraph 35 of CPT/Inf (2015) 21, https://rm.coe.int/16806985fd.

52 But also, on occasion, for such minor violations as smoking in a prohibited area or addressing the staff in an impolite manner.

53 At the time of the visit, there were two inmates in DIZO and two in PKT (one since August 2016, the other since September). Placements were not too frequent (80 DIZO and 15 PKT placements in the period from 1 January to 1 November 2016) but a small group (eight or nine) of "difficult" prisoners were being punished frequently, and it was not exceptional to come across consecutive placements in DIZO/PKT, sometimes with only one day of interruption.

Furthermore, there must be a clear difference between such administrative segregation and segregation/solitary confinement on disciplinary grounds. In particular, the conditions of administrative segregation must be less strict and, save for the most exceptional of circumstances, should not amount to solitary confinement. Special efforts should be made to develop positive relations between staff and prisoners. Throughout the period of administrative segregation, the objective should be to persuade the prisoner to re-engage with the normal regime.

Accordingly, it is essential that there is a plan for all such prisoners and that all staff involved with them work to that plan to maximise its effect.

It is impossible to predict in advance how long the process may take, and it is thus impossible to set a time limit on the process at the outset. Equally, it is counterproductive to set a time limit which cannot be varied downwards to account for a prisoner who decides to begin to co-operate shortly after the start of the period. Consequently, all such placements should be reviewed on a regular basis, at least every two months. Further, prisoners should as far as possible be kept fully informed of the reasons for the imposition of the measure and, if necessary, its renewal.

The Committee recommends that the Ukrainian authorities review the practice of disciplinary isolation and segregation at Colony No. 25 (and, as appropriate, in all other penitentiary establishments) in the light of the above remarks. Section 391 of the Criminal Code should be abolished. Further, the current practice should be changed so as to ensure that a prisoner is not subjected to successive disciplinary sanctions of solitary confinement, without there being an appropriate interruption (of several days) in the solitary confinement regime.

47. Further, the CPT has serious misgivings about the fact that, despite the specific recommendation made in the report on the 2013 visit, operational staff at Colony No. 25 continued to obtain confessions concerning offences allegedly committed by prisoners prior to their incarceration. In this regard, the Committee wishes to stress again that such practices are clearly detrimental to the protection of prisoners against ill-treatment (including inter-prisoner violence) and lend themselves to abuse.

The Committee reiterates its recommendation that the Ukrainian authorities take steps, including at the legislative level, to ensure that officers of 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.

b. Colony No. 100

48. Similar to the situation at Colony No. 25 (see paragraph 45), the Director of Colony No. 100 (albeit not all the deputies) had been replaced after the CPT's September 2014 ad hoc visit. The new Director told the delegation that the overall atmosphere and relations between the administration (and staff) and prisoners had improved and that "the right balance" had been found in this respect. Indeed, the delegation heard no recent, direct allegations of ill-treatment and inter-prisoner violence from inmates interviewed in the general accommodation blocks.[54] It is also noteworthy that the delegation did not gain the impression that formal disciplinary sanctions were applied excessively.[55]

The CPT welcomes this positive development as regards the general Colony population, and trusts that efforts will be continued to maintain it.

49. By contrast, the delegation heard, at Colony No. 100, a number of recent and credible allegations of physical ill-treatment (consisting mainly of punches and kicks) of life-sentenced prisoners by some of the custodial staff, as an informal punishment for the slightest violations of the internal rules and for failing to obey staff orders immediately. Furthermore, there was a palpable climate of fear in the lifers' unit, with prisoners being visibly frightened to speak with the delegation. The impression was that of the unit being almost like an "institution within an institution", governed by its own set of informal rules.

The CPT calls upon the Ukrainian authorities to take urgent and decisive steps to prevent ill-treatment and intimidation of life-sentenced prisoners at Colony No. 100. The Colony's management must assert full control over the unit for prisoners sentenced to life imprisonment and take appropriate measures vis-à-vis custodial staff engaging in any such misconduct.

