

## **Response**

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

**from 9 to 21 October 2013**

The Ukrainian Government has requested the publication of this response. The CPT's report on the 2013 visit to Ukraine was published on 29 August 2014 (document CPT/Inf (2014) 15).

Strasbourg, 13 January 2015

**Information on the measures undertaken by Ukraine in connection of the CPT  
comments and recommendations in view of the findings of its visit to Ukraine  
from 09 to 21 October 2013**

*(Received by the CPT Secretariat on 23 October 2014)*

**According to the information of the Ministry of Justice of Ukraine**  
*Concerning the establishment of the State Bureau of Investigation*

The process of creating an independent and effective system of pre-trial investigation started with the adoption of the new Criminal Procedure Code of Ukraine in 2012.

According to the final provisions of the said Code prosecutors shall continue to conduct pre-trial investigation into certain crimes till the State Bureau of Investigation Ukraine starts operating, but not longer than five years after the effective date of this Code. Thus the State Bureau of Investigation should begin its work no later than 21/11/2017.

Pursuant to the Plan of priority measures on combating corruption, approved by the decree of the Cabinet of Ministers of Ukraine from July 2, 2014 № 647, the Ministry of Justice drafted the Law of Ukraine “On the State Bureau of Investigation”.

The purpose of the draft is to define the legal principles of organization and functioning of the State Bureau of Investigation as a central executive body with a special status, which shall prevent, reveal, suppress and detect criminal offenses within its jurisdiction.

The draft law provides for a special procedure for the establishment of the State Bureau of Investigation, a special procedure for appointment of its director, competitive recruitment process, a special mechanism of public control over the activities of the State Bureau of Investigation.

According to the draft law the investigators of the State Bureau of Investigation will carry out pre-trial investigation of criminal offenses under the law of Ukraine on the criminal responsibility other than those referred to the jurisdiction of other pre-trial investigation bodies. Thus, under Article 216 of Code of the Criminal Procedure of Ukraine in the wording of the draft Law, pretrial investigation will be carried out by the investigators of the State Bureau of Investigation, the investigators of the Interior (the investigation of criminal offenses in the form of inquiry), those of security agencies, bodies that monitor compliance with the tax laws, and the National Anti-Corruption Bureau of Ukraine.

The system of the State Bureau of Investigation will be comprised of the central administration, territorial authorities, special divisions, educational and research institutions. Investigative, operative and other units will function as part of the State Bureau of Investigation.

The Director of the State Bureau of Investigation will be appointed by the Cabinet of Ministers of Ukraine upon the motion of the Prime Minister of Ukraine in accordance with the recommendations of the Commission on the competition for the position of the Director of the State Bureau of Investigation. This approach will ensure that people with high professional and moral qualities, independent of any political or other influence, will be appointed to this position.

Persons who do not have previous experience in state bodies in positions related to operative-search activity or pre-trial investigation after passing the competition for the position of an investigative or operational employee, will be required to undergo training, upon the results of which the question of their further employment with the State Bureau of Investigation will be decided.

The draft law provides for the establishment at the State Bureau of Investigation and its territorial bodies of internal control units to carry out prevention and detection of offenses by the State Bureau of Investigation officials, conduct internal investigations against them, exercise control over compliance with the State Bureau of Investigation rules of ethical conduct, oversee compliance with the principles of prevention of conflict of interest, rules of declaring of assets, revenues, expenditures and financial commitments, and conduct checks on the employees' virtue.

Pursuant to the draft law the director of the State Bureau of Investigation shall inform the President of Ukraine, the Verkhovna Rada of Ukraine and the Cabinet of Ministers of Ukraine on the main issues of the State Bureau of Investigation and its units, the performance of tasks, compliance with laws, observance of the rights and freedoms of individuals, and shall every year before April 1 submit them a written report on the activities of the State Bureau of Investigation in the previous year.

In order to ensure transparency and civic control over the activities of the State Bureau of Investigation the Council of public control consisting of 15 persons shall be formed on the basis of an open and transparent competition.

According to the final and transitional provisions of the draft Law this Law shall enter into force on the date of formation by the Cabinet of Ministers of Ukraine of the State Bureau of Investigation, but not later than 1 January 2016. It was recommended to the Cabinet of Ministers of Ukraine to form a State Bureau of Investigation by means of employing personnel of the relevant departments of the Ministry of Internal Affairs of Ukraine and other state bodies dealing with crime prevention.

The Ministry of Justice asked the Ministry of Foreign Affairs (letter from 24.09.2014 № 11.0.1-26 / 442) to facilitate submission of the draft law to the Council of Europe for the purpose of its examination by the Venice Commission.

**According to the information of the State Penitentiary Service of Ukraine (hereinafter - SPSU) §**

SPSU is taking steps to unite initiatives of public and private sectors in the field of strengthening safeguards to the rights of citizens in uniform continuous processes effectively influencing the improvement of subordinate bodies and institutions under its control.

Organizing work against torture and ill-treatment in places of detention is seen by the newly appointed SPSU leadership as an underlying theme in meeting all the needs of convicts and detainees provided by the Criminal Procedure Code of Ukraine, the Law of Ukraine "On pre-trial detention" and other legal acts.

