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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 2 to 11 April 2019**

The Ukrainian Government has requested the publication of this report.

Strasbourg, 14 January 2020

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## EXECUTIVE SUMMARY

The purpose of this ad hoc visit was to examine the treatment of residents of Psycho-neurological Institutions (“Internats”) and, in this context, to assess the progress made as regards the implementation of previous CPT’s recommendations. The Committee’s delegation visited the “Internat” in Viktorivka (Cherkasy Region) and two “Internats” in Odesa Region, in Velykorybalske and Baraboi.

The delegation did not receive any direct and credible allegations of deliberate physical ill-treatment of residents by staff at the three “internats” visited. However, the delegation did receive isolated allegations of occasional rude behaviour (e.g. pushing) and verbal abuse (shouting and insults) of residents by some junior health-care staff (orderlies). The Committee recommended that the management of Viktorivka, Velykorybalske and Baraboi Internats make it clear to staff that all forms of ill-treatment of residents, including verbal abuse, are unacceptable and will be punished accordingly. Inter-resident violence was clearly a problem in the “internats” visited, which was acknowledged by the management and staff and related with the residents’ psychiatric condition, the very low staff presence on the wards and – in Velykorybalske – with the lack of appropriate treatment for some of the residents. The CPT recommended that steps be taken to combat this phenomenon.

Living conditions were overall acceptable at Viktorivka Internat. As for Baraboi Internat, living conditions were rather poor because of outdated infrastructure and overcrowding. That said, the CPT put on record the Director’s evident determination to constantly improve the conditions and provide a pleasant and homely environment to residents. By contrast, living conditions were generally very poor at Velykorybalske Internat where the whole establishment was severely dilapidated and where the condition of the smaller wards (located in former village houses) was beyond repair. The Committee recommended that a major concerted reflection take place in the nearest future at the level of the Ministry of Social Policy and the regional authorities concerning the material environment of Velykorybalske Internat. Further, the CPT called upon the Ukrainian authorities to ensure that all residents in the three “internats” visited benefit from unrestricted access to sufficiently spacious outdoor areas during the day unless treatment activities require them to be present inside the buildings.

Regarding health-care staff, the three “internats” visited were grossly understaffed with doctors, nurses and orderlies. Furthermore, there was hardly any other staff qualified to provide psycho-social therapy and other activities. The Committee recommended that efforts be made to improve the health-care staffing situation at Viktorivka, Velykorybalske and Baraboi Internats, by increasing substantially the numbers of ward-based staff (nurses and orderlies), filling all vacant doctors’ posts and recruiting other qualified staff (psychologists, occupational therapists, physiotherapists, social workers, etc.). All the aforementioned different categories of staff should work as a multi-disciplinary team. As a first step, a regular, preferably daily, presence of a psychiatrist must be ensured in the three “internats” visited, considering the needs of the respective populations of these establishments.

In the three “Internats” psychiatric treatment was essentially based on pharmacotherapy, with a limited range of mostly first-generation anti-psychotic drugs available. The worst situation was observed at Velykorybalske Internat where the psychiatric treatment was inadequate. In particular, in the absence of a psychiatrist, the acting Director (who had no medical training) had instructed the health-care staff not to administer to residents discharged from psychiatric hospitals the medication prescribed by psychiatrists from those hospitals. The lack of proper treatment led to a deterioration of residents’ mental conditions which contributed to an environment that was unsafe for the residents concerned, as well as for other residents and the staff. Consequently, at the end of the visit the delegation invoked Article 8, paragraph 5, of the Convention and made an immediate observation requesting the Ukrainian authorities to confirm, within one month, that all residents with psychotic disorders at Velykorybalske Internat have been seen by a psychiatrist and that they are given medication as prescribed. Further, the Ukrainian authorities were requested to confirm, within 3 months, that there is a regular (at least once a week) presence of a psychiatrist at Velykorybalske Internat.

The Committee stressed that measures taken so far fell clearly short of what the CPT considered as acceptable. The Committee called upon the Ukrainian authorities to redouble their efforts regarding the presence of a psychiatrist at Velykorybalske Internat and to report on the results of these efforts in the response to this report. The CPT also wished to receive unequivocal confirmation that that all residents with psychotic disorders at Velykorybalske Internat are given medication as prescribed by psychiatrists.

As for somatic treatment, access to different somatic specialists was in principle provided but the delegation noted that dental care was not free of charge for the residents. Furthermore, at Velykorybalske Internat, the delegation was told that outpatient clinics and hospitals sometimes required payment for specialist examinations and materials, and even for some more expensive somatic medication. The CPT recommended that steps be taken to ensure free of charge somatic examinations, treatment (including dental treatment), medication and materials for all residents in the “internats” visited (and, as applicable, in all other “internats” in Ukraine).