Further, **the Committee recommends that a thorough and independent inquiry be carried out into the situation at the above-mentioned unit; it would like to be informed of the outcome of this inquiry and of any measures taken as a result thereof.**

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54 See, however, paragraph 49.

55 On the day of the delegation's visit, there was only one inmate in DIZO and none in PKT. There had been 59 placements in DIZO in the first ten months of 2016 (usually for three to seven days) and placements in PKT were rare (only twice in 2016, for one month and three months).

c. SIZOs in Kyiv, Kharkiv, Khmelnytskiy and Odesa

50. The delegation received no direct allegations of ill-treatment by staff at any of the *SIZOs* visited.

However, while at Colony No. 100, the delegation interviewed an inmate (Mr S. T.) who alleged having been struck several times with truncheons, kicked and punched on his head, chest and right thigh by a group of four or five custodial officers at Kharkiv SIZO in early September 2016, reportedly because he kept making complaints about his conditions of detention and claimed to have been subjected to groundless disciplinary sanctions. It is noteworthy that he still bore visible injuries at the time of the CPT's visit, injuries that were observed by one of the delegation's forensic doctors.[56] Mr T. told the delegation that he had lodged a formal complaint to the prosecutor's office and that he had undergone a forensic medical examination.[57]

The CPT would like to receive detailed and updated information on the above-mentioned investigation. Further, **the Committee would like to be informed whether any disciplinary inquiry has been carried out into this incident and whether any measures were taken vis-à-vis the custodial staff.**

51. Inter-prisoner violence was a problem acknowledged by the Directors of all the *SIZOs visited*;[58] this was hardly surprising given that the accommodation was based on large-capacity cells (e.g. 25 – 30 inmates per cell in Kyiv)[59] and the staff's reliance on the informal prisoner hierarchy to help them control the situation (especially conspicuous at Kharkiv and Odesa SIZOs).[60]

In this regard, the CPT must reiterate 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 the other inmates, and members of the penitentiary staff anxious to preserve the appearance of order in the establishment. The development of constructive relations between staff and all the prisoners, based on the notion of dynamic security,[61] is a crucial factor in the effort to combat inter-prisoner intimidation and violence.

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56 Upon examination by the delegation's forensic doctor, on 24 November 2016, Mr T. displayed, near the middle of the external surface of the right thigh, an area with brown hyper-pigmentation, measuring 6.5 x 3.5 cm. Further, photographs of Mr T.'s injuries, shown to the delegation's forensic doctor by the inmate's lawyer, displayed an abrasion in the right parietal region and pale yellow bruising on the right side of the chest. All the above-mentioned injuries had resulted from the application of a blunt instrument and were consistent with Mr T.'s allegations.

57 The delegation received a copy of the forensic medical report from Mr T.'s lawyer (with his client's permission). According to the report, Mr T. displayed the following injuries upon examination by the forensic medical expert: an abrasion in the right parietal region, a pale yellow bruising of the right side of his chest, and an abrasion on the external surface of the right thigh.

58 The delegation also noted in the relevant medical documentation at Kharkiv SIZO many injuries sustained inside the establishment (112 cases between 29 April and 22 November 2015), the type of which (e.g. periorbital haematomas) suggested possible inter-prisoner violence; that said, explanations given by inmates concerned usually denied this (e.g. that they had fallen from the upper bunk bed) and the delegation did not receive any direct allegations of such violence.

59 See also the recommendation in paragraph 66.

60 See also paragraph 43.

61 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.

The Committee reiterates its recommendation that the management of Kharkiv and Odesa SIZOs, as well as that of all other SIZOs in Ukraine, make use of all the means at their disposal to counter the negative impact of the informal prison hierarchy and prevent inter-prisoner intimidation and violence. The Ukrainian penitentiary authorities should also be vigilant as to possible collusion between staff and prisoner "leaders".