Much attention has been paid to the improvement of the mechanisms for filing complaints by potential victims of ill-treatment and the adequate response thereto. SPSU concluded that the organizational and legal instrument must meet the relevant absolute principles: independence and impartiality, efficiency, a sufficient degree of involvement of the victim and transparency for public scrutiny.

To achieve this, till December 2013, SPSU was active in the implementation of the preventive mechanisms projects under the auspices of the Council of Europe.

In the framework of the EU and the Council of Europe Joint Program "Strengthening the fight against ill-treatment and impunity" (Council of Europe Action Plan for Ukraine for 2011-2014) a discussion on the guidelines of assessing the effectiveness of the mechanism for filing complaints of ill-treatment in the penitentiary system of Ukraine drafted by the Council of Europe consultant was held on December 13, 2013.

Further work on the elaboration of organizational and legal instruments and their implementation is set to continue after the recommencement of cooperation with the Council of Europe in 2015. To this end, a meeting with the representatives of the Criminal Law Cooperation Unit of the Action against Crime Department of the Directorate General of Human Rights and Rule of Law of the Council of Europe was held on September 30, 2014. It will be proposed that practical testing of the relevant organizational and legal instrument be carried out at the Oleksiivska penal colony (№ 25) in the Kharkiv oblast.

The above is also conditioned by the fact that the improvement of the mechanism for investigating complaints of ill-treatment is under control of the Government Agent before the European Court of Human Rights as one of the solutions to problems that cause complaints on violations of human rights provided for in Articles 3 and 13 of the Convention for the Protection of Human rights and Fundamental Freedoms proposed by the Government Agent before the European Court of Human Rights<sup>1</sup>.

A meeting with the OSCE Project Coordinator in Ukraine was held on June 25, 2014, during which joint activities in 2015 on improving the efficiency of SPSU's interaction with the civil society and professional training of penitentiary staff in cooperation with the media were agreed.

The management of SPSU favors implementation of international standards in the field of the human dimension with the recent ratification of the Association Agreement between Ukraine and the EU.

Interaction with the CPT is organized in a transparent manner and is accompanied by the relevant information on the SPSU website, which also provides for the relevant links to the website of the Ministry of Justice of Ukraine and is coordinated with the policy of the Minister of Justice of Ukraine Pavlo Petrenko on this issue (6 items were uploaded on May 7 and 16 this year).

In all cases, inspection institutions independently determined the list of institutions to be visited without intervention of the management of the Penitentiary Service of Ukraine, as provided for by the said Conventions and Protocols thereto - therefore Ukraine insures the implementation of international law in combating mistreatment to a certain extent.

The institution of public control over penal institutions is enshrined in Article 25 of the Penal Code of Ukraine and the Regulations of the supervisory committees of the local administrations, approved by the ordinance of the Cabinet of Ministers of Ukraine from April 1, 2004 № 429. The ordinance of the Cabinet of Ministers of Ukraine from November 3, 2010 № 996 "On public participation in the formulation and implementation of public policy" is complied with.

The newly created Public Council, the competence of which includes matters of public control over authorities and institutions subordinated to SPSU has been operating at SPSU since September 2013. The procedure for the formation of the Public Council at SPSU lies outside the competence of SPSU, but SPSU is an active participant in promoting its work.

SPSU also helps to improve the operation of national and inter-agency mechanisms against torture in order to strengthen safeguards to the rights of citizens.

A section on this issue was created on the SPSU website on June 19, 2014 <http://www.kvs.gov.ua/peniten/control/main/uk/publish/category/643790>.

In particular, the powers of the Ukrainian Parliament Commissioner for Human Rights were legally expanded on October 2, 2012. Accordingly, unhindered access of the personnel of the Department for implementation of the national preventive mechanism that operates within the Ombudsman's Secretariat is ensured to the institutions subordinate to SPSU.

To ensure interoperability with the Ombudsman on the above issues SPSU adopted the order from 30.11.2012 № 810, according to which the management of SPSU territorial divisions is obliged to provide necessary assistance to the staff of the Department for implementation of the national preventive mechanism in their monitoring visits to penal institutions and investigative isolators.

A permanent interagency Working group on developments and implementation of joint activities aimed at improving the human rights protection in places of detention was established under the auspices of the Ombudsman on November 4, 2013<sup>2</sup>.

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<sup>1</sup> Order of the Cabinet of Ministers of Ukraine from 14.07.2014 № 25007/1 / 1-14.

<sup>2</sup> The group included representatives of the Ukrainian Parliament Commissioner for Human Rights, the Presidential Administration of Ukraine, the Ministry of Justice of Ukraine, the State Judicial Administration of Ukraine, the

Its mission is to elaborate standards of holding persons in places of detention, developing proposals to improve the regulatory framework, bringing it in line with international standards and practice of the European Court of Human Rights etc.