Viktorivka Internat did not have a Ministry of Health licence for the provision of health care to residents and the licence given to Baraboi Internat only covered somatic care so technically any psychiatric treatment provided in those two establishments was illegal. Considering that granting of such a licence is connected with the requirement to fulfill several criteria related with staffing, medication and premises, the Committee recommended that urgent steps be taken to ensure that all psycho-neurological “internats” obtain, as soon as possible, a Ministry of Health licence, both for somatic and (especially) psychiatric treatment.

The offer of psycho-social therapy and other activities was generally underdeveloped in the “internats” visited and the Committee recommended that steps be taken to develop it, including the drawing up of genuine individual treatment and rehabilitation plans for each resident.

In the three “internats”, a number of residents were allowed (or even asked, on a voluntary basis) to perform work such as cleaning, small repairs and helping with gardening or farm work. While the CPT acknowledged that work can play an important positive role in the psycho-social functioning of residents, the Committee expressed the view that any kind of work should be remunerated.

Regarding means of restraint, senior officials from the Ministry of Social Policy told the delegation that they could only be legally resorted to in those of the psycho-neurological “internats” which had a Ministry of Health licence for the provision of psychiatric care; in such cases, the rules applicable would be the same as those applied in psychiatric hospitals. In practice, the delegation observed that mechanical restraint was occasionally resorted to in Velykorybalske and Baraboi, and seclusion was used in the three “internats”, as was chemical restraint, irrespective of whether the establishment concerned had the relevant Ministry of Health licence or not. The CPT recommended that the Ukrainian authorities ensure that resort to means of restraint in all psycho-neurological “internats” takes place in accordance with the law; this would require, as a first step, obtaining a Ministry of Health licence for the provision of psychiatric care.

As for the legal safeguards for residents, attempts were made at Viktorivka and Baraboi Internats to apply the current legislation, including the requirement to sign “contracts” between residents (or their guardians) and the establishments’ Directors, and to carry out reviews by medical commissions and district medico-social expertise commissions; that said, reviews were performed in a perfunctory manner and were poorly documented. The situation was of even more concern at Velykorybalske Internat where no “contracts” existed and the last review by a medical commission had reportedly taken place in February 2018 – but there was no documentary proof of such review to be found. Furthermore, there was very little information available to residents in the three “internats” on the actual content of the “contracts” and – more generally – on their rights. It is to be added that in the three “internats” the delegation met many residents (especially on closed wards) who stated spontaneously and insistently that they did not wish to stay there; in Velykorybalske in particular, the delegation had the impression that a very large proportion of residents were *de facto* deprived of their liberty, without benefiting from any legal safeguards. The CPT called upon the Ukrainian authorities to ensure that residents in the three “internats” visited, and especially at Velykorybalske Internat, benefit from the legal safeguards. The Committee also reiterated its recommendation that written information (e.g. in the form of a brochure) on daily routine, residents’ rights, and complaints bodies and procedures be made available to all residents of “internats” in Ukraine.

In none of the “internats” visited was any attempt being made to obtain consent to treatment from those of the residents who were receiving psychotropic medication. In this context, the CPT recommended that all residents (and, if they are incompetent, their guardians) be provided systematically with information about their condition and the treatment prescribed for them, and that doctors be instructed that they should always seek the resident’s consent to treatment prior to its commencement.

The delegation was very concerned to note that several residents in Viktorivka and the vast majority of those in Velykorybalske and Baraboi had the “internat” as acting guardian. The Committee again called upon the Ukrainian authorities to search for alternative solutions which would better guarantee the independence and impartiality of guardians. The CPT also recommends that steps be taken to facilitate residents’ access to a telephone and to put in place a formal complaints system in all “internats” in Ukraine. Last but not least, the Committee called upon the Ukrainian authorities to step up their efforts towards the development of social care in the community. Such community accommodation should consist of small group home living units in the community, ideally in towns, with all the relevant facilities close at hand, and not larger units situated on the grounds of long-standing social care establishments (which do not allow genuine de-institutionalisation and proper re-integration into the community).

## I. INTRODUCTION

### A. The visit, the report and follow-up

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 carried out a visit to Ukraine from 2 to 11 April 2019. The visit was one which appeared to the Committee “to be required in the circumstances” (see Article 7, paragraph 1, of the Convention) and its purpose was to examine the treatment of residents of Psycho-neurological Institutions (“Internats”) and, in this context, to assess the progress made as regards the implementation of previous CPT’s recommendations. It was the Committee’s 15<sup>th</sup> visit to Ukraine.<sup>1</sup>

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

- Marzena Ksel (Head of the delegation)
- Dagmar Breznoščáková
- Costakis Paraskeva
- Ceyhun Qaracayev
- Vytautas Raškauskas.