52. **The Committee would also like to be informed of the outcome of the investigation into the death of prisoner Bohdan GRETSENKO at Kyiv SIZO on 17 November 2016.** Mr Gretsenko was reportedly found unconscious in his (multiple-occupancy) cell bearing severe head injuries. He was taken to a hospital and died the same day, the autopsy report concluding cranial trauma and brain haemorrhage. A criminal investigation was apparently opened against Mr Gretsenko's ten cellmates.

Further, **the CPT requests to be provided with information on the outcome of investigation into another violent death of a 20-year old remand prisoner at Kyiv SIZO, which occurred in the end of January 2017.**[62] The prisoner concerned reportedly died in hospital on 26 January 2017, after having been hospitalised while unconscious and with a head injury.

2. Issues as regards the general prisoner population in the correctional colonies visited

a. Colony No. 25

53. The material conditions at Colony No. 25 had remained as observed during the September 2014 ad hoc visit, namely very good,[63] and all the premises continued to be remarkably clean. It is also noteworthy that many of the inmates interviewed praised the food offered to them. The sole issue of real concern was that showers were only available once a week. **The CPT recommends that the frequency of prisoners' access to a shower be increased, at Colony No. 25 and throughout the prison system, taking into consideration Rule 19.4 of the European Prison Rules.**[64]

54. Given that there had been a significant reduction in the prisoner population (from 1,611 inmates during the December 2012 ad hoc visit[65] to 673 at the time of the November 2016 visit, with the current official capacity of 1,000 calculated on the basis of 4 m² of living space per prisoner), overcrowding was no longer an issue and the management had even decided to close one of the accommodation blocks. However, there had also been a reduction in the offer of activities, with approximately half of the inmates having a job and some 160 being enrolled in vocational training courses and/or attending secondary school. **The Ukrainian authorities should pay closer attention to this issue, with a view to improving prisoners' access to organised activities at Colony No. 25.**

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62 See e.g. https://tsn.ua/kyiv/u-kiyivskomu-sizo-do-smerti-zabili-20-richnogo-hlopcya-870123.html.

63 See paragraph 36 of CPT/Inf (2015) 21, https://rm.coe.int/16806985fd.

64 Rule 19.4 reads as follows: "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."

65 See paragraph 4 of CPT/Inf (2013) 23, https://rm.coe.int/168069844d.

55. On a positive note, and contrary to the situation observed during the September 2014 ad hoc visit,[66] the delegation heard no allegations, and saw no other indications, of "slave labour" (exploitation of prisoners for economic reasons, with inmates not receiving the salaries they were entitled to for their work and being pressured by the management to work overtime, often without any additional remuneration). This change is to be welcomed.

b. Colony No. 100

56. The CPT has no major concerns as regards the material conditions in the general accommodation blocks of Colony No. 100. The prisoner population had diminished (it stood at 759, as compared with 970 in September 2014) which meant that there was no longer any overcrowding.[67] Two sections (Nos. 12 and 13) had recently been refurbished as had the disciplinary unit, the "club" (activity area) and part of the health-care unit (the surgery ward); further, the heating and plumbing installations had been modernised in other sections. The delegation heard hardly any complaints about the food. The only noteworthy problems concerning material conditions were the partially screened in-cell toilets in the disciplinary unit and the fact that showers were accessible only once a week. **The Committee reiterates its recommendation that in-cell toilets in all prisoner accommodation areas be fully partitioned (i.e. up to the ceiling). As for access to a shower, reference is made to the recommendation in paragraph 53.**

57. As at Colony No. 25 (see paragraph 54), there had been a decrease in the number of prisoners involved in organised activities, especially paid work (the usual daily number of working inmates being between 250 and 300, as compared with almost 600 in September 2014).[68] In this respect, **reference is made to the comment in paragraph 54, which applies in the same way to Colony No. 100.**

3. Issues as regards life-sentenced prisoners at Colony No. 100

58. Since the September 2014 visit, the number of inmates in the special unit for life-sentenced prisoners at Colony No. 100 had been reduced from 86 to 62, reportedly due to the transfer of a number of inmates to establishments closer to their homes. This is a welcome development.