The Plan of additional activities of the State Penitentiary Service of Ukraine on strengthening safeguards to the rights and freedoms of persons being held at institutions subordinate to SPSU, and prevention of torture and inhuman or degrading treatment or punishment was approved on November 27, 2013. This document incorporates a list of measures aimed at strengthening safeguards to the rights and freedoms of citizens, who are held in facilities subordinate to SPSU, in order to conduct this work on a regular basis.

On April 18, 2014, subject to the order of the Ministry of Justice of Ukraine № 670/5 a commission on public policy on the execution of sentences was formed (the meetings of the commission were held on June 2 and September 4, 2014), in the framework of which 5 mobile teams for inspection of penal institutions operate (the activities of six institutions have already been inspected - Kiev and Odessa investigative isolators, Boryspil (№119), Stryzhavska (№81) and Polytska (№76) correctional colonies in Kyiv, Vinnytsia and Rivne oblasts and Melitopol educational colony in Zaporizhia oblast).

Representatives of the civil society and the public council, formed at SPSU, even those that oppose the activities of the bodies and institutions subordinated to the SPSU, are being actively involved in this work.

The above commission is scheduled to inspect seven penal institutions and investigative isolators till the end of 2014: Kryvorizka and Transcarpathian penal institutions (№ 3 and 9, respectively), Oleksiivska (№ 25), Zamkova (№58) and Zbarazka (№63) penal colonies in Kharkiv, Khmelnytsky and Ternopil oblasts, respectively, and Dnipropetrovsk and Kharkiv investigative isolators.

The Commission on public policy on the execution of sentences during its second session on September 4, 2014 decided that mobile teams for inspection of penal institutions will be headed by the members of the public or the Ministry of Justice of Ukraine.

On May 16, 2014 SPSU decided to put into practice coordination of the candidatures for the leadership of the organs and institutions subordinated to SPSU, and consideration of their appointment or promotion at the sessions of personnel commissions with due regard to the comments contained in the CPT reports.

Before that, the Code of Ethics and Conduct of the service personnel of the State Penitentiary Service of Ukraine that incorporates the provisions of the European Code of Ethics for penitentiary institutions approved by the Committee of Ministers of the Council of Europe on 12 July 2012 (the document was brought to the attention and the entire staff of the institutions subordinate to SPSU) was approved on December 19, 2012 by SPSU board.

Staff of the State Penitentiary Service of Ukraine, as a power holder, must abide by the national legislation from the Basic Law - the Constitution of Ukraine – to specialized acts – Penal Code of Ukraine (2003), the Law of Ukraine "On pre-trial detention" (1993), and other ones that were drafted based on the generally recognized standards of protection of human rights and freedoms.

SPSU has the necessary authority and shall take all necessary measures envisaged by the laws of Ukraine to ensure human rights and freedoms of persons taken into custody, and convicted.

SPSU considers comprehensive, systematic, competent and constructive work of all participants in international, public and private sectors to be the key to bringing to order serving and execution of criminal penalties, as required by the international community.

The implementation of paragraph 13 of the CPT Report which invoked the CPT procedure referred to in paragraph 2 of Article 10 of the European Convention against Torture (*publication of a unilateral declaration of lack of cooperation with the CPT in the light of the implementation of its recommendations*), based on intimidation of prisoners and their moral and physical pressure because of the contacts with the CPT representatives in Oleksiivska (№25), Stryzhavska (№81) correctional facilities and Krivorizska penal institution (№3) is under control.

To this end, the implementation of the CPT observations and recommendations on compliance with human rights in penal institutions and investigative isolators upon the visit of its representatives to Ukraine in October 2013 was discussed separately in the enlarged DPSU board meeting on May 16, 2014.

It was decided at the board meeting to intensify in 2014 the work on the additional measures set out in paragraph 7 of the Plan of additional measures to be taken by SPSU to strengthen safeguards of the rights and freedoms of persons being held in the institutions subordinate to SPSU, prevent torture and inhuman or degrading treatment or punishment, approved by the minutes of the extended operational meeting at SPSU from November 27, 2013 № 59. Practice of the above measures concerning Oleksiivska correctional facility was disseminated (№ 25).

Pursuant to the order of the Ministry of Justice of Ukraine from 23.04.2014 № 741 / K, the order of the Minister of Justice of Ukraine Petrenko P.D. from 28.04.2014 №6.2-48 / 990, SPSU was conducting internal investigations at Dnipropetrovsk and Odessa investigative isolators and Krivorizka penal institution (№3) in the period from 24 to 29 April 2014.

Materials for study including regarding the deputy chief of Southern correctional facility (№51) of SPSU division in Odessa oblast and a senior agent in special cases of Dnipropetrovsk regional department of internal security and combating corruption on the violations on their part concerning ill-treatment of prisoners, reported by the CPT, were submitted to the General Prosecutor's Office of Ukraine on May 14, 2014 (pursuant to § 5 of the minutes of the Cabinet of Ministers of Ukraine from 23.04.2014 №23 and request of the General Prosecutor's Office of Ukraine from 05.05.2014 № 16-291vyh-14).

Chiefs of Dnepropetrovsk investigative isolator and Krivorizka penal institution № 3 were suspended from their posts on April 23, 2014.