They were supported by Borys Wódz, Head of Division at the CPT’s Secretariat, and assisted by two interpreters, Denys Danylenko and Larysa Sych.

3. The Committee’s delegation visited the “Internat” in Viktorivka (Cherkasy Region)<sup>2</sup> and two “Internats” in Odesa Region, in Velykorybalske and Baraboi.<sup>3</sup>

4. The report on the visit was adopted by the CPT at its 100<sup>th</sup> meeting, held from 4 to 8 November 2019, and transmitted to the Ukrainian authorities on 29 November 2019. The various recommendations, comments and requests for information made by the Committee are set out in bold type in the present report. The CPT requests the Ukrainian authorities to provide within three months a response containing a full account of action taken by them to implement the Committee’s recommendations and replies to the comments and requests for information formulated in this report.

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<sup>1</sup> See the full list of visits and their dates on the CPT’s website, <https://www.coe.int/en/web/cpt/ukraine>. All the Committee’s reports and responses of the Ukrainian authorities to date are in public domain, upon the authorities’ request and pursuant to the automatic publication procedure introduced by the Ukrainian authorities in 2014. According to this procedure, all documents related to CPT visits shall be published automatically, unless the Ukrainian authorities submit within one month a request to postpone (for a period of up to six months) the publication of the document concerned.

<sup>2</sup> Hereafter Viktorivka Internat.

<sup>3</sup> Hereafter Velykorybalske and Baraboi Internats.

**B. Consultations held by the delegation and co-operation encountered**

5. In the course of the visit, the CPT's delegation held consultations with Oleksandra Churkina, Deputy Minister of Social Policy, as well as with senior officials from her Ministry and the Ministry of Health. The delegation also met representatives of regional authorities of Cherkasy and Odesa Regions in charge of social care. In addition, talks were held with the Ombudsperson Lyudmyla Denisova and staff of the National Preventive Mechanism (NPM) Department.

A full list of the authorities with which the CPT's delegation held consultations is set out in the Appendix to this report.

6. The delegation received generally very good co-operation in the establishments visited, including those for which the visit had not been notified in advance. In particular, the delegation had rapid access to all premises it wished to visit, was able to meet in private with persons with whom it wanted to speak and was provided with access to all the documents it required. This was indeed positive and demonstrated that information about the Committee's visit and the CPT's mandate had been circulated to the establishments concerned.

The Committee also wishes to express its appreciation of the efficient assistance provided to its delegation before and during the visit by the Liaison Officer appointed by the Ukrainian authorities, Svitlana Rohozianska from the Ministry of Justice.

**C. Immediate observations under Article 8, paragraph 5, of the Convention**

7. At the end of the visit, the CPT's delegation met senior Government officials in order to acquaint them with the main facts found during the visit.

During the above-mentioned meeting, the delegation *inter alia* invoked Article 8, paragraph 5, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and requested the Ukrainian authorities to confirm, within one month, that all residents with psychotic disorders at Velykorybalske Internat have been seen by a psychiatrist and that they are given medication as prescribed.

Further, the Ukrainian authorities were requested to confirm, within three months, that there is a regular (at least once a week) presence of a psychiatrist at Velykorybalske Internat.

8. The above-mentioned immediate observations were subsequently confirmed by the Committee's Executive Secretary in a letter of 18 April 2019. The Ukrainian authorities informed the CPT of measures taken in their letters dated 21 May and 18 July 2019. These measures will be assessed later in the report.

## II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

### 1. Preliminary remarks

9. As already mentioned in paragraph 3 above, the CPT's delegation carried out first-time visits to three psycho-neurological "internats", in Viktorivka, Velykorybalske and Baraboi. All three were accommodating adult residents with a psychiatric diagnosis (mostly schizophrenia and organic disorders) and a significant proportion of the residents had various degrees of learning disability or dementia.

Viktorivka Internat was located on the leafy grounds of a former late 18<sup>th</sup> century noble estate, by the shore of a small lake, approximately 40 km from the town of Uman in Cherkasy Region. After having served as accommodation for disabled WWII veterans in the 1950s, it became an "internat" in the late 1960s. On the day of the delegation's visit, the establishment (with the official capacity of 160) was accommodating 157 male residents, most of them middle-aged or elderly (the oldest resident being 87 years old). 19 of the residents were legally incompetent.<sup>4</sup>

Velykorybalske Internat was located on an extensive territory of a former village of ethnic German settlers from the 19<sup>th</sup> century, close to the Moldovan border and approximately 140 km from Odesa. Similar to Viktorivka, it had initially been an establishment for disabled war veterans before becoming an "internat" for the elderly in the 1960s and a psycho-neurological "internat" in 1978. Most of the accommodation was in former (partly wooden) village houses,<sup>5</sup> the oldest of which dated back to the 1880s and the newest to 1896. Two larger, two-level brick blocks<sup>6</sup> had been constructed more recently, in the 1980s and 1990s. With the official capacity of 450, the establishment was accommodating 380 residents<sup>7</sup> (most of them women except for nine men) aged 18 to 90; all but 24 were legally incompetent.