59. Material conditions in the cells had improved because there was more space in them: most life-sentenced prisoners were now accommodated in double-occupancy cells measuring approximately 10 m² including the sanitary annexe. The delegation noted that in-cell toilets were only partially screened in some of the cells; in this respect, **reference is made to the recommendation in paragraph 56**.

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66 See paragraph 39 of CPT/Inf (2015) 21, https://rm.coe.int/16806985fd.

67 One detachment in one of the accommodation blocks had been closed as it was no longer needed.

68 To this number, one should add 45 inmates attending vocational training (turner and milling machine operator).

60. More generally, the Committee is concerned that the regime of life-sentenced prisoners at Colony No. 100 has not improved and, in some respects, has even deteriorated since the last visit.[69] Hardly any of the CPT's previous recommendations have been implemented, the result of the near-total absence of change to the relevant laws and regulations.[70]

61. This included the continued practice of routine handcuffing of life-sentenced prisoners whenever they were outside the cell[71] (including reportedly during medical consultations), other excessive and degrading security measures (e.g. inmates being obliged to recite one by one the Section(s) of the Criminal Code under which they had been convicted, while facing the wall with their hands behind their backs and with their head bowed each time the cell door opened; prohibition to stand (at any time) less than one metre from the outer cell wall, etc.), the lack of organised purposeful activities apart from some work inside the cells[72] and daily exercise of one hour, prohibition of any contact and association between the cells, segregation from the rest of the prisoner population, and constant CCTV surveillance inside the cells.

62. Consequently, **the CPT calls upon the Ukrainian authorities to implement without further delay its recommendations made after the visit to Colony No. 100 in September 2014, and to take steps at the above-mentioned establishment, as well as in other penitentiary establishments, to ensure that:**

- **an immediate end is put to the practice of routinely handcuffing life-sentenced prisoners within the prison perimeter. Handcuffing of such prisoners outside their cells should be an exceptional measure, always based on an individual risk assessment and should be reviewed on a regular and frequent basis;**

- **the anachronistic, excessive and degrading practices described in paragraph 61 are abolished;**

- **all life-sentenced prisoners are offered a range of purposeful out-of-cell activities (such as work, education, sports, recreational activities);**

- **life-sentenced prisoners are as a rule allowed to have contact with life-sentenced prisoners from other cells (including during outdoor exercise);**

- **life-sentenced prisoners are as a rule allowed to receive short-term visits in open conditions (i.e. table visits).**

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69 Unlike in the case of the two (already) sentenced lifers and ten remand prisoners awaiting the entry into force of their life sentences that the delegation saw at Kharkiv SIZO: they were no longer subjected to routine handcuffing and the attitude of custodial staff had reportedly much improved, as a result of which most of the life-sentenced prisoners concerned expressed the wish to remain at the SIZO for as long as possible, despite being obliged to live in very cramped conditions (e.g. a double cell measuring some 8 m² including a fully screened sanitary annexe) and with very limited access to natural light.

70 One positive exception was the improved visiting entitlement (a long-term visit every two months, a short-term visit once a month, see also paragraph 37), but short-term visits continued to take place under closed conditions (through Plexiglas).

71 Only three life-sentenced prisoners were not subjected to routine handcuffing, one of them being of advanced age and the two other being physically disabled.

72 Sewing textile items, making slippers and assembling paper bags.

Further, **the Committee reiterates its recommendation that the Ukrainian authorities review the use of CCTV inside the cells in the lifers' unit at Colony No. 100 (as well as in other penitentiary establishments) and adopt detailed regulations in the light of the remarks made in paragraph 52 of the report on the ad hoc visit carried out in September 2014.**[73]

The CPT also once again urges the Ukrainian authorities to reconsider their position vis-à-vis life-sentenced prisoners and to amend the relevant legislation accordingly, in order to integrate life-sentenced prisoners into the general prison population as soon as possible following their conviction (taking into account the European Prison Rules and the Committee of Ministers' Recommendation Rec (2003) 23 on the management by prison administrations of life sentence and other long-term prisoners).