The results of the official investigations into human rights violations during execution and serving of criminal sentences and detention, found during the CPT visit to Ukraine, and measures to prevent such incidents in the future were reviewed during the first meeting of the Commission on policy issues on the execution of sentences<sup>3</sup> on June 2, 2014.

As a result of the numerous inspections in Dnepropetrovsk investigative isolator and Krivorizka penal institution № 3 comments of the CPT representatives found their partial confirmation, but were found to be such as offering no grounds for the opening of criminal proceedings and the entry of information into the Unified Register of pre-trial investigations (URPI). It is recognized that the management of these institutions are able to perform their duties, subject to corrective measures.

At the same time, to prevent the occurrence of negative publicity in the community, it was decided to implement staff turnover of the leadership who are now serving in other positions.

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<sup>3</sup> formed by the order of the Ministry of Justice of Ukraine from 18.04.2014 № 670 / 5 IO

Inspections for defects in the work set out in the CPT report from 2013 resulted in applying disciplinary penalties to 29 employees of Krivorizka penal institution (№3) and Odessa investigative isolator.

Aiming at the implementation of all recommendations of the CPT, systematic work is conducted with the staff of the penal bodies and institutions within the framework of an individual educational work, service training to exclude cases of torture, the inadmissibility of violence against prisoners and persons held in custody or actions which would impair their human dignity.

The complex of measures is conducted to nurture high professional and moral qualities, promote discipline and order, develop ethical behavior of staff, and ensure effective individualization of each employee. The staff are provided with manuals on the main provisions of the CPT, focus is on mastering these provisions by medical and psychosocial services staff, junior officers of surveillance and security service.

Priorities of the State Penitentiary Service of Ukraine to reform the State Penitentiary Service of Ukraine for the year 2014 were agreed during a meeting of the Commission on policy issues on the execution of criminal sentences on June 2, 2014. In particular the priorities are related to the following areas:

- strengthening safeguards to the rights and freedoms of persons who are held in the institutions subordinate to the State Penitentiary Service of Ukraine, improving their living conditions, in accordance with national laws and international standards;

- modernization of engineering security facilities, creation of modern security systems in penal institutions and investigative isolators;

- improving the efficiency of combating crime and illicit trafficking in narcotic drugs, operational activities in the bodies and institutions subordinate to the State Penitentiary Service of Ukraine;

- improving the quality of health care, improving the health care system in place for prisoners and persons detained;

- increasing the level of social, educational and psychological work with convicts, respect for the rights of children who are in conflict with the law;

- modernization of enterprises of penal institutions, and improving vocational training for convicts;

- increasing effectiveness of execution of penalties other than imprisonment;

- improving the efficiency of the staff of penal bodies and institutions.

Work is continued on the preparation of draft legal acts aimed at addressing the issues related to:

- increasing standards of the living space for persons taken into custody;

- improvement of conditions of short-term visits for prisoners;

- humanization of security measures for persons sentenced to life imprisonment;

- improving the mechanism for filing by prisoners and persons in custody of complaints against staff of penal institutions and detention facilities;

- improving procedures for medical examinations of prisoners and persons detained for the fixation of traumas and other bodily injuries;

- submission of SPSU health care facilities, the issue of medical assistance to convicts and persons taken into custody, to the Ministry of Health of Ukraine.

these issues are to be addressed as part of the draft laws of Ukraine “On the State Penitentiary Service of Ukraine”, “On pre-trial detention and “On probation”.

The legal status of the convicted is significantly improved.

The Law of Ukraine from April 8, 2014 № 1186-VII “On Amendments to the Criminal Procedure Code of Ukraine to adapt the legal status of the convicted to European standards” entered into force on May 7, 2014.

The Law is aimed at minimizing the difference between the conditions in the colony and at liberty by empowering convicts in order to enhance responsibility of the convicted for their behavior and awareness of human dignity;

creating conditions for achieving such goal of punishment as correction;

bringing the penal legislation of Ukraine in compliance with the standards of the majority of European countries.

This law regulates a number of issues relating to the rights of prisoners, in particular:

The convicted are entitled to:

social security, including to information about their rights and responsibilities, procedures and order of serving the sentence as ruled by court;

humane treatment of them and respect to their human dignity; convicts should not be subjected to cruel, inhuman or degrading treatment. Measures of influence can be applied to the convicted solely on the basis of the law;

file in accordance with the law proposals, applications and complaints to the administration of penal institutions and their parent bodies, to the Ukrainian Parliament Commissioner on Human Rights, the European Court of Human Rights and other relevant bodies, international organizations, of which Ukraine is member or participant, to the authorized persons of international organizations, courts, prosecutor's offices, other state agencies, local governments and communities;

give explanations and to enter into correspondence, as well as submit proposals, applications and complaints in their native language. Responses to the convicted are given in the language of the application. If there is no possibility to respond in the language of the application the response is given in Ukrainian with translation into the language of the application provided by the penal body or institution;