Baraboi Internat was situated on the edge of a village some 35 km from Odesa. Opened in the 1930s as a labour camp (part of the Gulag system), it had later served as accommodation for disabled war veterans before becoming an "internat" in 1974. Occupying four relatively small one-level residential blocks<sup>8</sup> and a number of auxiliary buildings, the establishment had the official capacity of 160 and was accommodating, at the time of the visit, 152 residents including 15 men. Only three of the residents were legally competent.

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<sup>4</sup> See paragraphs 43 and 44 below.

<sup>5</sup> Ward 34 (closed, 20 residents), Ward 26 (closed, 23 residents including two bedridden), Ward 14 (open, 22 elderly residents), Wards 10 and 12 (two houses with a joint entrance area, open, 22 residents), Wards 6 and 8 (closed, two houses with a joint entrance area, 27 residents including two bedridden), Ward 5 (closed, 23 residents), Ward 7 (closed, 22 residents considered by staff to be challenging/"dangerous"), Ward 17 (closed, 20 residents), Ward 19 (closed, mixed-gender, 28 residents including 9 elderly men), and Ward 21 (open "rehabilitation" or half-way accommodation for four residents whose legal capacity had recently been restored). The numbering of the wards, apparently rather illogical, corresponded to the postal addresses of the former village houses (as explained to the delegation by the acting Director of Velykorybalske Internat).

<sup>6</sup> Open Wards 1 (100 residents) and 40 (69 residents).

<sup>7</sup> But 371 residents were actually present, the remaining nine being temporarily accommodated in psychiatric hospitals.

<sup>8</sup> Ward 2 (open, 30 female residents), Ward 3 (open, 30 female residents), Ward 4 (closed, 67 more disabled and elderly female residents, many with dementia) and Ward 5 (open, 15 male residents). There was no Ward 1 (the building had collapsed several years ago and had never been rebuilt).



10. At the outset of the visit, the delegation was informed by senior officials of the Ministry of Social Policy about the Ukrainian authorities' ongoing efforts to modernise the sector of social care, including the area of institutional care.<sup>9</sup>

These efforts included the recent (January 2019) adoption of the new Law on Social Services, which provided more clear definitions of social care services and of the responsibilities of the various authorities concerned, and which foresaw the creation of a new institution of "social care managers" for all social service users. However, most of the necessary implementing regulations had not yet been drafted or were still in the process of being drafted (one important exception being the just adopted regulation allowing the opening of day care centres, half-way and assisted accommodation).<sup>10</sup>

11. The delegation's interlocutors also referred to the 2017 Government Resolution putting in place the National Strategy for the Reform of Institutional Care until 2026, pursuing the objective of de-institutionalisation. The Strategy aimed *inter alia* at reducing the number of "internats",<sup>11</sup> gradually replacing the existing large-capacity establishments with smaller ones (with a maximum of 80 places) and creating outside structures such as day care centres and assisted accommodation.<sup>12</sup> However, the Ministry's representatives stressed that the available financial resources were inadequate which hampered severely the implementation of the aforementioned National Strategy; in fact, de-institutionalisation was still very much in its infancy and work on carrying out needs assessment (to be followed by drawing up detailed action plans at the level of each region) had only just begun.<sup>13</sup>

12. In the light of its delegation's findings from the 2019 ad hoc visit (see paragraphs 13 to 34 below), the Committee cannot overemphasize the importance of effectively implementing the Ukrainian Government's self-imposed objective of pursuing de-institutionalisation with respect to psycho-neurological "internats". Indeed, in the establishments visited in April 2019 – all three of them being large-capacity institutions located in rural settings relatively far away from major urban centres and with poor access by public transportation – the delegation found that the (vast) majority of residents had spent very long periods in them, going into decades and sometimes spanning over the residents' entire adult lives.<sup>14</sup>

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<sup>9</sup> It is to be recalled here (see also paragraph 156 of the report on the 2017 periodic visit, CPT/Inf (2018) 41, <https://rm.coe.int/16808d2c2a>) that the 151 psycho-neurological "internats" in Ukraine (with the total population of some 30,000 residents at the time of the 2019 ad hoc visit) are funded and run by regional authorities. The Ministry of Social Policy is only involved in developing the legal framework, operating standards and methodological guidelines, quality control and staff training; further, the Ministry's role is also to ensure overall co-ordination in the sphere of social policy between the responsible regional authorities.

<sup>10</sup> The Ministry had also recently issued new standards of psycho-social rehabilitation of persons with psychiatric disorders, standards on in-patient and day care, as well as methodological guidelines on occupational therapy and cultural and educational activities in "internats".