Finally, **the Committee refers to its comments on conditional release in paragraph 40**.

4. Issues as regards the SIZOs in Kyiv, Kharkiv, Khmelnytskiy and Odesa

63. The most striking feature of the SIZOs visited were the appalling material conditions, in particular at *Odesa, Khmelnytskiy and Kyiv SIZOs* (with the notable positive exception of the juvenile units at Khmelnytskiy and Kyiv SIZOs). Those in Kyiv and Odesa had further deteriorated since the CPT's last visits in, respectively, September 2014 and October 2013[74] and could now easily be considered inhuman and degrading. Cells were overcrowded[75] (e.g. at Khmelnytskiy SIZO, up to six prisoners in cells measuring some 13 m², sanitary annexe excluded, up to eight inmates in cells measuring some 22 m² and up to twelve in cells measuring some 29 m²) and the infrastructure was often beyond repair. Conditions in the so-called "hospital" at Kyiv SIZO were very poor, especially in the TB ward where there was a real risk of the spread of the disease amongst prisoners but also prison staff;[76] **the CPT calls upon the Ukrainian authorities to take immediate steps to remedy this worrying state of affairs.**

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73 "As regards the systematic 24-hour video surveillance of prisoners, the CPT already acknowledged in previous reports that the installation of CCTV cameras may be an important additional means to ensure security in common detention areas (corridors, sports rooms, etc.), special cells (e.g. special observation cells, disciplinary cells) and exercise yards. However, given the extreme intrusion into the privacy of prisoners when such cameras are installed in their own cells, in particular when the inmates remain there for prolonged periods, the Committee reiterates its serious misgivings about 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 the prisoners concerned."

74 See, in particular, paragraph 120 of CPT/Inf (2014) 15, https://rm.coe.int/1680698465.

75 Despite the fact that the SIZOs visited operated generally below their official capacity (e.g. 1,640 inmates at Kharkiv SIZO, a virtual 50% drop as compared with the September 2014 ad hoc visit, for the capacity of 2,460; 305 prisoners at Khmelnytskiy SIZO, for the official capacity of 421). Kyiv and Odesa SIZOs were more crowded: 2,211 inmates for the capacity of 2,474 in Kyiv and 1,146 inmates for the capacity of 1,227 in Odesa, but (anyway) the population at Odesa SIZO was slightly less than at the time of the 2013 periodic visit when it had stood at 1,231. That said, it should be recalled that the official capacities were calculated based on the norm of 2.5 m² per inmate, criticised many times in the past by the CPT (see paragraph 39).

76 The ward was overcrowded and the poorly lit and ventilated rooms were shared by patients, some of whom were suffering from multi-drug-resistant tuberculosis (MDR-TB).

The buildings at Odesa SIZO, including the health-care unit, were literally falling apart, infiltrated with damp and infested with mildew, and were unhygienic; water pipes and the sewerage system had not been modernised for 50 years and leaked or became blocked up frequently.[77] It was obvious to the delegation that steps to address this unacceptable state of affairs were long overdue. In this respect, **reference is made to the recommendations in paragraph 38**.

64. The above-mentioned situation was made even worse by the fact that the heating was either completely switched off or barely working (as at Odesa SIZO, where the heating had only very recently been switched on in two detention blocks) and everyone (management and staff included) was freezing cold. The delegation was told that, due to the ongoing reorganisation of the prison service (see paragraph 35), there had been a delay in tendering procedures and coal/gas/wood (whichever fuel was used in the establishments concerned) had not been purchased in time. The management of Odesa SIZO had tried to alleviate this to an extent by burning turf, but the heating installation was not well adapted to this type of fuel and, as the delegation observed, the production of smoke was far more noticeable than the production of heat. **The CPT would like to know whether the heating problem has now been solved in the establishments visited and, more generally, throughout the prison system.**