health care to the extent envisaged by Basic Laws of Ukraine on Health Care except restrictions prescribed by law. Health care is provided by a system of health care and prevention measures as well as by means of combination of free and paid forms of medical care. A convicted person is guaranteed the right to free choice of doctor and access to health care, including at their own expense. Convicts with mental and behavioral disorders due to use of alcohol, narcotic drugs, psychotropic substances or their analogues or other intoxicating substances may, at their written consent, undergo treatment of these diseases;

social security, including pensions in accordance with the laws of Ukraine;

receive parcels in accordance with the law (except things that are not permitted by law, including weapons, narcotics or psychotropic substances, precursors);

paid work, organized according to the requirements of labor legislation, including the duration and conditions of remuneration; an eight-hour day is established, but not more than 40 hours per week. The duration of the working day is thereby set from 7 to 17 hours or 6 to 16 hours;

exercise freedom to profess any religion or express belief associated with religion, including the freedom to choose and see a priest for religious rites and sacraments, except for limitations provided by this Code.

In addition, according to the Law, convicts cannot be subjected to medical or other similar research regardless of their consent;

convicts are guaranteed the right to short-term visits when treated in health care facilities;

arbitrary forced convicts' sleep disruption at night, including solely for checking their presence, is prohibited.

*The persons sentenced to arrest have the right to:*

submit proposals, applications and complaints to state bodies, public organizations and officials;

spend money amounting to seventy percent of the minimum wage on food and essentials each month, and for convicts with the first group of disability - to one hundred percent of the minimum wage. Where allowed funds have not been spent within a month, convicts can buy food and essentials for the unspent amount in the coming months;

receive remittances;

receive and send unlimited letters and telegrams.

The persons sentenced to restriction of liberty shall be entitled to have portable personal computers and their accessories, money, mobile phones and their accessories, valuables, use the money without restrictions;

receive legal assistance provided for persons sentenced to deprivation of liberty.

The persons sentenced to deprivation of liberty are also granted the right to enter into correspondence with persons who are outside the colonies, call them, including via mobile networks, and to use the Internet.

*The persons sentenced to life imprisonment are legally allowed to:*

have a monthly short-term appointment and have every three months a long-term appointment with close relatives (spouses, parents, children, adoptive parents, adopted, siblings, grandparents, grandchildren). Long-term appointment may be given to couples who lived as a family, but were not married, provided that they have common minor children.

**It is also proposed to regulate many other issues in the said law, including:**

recognition of investigative isolators as penal institutions;

order of visiting penal institutions by regulatory authorities;

procedure and conditions of the execution of sentences of arrest;

provision of an opportunity to carry out short-term trips outside the colonies to obtain medical assistance where such assistance cannot be provided on the territory of the place of detention;

Cancellation of public control over person's parole from punishment;

rules for detainees with tuberculosis;

change in the conditions of prisoners to prison;

regime in the colonies and its basic requirements;

compliance force-feeding requirements of the European Court of Human Rights.

Within three months with aim to bring legislation into compliance with this law the drafts of legal acts which will regulate the activities of agencies and institutions that are subordinated to the State Penitentiary Service of Ukraine will be prepared.

Prior to this, on September 5, 2013 the Verkhovna Rada of Ukraine adopted the Law of Ukraine №435-VII «On Amendments to the Criminal Procedure Code of Ukraine regarding the manner and conditions of sentence.

This Law was adopted in order to streamline the legislative procedure and conditions of punishment sentenced to penalties of restraint of liberty, imprisonment for a term and life imprisonment, and humanizing the conditions of their detention in penal institutions.

It should be noted that a number of provisions made to the Criminal Procedure Code of Ukraine, existed in other regulations. However, European standards of treatment of prisoners require that all provisions that set forth the rights of prisoners or establish limitations shall be governed exclusively by provisions of law.

Therefore, any changes made to this Law relating to the specification or ordering certain norms in the Criminal Procedure Code of Ukraine.

Also, the law introduced changes aimed at improving the legal protection of mothers and children who are in orphanages at the prisons, bringing the conditions of their stay in line with international and particularly European regulations.

Thus, the law stipulates that children who are in orphanages at the prisons are on full state support. It establishes that children have the right of to communicate not only with his mother, but with close relatives.

Status of childcare facility that fixed these changes in this orphanage, took a number of problems encountered in the payment of state aid to women with children.

From criminal – execution legislation the norm that allowed the administration to make decisions about termination of a child in an orphanage in the penitentiary, depending on the behavior of the mother (her admission malicious violations of the order of sentence) was excluded.

In addition, included provisions aimed at humanizing the order of sentence of imprisonment of convicted juveniles. Thus, the restrictions on the frequency of short-term visits of prisoners while serving their sentences in correctional facilities were canceled. The provisions of the possibility of such visits outside institutions (every three months) were regulated.

Also, the introduction of progressive provisions of the new Criminal Procedure Code of Ukraine in terms of species and the application of preventive measures had a positive impact on the validity of the preventive measure of remand in custody, reducing cases of election in respect of suspects, accused or defendants as a preventive measure of detention.

Also, from July 25 to August 25, 2014 was held a public discussion of the Ministry of Justice of Ukraine and SPSU regarding the draft Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine regarding the enforcement of criminal penalties and the rights of prisoners."