<sup>11</sup> Two "internats" had reportedly been closed in the course of 2018 and a further five other had had their profiles changed so as not to accommodate persons with mental disorders.

<sup>12</sup> Representatives of social care authorities from Cherkasy Region told the delegation that work on setting up such structures had already started in the region. By contrast, officials from Odesa Region stated that the lack of available financial resources in the region's budget had prevented any such action so far.

<sup>13</sup> The first "pilot" regions where such needs assessments and action plans would be prepared were Donetsk Region (the part under the Government's effective control), Poltava Region and the City of Kyiv.

<sup>14</sup> In not so infrequent cases, residents had been transferred to psycho-neurological "internats" from children's institutions, as soon as they had turned 18.

Further, the delegation met several residents (some of whom had recently had their legal capacity restored, see paragraph 43 below) whose mental condition would clearly allow them to leave the establishments provided appropriate structures existed in the outside community.

**The CPT calls upon the Ukrainian authorities to step up their efforts towards the development of social care in the community,<sup>15</sup> as this can not only shorten or avoid institutional stay and reduce the potential for ill-treatment, but also improve experiences and outcomes for service users.<sup>16</sup> Such community accommodation should consist of small group home living units in the community, ideally in towns, with all the relevant facilities close at hand, and not larger units situated on the grounds of long-standing social care establishments (which do not allow genuine de-institutionalisation and proper re-integration into the community).<sup>17</sup>**

## 2. Ill-treatment

13. The delegation did not receive any direct and credible allegations of deliberate physical ill-treatment of residents by staff at the three “internats” visited. However, the delegation did receive isolated allegations of occasional rude behaviour (e.g. pushing) and verbal abuse (shouting and insults) of residents by some junior health-care staff (orderlies).

**The Committee recommends that the management of Viktorivka, Velykorybalske and Baraboi Internats make it clear to staff that all forms of ill-treatment of residents, including verbal abuse, are unacceptable and will be punished accordingly.**

14. As regards in particular the orderlies, given the challenging nature of their job, it is essential that they be carefully selected and given suitable training before taking up their duties, as well as ongoing training. While carrying out their duties, such staff should also be closely supervised by – and placed under the authority and responsibility of – qualified health-care staff. **The CPT recommends that the procedures for the selection, training and supervision of orderlies be developed in the light of the above remarks.**

15. Inter-resident violence was clearly a problem in the “internats” visited, which was acknowledged by the management and staff and related with the residents’ psychiatric condition, the very low staff presence on the wards (see paragraph 24 below) and – in Velykorybalske – with the lack of appropriate treatment for some of the residents (see paragraph 26 below).

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<sup>15</sup> See also the recommendation in paragraph 156 of the report on the 2017 periodic visit (CPT/Inf (2018) 41), <https://rm.coe.int/16808d2c2a>.

<sup>16</sup> This should also be seen in the context of the State’s obligations stemming from the UN Convention on the Rights of Persons with Disabilities, ratified by Ukraine in 2009.

<sup>17</sup> In this context, the delegation was concerned to learn at the outset of the visit that small half-way and assisted accommodation units had recently been opened on the territory of some 20 “internats” (the delegation saw one of such units at Velykorybalske Internat, see paragraph 9 above). It is clearly not the way to proceed if genuine de-institutionalisation is the objective.

The Committee wishes to reiterate that the authorities' obligation to care for residents includes responsibility for protecting them from other residents who might cause them harm. This means in particular that staff must be alert to residents' behaviour and be both resolved and properly trained to intervene when necessary. Likewise, an adequate staff presence should be ensured at all times, including at night and weekends.<sup>18</sup> Further, appropriate arrangements should be made for particularly vulnerable residents, such as those who have motor disabilities or are bedridden, by taking care, for example, not to place them or leave them alone with residents identified as behaving in an aggressive manner.

In the light of the aforementioned, **the CPT recommends that steps be taken to combat the phenomenon of inter-resident violence at Viktorivka, Velykorybalske and Baraboi Internats.** As regards the lack of appropriate psychiatric treatment at Velykorybalske Internat, reference is made to the comments and recommendation in paragraphs 26 to 29 below.

16. At Viktorivka Internat the delegation observed that some of the residents were used by staff to assist them to maintain order or to help them in case of psychiatric emergency;<sup>19</sup> in this context, it could apparently occur that residents would use physical force vis-à-vis their fellow residents. Such a partial delegation of authority to selected residents is unacceptable. **The Committee recommends that it be stopped immediately.**

### **3. Residents' living conditions**

17. Living conditions were overall acceptable at Viktorivka Internat,<sup>20</sup> where residents lived in bright, airy, clean and for the most part recently refurbished<sup>21</sup> rooms measuring from 25 to 65 m<sup>2</sup> and containing 4 to 7 beds (with full bedding).<sup>22</sup> Apart from the beds, the furniture consisted of bedside lockers, chests and sometimes tables and chairs. The rooms were decorated with carpets, wall rugs, curtains and some pictures and plants.