65. At Kyiv SIZO, the delegation noticed that, due to the degree of general dilapidation of the premises, staff had the greatest difficulty in opening some of the cell doors. This is a disaster waiting to happen, e.g. in the case of fire or other (medical or security) emergency. **Immediate steps are required to solve this problem, without waiting for the construction of the new SIZO in Kyiv.[78]**

66. Conditions were somewhat better at *Kharkiv SIZO* although they remained quite poor due to the age[79] and infrastructure[80] of the buildings; in particular, Block 2 had been taken out of service (except for the ground level) because of its advanced dilapidation. Overall though, the premises were better kept (with the roofs having recently been repaired, some exercise yards renovated and fitted with shelters against inclement weather, and with ongoing redecoration and small repairs in the detention areas including the workers' unit and the punishment cells) and cleaner than in the other SIZOs visited.

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77 The recently appointed new deputy Director (acting Director) had taken the initiative of documenting the state of the premises with photographs showing e.g. damaged and walls and floors with holes, broken pipes, exposed electric wires, etc. He told the delegation that his intention was to transmit this documentation to the Ministry of Justice, accompanied by a request for urgent remedial action.

78 See paragraph 38.

79 The oldest detention blocks dated back to 1882, the most recent (Block 6) to 1986, but most of the accommodation was built in the early 20th century.

80 E.g. large cells (up to 30 beds) with small windows allowing in little natural light and fresh air (although this was better in the few cells that had recently been renovated).

The Committee recommends that the ongoing renovation of Kharkiv SIZO be continued and that, to the extent possible with the existing infrastructure, it include the transformation of large-capacity cells into smaller living units.[81] Such transformation should also be the objective for all the other SIZOs (and, as applicable, all the other penitentiary establishments) in Ukraine.

Further, **the CPT recommends that efforts be made to reallocate prisoners within the existing accommodation so as to prevent localised overcrowding (which is the case at present).**

67. As regards the absence of purposeful out-of-cell activities and the persistence of a regime based on the concept of "isolation", observed yet again in all the SIZOs visited, **reference is made to the remarks and recommendation in paragraph 39**.

68. At *Khmelnytskiy SIZO*, the delegation heard complaints from female prisoners that they were not allowed to take outdoor exercise every day. Further, the delegation noted that women and juveniles had to take their exercise under totally inadequate conditions (in large rooms located on the 4th floor, each with four windows without panes), which could by no means be considered as permitting genuine *outdoor* exercise. **The CPT calls upon the Ukrainian authorities to remedy the above-mentioned deficiencies.**

69. As mentioned in paragraph 18, there was systematic medical screening on arrival at the SIZOs visited (at the latest the day after arrival) which included screening for injuries. However, the confidentiality of the screening was still not respected (except in Odesa), injuries were not always well described and sometimes – even if the inmate said he/she had been ill-treated by the police – the doctors or feldshers noted that injuries had been sustained "during apprehension" (which was not an accurate explanation). The delegation saw examples of this, e.g. at Kharkiv SIZO.

70. **The Committee once again calls upon the Ukrainian authorities to ensure at all SIZOs 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;**

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81 As the CPT has stressed in the past, large-capacity cells inevitably imply a lack of privacy for prisoners in their everyday lives. Moreover, the risk of intimidation and violence is high. Such accommodation arrangements are prone to foster the development of offender subcultures and to facilitate the maintenance of the cohesion of criminal organisations. They can also render proper staff control extremely difficult, if not impossible; more specifically, in the case of prison disturbances, outside interventions involving the use of considerable force are difficult to avoid. With such accommodation, the appropriate allocation of individual prisoners, based on a case-by-case risk and needs assessment, also becomes an almost impossible exercise.