<http://www.kvs.gov.ua/peniten/control/main/uk/publish/article/741849>

### **According to the Prosecutor General of Ukraine (hereinafter - the GPU)**

During October 2013 - May 2014 GPU has organized and participated in audits of these issues in Krivoy Rog PI No. 3, Dnipropetrovsk and Odessa prison, Alexeyev VC No. 25 and No. 81 Stryzhavska VC.

During inspections prosecutors were used an anonymous survey of prisoners who are held in these penal institutions, and ensured their communication with representatives of human rights organizations, employees of the General Prosecutor of Ukraine alone. According to the survey results none of the prisoners had not told about the facts of harassment, violence and other ill-treatment, arbitrary use of force or special means.

Any equipment or supplies, tools or other items designed for the task of physical pain and suffering, bodily injury, prosecutor's inspections were found. Existence of rooms or areas that used to be psychological or physical impact, the prisoners were not stated.

All persons arriving in pre-trial detention facilities and prisons, are the primary medical examination in order to identify prisoners who pose an epidemic threat to the environment or need emergency care. Overview provides a doctor or nurse in a specially equipped medical room prefab branch of such institutions in a confidential setting.

According to a random survey of prisoners found that in the course of medical personnel review the requirements for confidentiality respected. Facts disclosure of confidential medical information or presence of unauthorized persons during a medical examination is not allowed.

At the present time, the procedure for registration of injuries persons taken into custody and prisoners who have injuries found on arrival to the institution, adjusted in accordance with the requirements of the joint order of the Ministry of Justice of Ukraine and the Ministry of Health of Ukraine of 10.02.2012 № 239/5/104 and from 10.05.2012 № 710/5/3432.

The study of medical records in medical institutions do not have identified in the parts of the recourse convicted of medical assistance with characteristic signs of torture, beatings, torture or other ill-treatment by prison staff.

Objective information regarding the possible existence among prisoners in the atmosphere of people who could be delegated administration to manage the institution, the impact on individuals and Special contingent, prosecutors has been identified.

In the absence of data regarding evidence of criminal offenses of the above information on the Register of pre-trial investigations were not adopted and pre-investigation was not carried out.

The cases of covering criminal offenses during inspections by prosecutors are not installed.

In addition, in November 2013 the GPO staff made rounds, all without exception, operating rooms Krivorozhskaya PI No. 3, and this year - in all cells of the Odessa prison, as well as in cells Krivorozhskaya PI No. 3 and Dnipropetrovsk prison where prisoners of interviewed.

Complaints regarding misconduct administration institutions, violation of constitutional rights of prisoners, as well as beatings, torture or other ill-treatment of workers establishments were not reported.

Workers GPU during inspections in Krivoy Rog PI No. 3, Dnipropetrovsk and Odessa prison in May 2014 personal appointments made more than 80 prisoners, none of which claims and complaints regarding misconduct administration institutions, violence or other misconduct not expressed.

In the GPU November 27, 2013 with the participation of heads State Penitentiary Service of Ukraine, Vinnytsia regional branches and Dnipropetrovsk, Rig PI No. 3 and No. 81 Stryzhavska VC, prosecutors these domains, the expanded working meeting, which identified a number of organizational and practical measures to eliminate violations of the laws of the aforementioned institutions of Corrections.

Also in November 2013 and May 2014, representatives of the Prosecutor General of Ukraine, Ministry of Justice of Ukraine and the Verkhovna Rada of Ukraine on Human Rights took part in the meetings of the Board SPSU Ukraine, where discussed the CPT comments and defined appropriate measures to eliminate them.

In particular, handled the issue of amending the legal acts regarding the manner and conditions of detention, serving criminal sentences, increasing standards of living space for persons taken into custody, and the improvement of conditions of prisoners short visits, humanization of security measures persons sentenced to life imprisonment and to improve medical examinations of prisoners and persons detained in the fixation of injuries and other injuries, submission of health care penitentiary service of the Ministry of Health of Ukraine.

The Prosecutor General of Ukraine in November, January and April this year, prosecutor sent letters to intensify supervision of the observance of laws and constitutional rights of prisoners and international norms and standards in the performance of judicial decisions in criminal proceedings and the application of other coercive measures to require to take additional organizational and practical measures to ensure effective supervision of the observance of laws in the organs and institutions of SPSU and Internal Affairs of Ukraine, preventing cases of torture or inhuman or degrading treatment or punishment.

As a result of the assignment of the GPU, to the prosecutor of the regional level was sent in November last year, examples of physical abuse of prisoners, ill-treatment and denial of the rights of some other prisoners were registered.

In order to prevent bullying and enhance confidence level from prisoners to prosecutors in 2013 were introduced a private reception in mandatory order in places of detention on regional level prosecutors and their deputies and employees of the Prosecutor General of Ukraine, including in the form of private survey.

In addition, the Deputy Prosecutor General of Ukraine 28.04.2014 prosecutors' regional level got the task of inspection observance of the rights of persons in places of detention, the prevention of torture and inhuman or degrading treatment or punishment, taking into account recommendations made by representatives of the CPT on the results visit in 2013.