The only issue of real concern was that in the so-called "palliative care unit"<sup>23</sup> several rooms contained sharp corners which were unsafe for the residents<sup>24</sup> and, more generally, the premises were not adapted to the needs of persons with reduced mobility. **The CPT recommends that these deficiencies be eliminated in the context of the ongoing refurbishment of Viktorivka Internat.**

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<sup>18</sup> See also paragraph 24 below.

<sup>19</sup> See paragraph 36 below.

<sup>20</sup> Accommodation was provided in a single two-storey building.

<sup>21</sup> There was ongoing refurbishment in the establishment (including repairing the roof of the accommodation building, fitting in new windows and replacing the water and heating installations) and most of the furniture and bedding in residents' rooms had already been replaced. The Director told the delegation that the kitchen, the canteen and the laundry were to be refurbished in the near future.

<sup>22</sup> There were also a few single and double rooms measuring between 10 and 15 m<sup>2</sup>.

<sup>23</sup> Accommodating 27 more severely disabled residents and occupying one side of the building on the ground level.

<sup>24</sup> There was also a cracked window pane in one of the rooms; staff explained that one of the residents had hit the window very recently and that the pane would be replaced within a very short time.

18. As for Baraboi Internat, living conditions were rather poor because of outdated infrastructure (consisting in the main of old and exiguous buildings) and the overcrowding,<sup>25</sup> with 24 of the residents being obliged to sleep in bunk beds. The Director told the delegation that she deplored this situation and referred in this context to an official standard of 8 m<sup>2</sup> of living space per resident.<sup>26</sup> **The Committee recommends that steps be taken accordingly to address the overcrowding problem at Baraboi Internat.**

That said, the CPT wishes to put on record the Director's evident determination to constantly improve the conditions and provide a pleasant and homely environment to residents, with the rooms and other areas being spotlessly clean, well-lit and ventilated, well-furnished and decorated with carpets, curtains, pictures and plants.

19. By contrast, living conditions were generally very poor at Velykorybalske Internat where the whole establishment (perhaps with the exception of the newer wards, which had undergone partial refurbishment two years ago) was severely dilapidated and where the condition of the smaller wards (located in former village houses, see paragraph 9 above) was beyond repair,<sup>27</sup> some houses having problems with humidity and mould, as well as malfunctioning heating, water supply and sewage installations. The acting Director also stated that the establishment's laundry and boiler room (providing central heating in the two newer wards, older wards being heated locally by small coal-fired stoves) required urgent repairs for which the establishment had no financial resources.

Furthermore, residents on the smaller wards lived in cramped rooms,<sup>28</sup> lacking privacy and lockable space, and fitted with dilapidated furniture usually limited to beds (with bedding), some bedside tables (insufficient in number) and occasional wardrobes, tables and chairs. Despite the orderlies' constant efforts to keep the living areas clean, the overall conditions were substandard.

**The Committee recommends that a major concerted reflection take place in the nearest future at the level of the Ministry of Social Policy and the regional authorities concerning the material environment of Velykorybalske Internat. As a result of this exercise, concrete steps must be taken to radically improve living conditions in the establishment. This may require closing down the older wards, transferring some of the residents to other establishments and building new modern and adapted accommodation, offering more congenial and personalised surroundings for residents.<sup>29</sup> The CPT would like to be informed of the steps taken in the Ukrainian authorities' response to this report.**

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<sup>25</sup> E.g. on Ward 3 the delegation saw a room measuring 15 m<sup>2</sup> and containing 5 beds including 2 bunk beds; on Ward 4 a room measuring some 15 m<sup>2</sup> contained 6 beds including a bunk bed, and another room on the same ward measured 36 m<sup>2</sup> and contained 9 beds; on Ward 5 a room measuring 12.5 m<sup>2</sup> contained 6 beds including two bunks.

<sup>26</sup> Interestingly, the delegation did not hear any reference to the aforementioned 8 m<sup>2</sup> norm in the other "internats" visited, neither was it mentioned by any of the senior Ministry officials met by the delegation.

<sup>27</sup> In particular on Wards 14 and 26.

<sup>28</sup> E.g. a room on Ward 7 measuring 28 m<sup>2</sup> and containing 7 beds; a room on the same ward measuring some 50 m<sup>2</sup> and containing 12 beds; a room on Ward 19 measuring approximately 25 m<sup>2</sup> and containing 7 beds (including two bunk beds); and another room on the same ward measuring some 19 m<sup>2</sup> and containing 5 beds including two bunk beds.