- **the record drawn up following the medical examination of a prisoner contains: (i) an account of statements made by the prisoner in question which are relevant to the medical examination (including his/her description of his/her state of health and any allegations of ill-treatment), (ii) a full account of objective medical findings based on a thorough examination; (iii) the health-care professional's observations in the light of i) and ii), indicating the consistency between any statements made and the objective medical findings; this record should take fully into account any attestation of injuries observed upon admission during the procedure of handover of custody;**

- **the record also contains the results of additional examinations performed, detailed conclusions of specialised consultations and a description of treatment given for injuries and of any further procedures performed;**

- **the recording of the medical examination in cases of traumatic injuries is made on a special form provided for this purpose, with "body charts" for marking traumatic injuries that will be kept in the medical file of the prisoner. If any photographs are made, they should be filed in the medical record of the inmate concerned. This should take place in addition to the recording of injuries in the special trauma register;**

- **the results of every examination, including the above-mentioned statements and the health-care professional's conclusions, are made available to the prisoner and his/her lawyer;**

- **special training is provided to health-care professionals working in SIZOs. 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.**

APPENDIX

LIST OF THE NATIONAL AUTHORITIES AND ORGANISATIONS WITH WHICH THE CPT'S DELEGATION HELD CONSULTATIONS

Ministry of Justice

Ms Natalia SEVOSTYANOVA	First Deputy Minister
Mr Denys CHERNYSHOV	Deputy Minister
Mr Sergiy PETUKHOV	Deputy Minister
Ms Liudmyla SUGAK	Deputy Head of the International Law Department
Mr Oleksii BONDARENKO	Deputy Head of Division, Head of the Unit on Ensuring Supervision of Convicts and Persons Taken into Custody at the Penitentiary Department
Mr Oleh SHEPEL	Deputy Head of the Department for Resourcing Provision
Mr Mykhailo ZLOBYNETS	Deputy Head of the Medical Department
Mr Oleh KORCHOVYI	Specialist at the International Law Department

Ministry of Internal Affairs

Ms Anastasiia DIEIEVA	Deputy Minister
Mr Konstantyn BUSHUIEV	Deputy Head of the National Police
Mr Yevhen DZUBA	Acting Head of the Human Rights Department of the National Police
Mr Yevhen DZIUBA	Acting Head of Human Rights Department
Mr Oleksandr HUMENIUK	Department of Organisational-analytical Activities and Operative Reaction
Ms Tamila KRAVCHUK	Department of Preventive Activities

Security Service of Ukraine

Mr Vitaliy MALIKOV	First Deputy Head
Mr Oleh REZNICHENKO	Deputy Head of the International Co-operation Centre
Mr Serhii RASTOPCHYN	International Co-operation Centre
Mr Vitalyi MAIAKOV	Investigation Department

Office of the Prosecutor General

Mr Yevhen BEZBORODOV	Head of the Department of Representation of the Interests of Citizens and the State in the Judicial System, Combating Crime and Corruption on the Temporarily Occupied Territory of Crimea
Mr Yevhen PIKALOV	Head of the International Co-operation and European Integration Department
Mr Roman ROMANCHUK	Head of the Juvenile Justice Department
Mr Viacheslav SVIRETS	Head of the Department of Supervision of Law Observance in the Execution of Court Decisions in Criminal Proceedings and Other Measures of Compulsory Character in Places of Imprisonment
Mr Dmytro HUZYR	International Co-operation Unit

Office of the Parliamentary Commissioner for Human Rights (National Preventive Mechanism)

Ms Valeriya LUTKOVSKA	Parliamentary Commissioner
Ms Kateryna CHUMAK	Head of the National Preventive Mechanism Department
Ms Anastasiia KLIUGA	Specialist, National Preventive Mechanism Department

International Organisations

European Union Advisory Mission
European Union Delegation
Office of the OSCE Project Co-ordinator in Ukraine
United Nations Human Rights Monitoring Mission to Ukraine
UNODC Ukraine

Non-governmental organisations

Amnesty International Ukraine
Association of Ukrainian Human Rights Monitors on Law Enforcement
Centre for Civil Liberties
Expert Centre for Human Rights
Kharkiv Human Rights Protection Group
Ukrainian Helsinki Human Rights Union