During the prosecutors inspections were found violations of the Penal Code of Ukraine, Laws of Ukraine "On pre-trial detention," "Basic Laws of Ukraine on Health Care," "On the Fight against TB" and other material on the community and sanitary maintenance of prisoners and convicts.

The results of these inspections are summarized and in June 2014 the Prosecutor General of Ukraine were made two submissions to the Ministry of Interior of Ukraine and Ukraine and SPSU to eliminate violations of the legislation on operational requirements, procedures and conditions of detention and custody of persons, their material and household and sanitary maintenance, pending. Also were included 4 guidance on the consideration of which to disciplinary charges brought against 12 officers.

In July 2014 the GPO in connection with riot among prisoners leaving to Zhovtovods'ka penal colony number 26 DPtS Ukraine in Dnipropetrovsk region were used.

It is established that the cause of these events were numerous violations of the penal administration with the laws and the rights of prisoners. In particular, the findings of unjust violence and torture of prisoners that took place even during the judicial inspections, in order to persuade the prisoners to give up prosecutors complaints against the actions of the administration. Also violations that were found were in improper material living and sanitary maintenance of prisoners, their poor diet and so on.

Pursuant to facts of illegal actions of officials' penal colony in the Unified Register of pre-trial investigations included information about criminal offenses under part. 2 Art. 365, p. 1. Art 127, p. 1 Art. 325 of the Criminal Code of Ukraine. Pretrial investigation continues.

GPO to the State Penitentiary Service of Ukraine was made submission eliminate violations of laws, restore violated rights and freedoms of prisoners. As a result of its consideration of disciplinary charges were brought against 52 officials of penitentiary institutions 11 oblasts and the cities of Kyiv.

In addition, the General Prosecutor of Ukraine 12.09.2014 directed a letter to Prime Minister of Ukraine Yatsenyuk about the need to bring national legislation into the line with European norms and standards in terms of increasing the size of living space per prisoner (closer to the recommended CPT - 7 m<sup>2</sup>).

**According to information from the Ministry of Internal Affairs of Ukraine (hereinafter - MIA)**

To implement the recommendations provided by the CPT after the visit to Ukraine in October 2013 MIA prepared and sent to branches of Internal Affairs of Ukraine, Research Affairs, Ministry of Internal Affairs in the areas of order of 14.07.2014, the №14445 / Av "On reviewing the CPT report, corrective measures , to prevent them in the future and implementing the recommendations. "

The report discussed at the working meeting, in part which is concerning to responsibility of the Interior Ministry. Every Head of the region department through Minutes of Meeting set appropriate targets to absolute rule of law during the arrest and detention of persons detained in special police, to prevent violations of human rights, the proper conduct of official documents, medical examinations held by individuals and ensure appropriate conditions of detention and delivered to the police.

With the aim of practically implementation of the recommendations of the CPT units in areas were held a number of concrete measures, namely:

- to personnel had been proven the requirements to prevent arbitrary use practices long stay detainees in detention centre; need to stop the practice of export suspects penal institutions to police for questioning. In order to compliance the requirements, the application checks the results of which are reported in the areas of management for rapid response to violations;

- personnel were strictly warned personnel of the commission regarding the inadmissibility of detainees to torture and ill-treatment. In the event of such facts to the guilty police officers will take the harshest disciplinary measures;

- taken under control of the requirements on completeness of statements and reports of ill-treatment and other unlawful acts against persons held in police establishments, objective consideration, the legal protection of persons who reported the incident, and taking steps to inadmissibility pressure on such persons by the guilty policemen and others;

- audited rooms for detained and brought to the next parts, service rooms, detention centre cameras to detect and extract items that could be used for torture, bodily injury. These checks will be conducted on a systematic basis in order to prevent unlawful methods of investigation;

- taken under control of compliance with CCP articles 224 and 226 on the order questioning persons and minors or minors;

- to personnel under the signature requirements proved to be interviewed (including primary, conducted operational divisions and departments of public security police) only in specially equipped rooms for interrogation (investigation rooms) with optional audio - and video of the meeting.

In order to prevent violations of the rights of persons held in detention centre conducted additional sessions with employees who are involved in the protection and escorting detainees.

By order of the Head of municipal regional local appointed officials responsible for the stay of detainees, whose duties include registering detention enforce proper treatment of detainees, recording all actions carried out involving a detainee, including with the time they start and finish and persons who carried out these steps or present, if necessary, to ensure immediate provision of adequate health care and fixing health professional of any injury or ill health of the detainee.

Officers' investigative units provided with timely information about the test message centers to provide free secondary help in detention, as well as are cooperation with representatives of the Centre, in order to prevent improper reports of detention.

Prior to placement in special police agencies all persons are medical examination in urban areas or health facilities, and only after receiving a medical opinion on the possibility of detention in conditions of special institutions delivered to special institutions where examined and interviewed health professional detention centre, in the absence of such position, next to special departments or another by the police. When detected injuries in people held and placed for detention centre, provided the relevant information to the prosecution.