<sup>29</sup> See also the recommendation in paragraph 12 above.

20. In the three “internats” visited residents had unrestricted access to communal toilets and washrooms (which were generally in a decent condition, except on the smaller wards in Velykorybalske, where bathrooms were as run down as the rest of the buildings<sup>30</sup>). They could use ward-based showers at least twice a week (usually more often) and, in addition, a central bath facility between once a week and every 10 days.

21. Supply of personal hygiene items, disposable pads for incontinent residents and waterproof mattress covers was said to be usually sufficient, although (especially in Velykorybalske) there were occasional interruptions due to intermittent financing or lengthy tender procedures, which sometimes obliged staff to wash the pads and/or purchase any missing items using the money from residents’ pensions<sup>31</sup> or to rely on humanitarian help from NGOs (in Viktorivka).

**The Committee recommends that the Ukrainian authorities take the necessary measures to ensure adequate and uninterrupted supply of hygiene items, disposable pads and waterproof mattress covers in the three “internats” visited (as well as in all other psycho-neurological “internats”).**

22. As regards the food, based on its own observations and on what it was told by residents, the delegation gained the impression that it was generally sufficient in quality and quantity,<sup>32</sup> although the three establishments relied to a certain degree on their own farm production<sup>33</sup> and, in Velykorybalske, the acting Director stressed that financial resources allocated by Odesa regional administration only covered 25% of the “internat”’s needs in terms of food. **The CPT recommends that urgent steps be taken to eliminate this deplorable financial shortage.**

It is also noteworthy that in Velykorybalske and Baraboi food had to be carried (by residents accompanied by staff) in containers over some distance outdoors, which was inconvenient (and potentially dangerous, especially in the winter) and meant that food that residents received was not always warm enough. **The Committee recommends that solutions be sought to this problem.**

23. As for outdoor exercise, most of the residents (i.e. those accommodated on open wards) could circulate freely during the day within the establishments’ extensive, green areas which were equipped with some seating and shelters against inclement weather. This was not, however, the case with residents living on closed wards (in Velykorybalske and Baraboi) who were *de facto* confined to smaller areas within their wards’ secure perimeters (especially in Velykorybalske, where such outdoor areas – indeed more like old farm courtyards – measured around 100 – 150 m<sup>2</sup>). In Viktorivka, staff and residents told the delegation that residents from the “palliative care unit” would only be taken outdoors irregularly, mostly in the summer; this was also related with insufficient staff presence in the unit (see paragraph 24 below).

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<sup>30</sup> See also paragraph 19 above.

<sup>31</sup> 75% of residents’ pensions was transferred on the establishments’ accounts; residents could use the remaining 25% (usually approximately 250 UAH) to buy food, cigarettes and other items in local stores.

<sup>32</sup> The delegation was particularly impressed by the quality of the food and the excellent state of the kitchen and the food storage at Baraboi Internat.

<sup>33</sup> For the fruit, vegetables, milk, cheese, meat, etc. See also paragraph 34 below.

**The CPT calls upon the Ukrainian authorities to ensure that all residents in the three “internats” visited benefit from unrestricted access to sufficiently spacious outdoor areas during the day unless treatment activities require them to be present inside the buildings. Residents with reduced mobility should be provided with adequate staff assistance.**

#### **4. Staff and treatment**

24. Regarding health-care staff,<sup>34</sup> the three “internats” visited were grossly understaffed with doctors, nurses and orderlies.<sup>35</sup> In particular, the numbers and presence of ward-based staff was clearly insufficient for the number of often needy (including bedridden and incontinent) residents.<sup>36</sup> This was particularly striking in the “palliative care unit” in Viktorivka,<sup>37</sup> on the closed wards at Velykorybalske<sup>38</sup> and on Ward 4 in Baraboi.<sup>39</sup> The delegation was informed by the establishments’ Directors that the impossibility to recruit and retain qualified staff was linked to low salaries.<sup>40</sup> The situation was made even worse by the absence of any formal training for orderlies, who were often left largely on their own to care for the residents (especially on weekends). Furthermore, there was hardly any other staff qualified to provide psycho-social therapy and other activities<sup>41</sup> (see paragraph 33 below).

**The Committee recommends that efforts be made to improve the health-care staffing situation at Viktorivka, Velykorybalske and Baraboi Internats, by increasing substantially the numbers of ward-based staff (nurses and orderlies), filling all vacant doctors’ posts and recruiting other qualified staff (psychologists, occupational therapists, physiotherapists, social workers, etc.); this may well require a substantial increase in staff salaries. All the aforementioned different categories of staff should work as a multi-disciplinary team. As a first step, a regular, preferably daily, presence of a psychiatrist must be ensured in the three “internats” visited, considering the needs of the respective populations of these establishments.**

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<sup>34</sup> The three “internats” also employed quite a lot of non-medical staff, not only in the administration but also on the farms (see also paragraph 34 below).