Officers of relevant departments make spot checks of round the clock work of video surveillance systems, especially those located in the rooms for detainees and delivered to on duty internal affairs bodies, the rooms of investigation with archiving video for at least one month. The results of inspections are reported to senior officers of General Administration Ministry of Internal Affairs, Ministry of Internal Affairs in regions and in the case of violations they take the appropriate measures for responding.

There were also conducted the spot checks of availability and completeness of the Book of registration of persons placed in the pretrial detention, the Journal of output of detained and arrested persons from the cameras of pretrial detention and other documentation on including information about the time spent by detained in detention, the actual time of arrest, detention, dismissal or transfer, etc.

A spot check in cities and regions of the availability and accuracy of the Registers of delivered, visitors and guests to the internal affairs organs, the Journal of registration of provision of medical care to persons detained in the on duty department, the Registration Book of persons placed in detention rooms and delivered, renewed Memorandum for detention under the new Criminal Procedure Code of Ukraine and the order of Ministry of Internal Affairs of Ukraine from 28.04.2009 № 181 (with amendments by the orders of the Interior Ministry from 13.08.2010 № 382 from 30.11.2011 № 882 from 19.10.2012 №923). The results of inspections are reported to the senior officers of the region. In case of violations the measures are taken for their elimination and bringing the perpetrators to disciplinary liability.

It should be noted that prejudicial detention cameras are equipped with water and drainage system, force jet ventilation, artificial and natural lighting, sinks, and sanitary facilities, shelves for food storage, tables and benches. Windows in cameras are equipped with vents for access to fresh air. Special institutions are equipped with showers with a supply of running hot and cold water.

Persons detained in special institutions of police are provided with individual sleeping place, bedding, 3 time hot food, walks on fresh air in technically fenced walking yards. Almost in all buildings of detention centers establish "hotlines" by which detainees can provide to the GA Interior Ministry, Ministry of Internal Affairs in the regions information about violations of the rights and legitimate interests in the pretrial detention centers.

Staff is strictly prohibited to review and censorship of correspondence that detained, taken into custody persons and persons placed under administrative arrest address to the Ombudsman of Ukraine, the European Court of Human Rights and other relevant international organizations, member or participant of which Ukraine is, to the authorized persons of such international organizations and prosecutors, as well as correspondence that the detained person will receive from these bodies and persons.

In the system service training there were organized and conducted additional training of MIA staff to study requirements of the Law of Ukraine "On Principles of Prevention and Combating Corruption" from 07.04.2014 №3206-UI, decrees of the CMU from 28.12.2011 №1363 «On Approval of Procedure of Informing the Centers of Free of Charge Secondary Legal Aid on Cases of Detention", orders of MIA of Ukraine from 31.03.2011 №329 «On Additional Measures to Prevent Cases of Torture and Abusive Treatment in the Work of the Internal Affairs Bodies», from 26.03.2010 №90 «On the State of the Discipline and Legality of Activities of Internal Affairs Organs and Units and Measures for Its Improvement" and from 22.02.2012 №115 «On Approval of Rules of Conduct and Professional Ethics of Junior Enlisted and Officers of the Internal Affairs Bodies of Ukraine" and so on.

Please be informed also that in Dnipropetrovsk, Odessa regions and in the city of Kiev checking of defects mentioned in the CPT report was carried out and corresponding measures were taken to address deficiencies that do not require considerable investments (due to the lack of funding) concerning improvement of conditions of detention of detainees.

**According to the Security Service of Ukraine (SSU hereinafter)**

Pursuant to the visit CPT from 9 to 21 in October 2013 to the designated places for temporary holding facility (IVS) Security Service of Ukraine, cases of violations of the law, suggestions, comments and recommendations to the Department for providing the preliminary investigation were reported.

Protection of the constitutional rights and freedoms are subject of attention of the Security Service of Ukraine and the Central Investigation Department. However, with staff conducted a public awareness work to implement the recommendations and observations of the CPT.

However, heads of regional investigative units Security Service of Ukraine, given the need to intensify work among subordinates for the purpose of strict observance of the principle of presumption of innocence and due process guarantees of the rights of the suspect (accused) investigated them in criminal proceedings.

Central Service Security Service of Ukraine in order to prevent violations of current legislation:

- Coordinated and supervised the activities of regional investigative units of the Security Service of Ukraine, especially in the part in timeliness and legality of decisions taken by them in criminal proceedings;
- Provided practical and methodological assistance investigating security for the detention of persons suspected of committing crimes against national security of Ukraine, and drawing their procedural acts in accordance with the requirements of Code of Ukraine;
- Apply disciplinary measures to investigators guilty of violation of the applicable criminal procedure law and the rights and freedoms of citizens;
- Taking measures to eliminate mistakes and shortcomings, and improve the quality and effectiveness of pre-trial investigation of criminal proceedings.

*The bimonthly responses concerning paragraph 13 of the visit report are contained in Addenda to this document which are available on the CPT's website (<http://www.cpt.coe.int/en/states/ukr.htm>)*