<sup>35</sup> Viktorivka Internat (population 157) had a half-time GP, a half-time psychiatrist, a senior nurse, five nurses and 36 orderlies; there was also a vacant post for a dentist. Velykorybalske Internat (population 380) had one GP (with 5 more posts vacant), no psychiatrist (the post was vacant since 3 years), no dentist (the post was vacant since 6 months), 23 nurses and 74 orderlies (with 3 more posts vacant); four of the orderlies (male) were used for escorts and one of the orderly posts was filled by a male feldsher who was only supposed to intervene in emergencies. Baraboi Internat (population 152) had a GP, no psychiatrist (the post was vacant since a year), no dentist, eight nurses (including a senior nurse) and 29 orderlies.

<sup>36</sup> There was one nurse (and the senior nurse, but only during working hours during weekdays) and seven orderlies per shift in Viktorivka. At Velykorybalske Internat, there were three nurses and 14 orderlies on each shift. At Baraboi Internat, a shift consisted of a senior nurse (only during office hours on weekdays), a nurse and five orderlies.

<sup>37</sup> With (only) two orderlies present on any given shift.

<sup>38</sup> With one orderly on each of the wards concerned (caring for up to 28 severely disabled, elderly and/or confused residents at a time).

<sup>39</sup> With two orderlies caring for 67 needy residents at the time of the visit (it should be added, however, that the Director had taken the initiative of transferring two logistical staff members – officially employed as tractor drivers – to help the two orderlies).

<sup>40</sup> An orderly could reportedly earn up to 4,200 UAH per month, a nurse up to 4,700 UAH per month and a general practitioner up to 6,200 UAH per month.

<sup>41</sup> Apart from a social worker (and a student trainee who was helping with activities) in Viktorivka, a social worker and one of the orderlies dealing with activities in Velykorybalske, and a physiotherapist (on leave at the time of the visit) and one of the administrative assistants who also performed the tasks of a social worker in Baraboi.

25. In the three “Internats” the psychiatric treatment was essentially based on pharmacotherapy,<sup>42</sup> with a limited range of mostly first-generation anti-psychotic drugs available. In this context, the delegation was concerned to note that some residents were receiving clozapine (Azaleptol) without necessary regular blood tests. Clozapine can have as a side-effect a potentially lethal reduction of white blood cells (granulocytopenia). Therefore, **the CPT recommends that the Ukrainian authorities take urgent steps to render regular blood tests mandatory in all psycho-neurological “internats” whenever clozapine is used; staff should be trained to recognise the early signs of the potentially lethal side effects of clozapine.**

26. The worst situation regarding pharmacotherapy (and psychiatric treatment in general) was observed at Velykorybalske Internat where psychiatric treatment was inadequate. In particular, in the absence of a psychiatrist, the acting Director (who had no medical training) had instructed the health-care staff not to administer to residents discharged from psychiatric hospitals the medication (e.g. Haloperidol in the prolonged form and Aminazin<sup>43</sup>) prescribed by psychiatrists from those hospitals.<sup>44</sup> The lack of proper treatment led to a deterioration of residents’ mental condition which contributed to an environment that was unsafe for the residents concerned, as well as for other residents and the staff.<sup>45</sup>

Consequently, as already mentioned in paragraph 7 above, at the end of the visit the delegation invoked **Article 8, paragraph 5**, of the Convention and made an immediate observation requesting the Ukrainian authorities to confirm, within one month, that all residents with psychotic disorders at Velykorybalske Internat have been seen by a psychiatrist and that they are given medication as prescribed. Further, the Ukrainian authorities were requested to confirm, within 3 months, that there is a regular (at least once a week) presence of a psychiatrist at Velykorybalske Internat.

27. In their letter of 21 May 2019, the Ukrainian authorities informed the Committee of ongoing efforts to fill the vacant post of psychiatrist at Velykorybalske Internat.<sup>46</sup> The CPT was also informed that the Internat’s acting Director had formally requested Sarata District Hospital to ensure, on a temporary basis pending the recruitment of a psychiatrist, that one of the hospital’s psychiatrists visit the Internat at least once a week. However, the Hospital’s management had apparently rejected this request and – at the time when the letter was written – negotiations were ongoing (with the participation of Social and Family and Health Care Departments of Odessa Regional Administration) aimed at coming to an agreement on ensuring residents’ examination by psychiatrists on a quarterly basis.<sup>47</sup>

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<sup>42</sup> It is noteworthy in this context that residents’ medical records appeared to be generally adequate and properly kept in the three establishments visited.

<sup>43</sup> Chlorpromazine.

<sup>44</sup> It is to be stressed here that both haloperidol and chlorpromazine are listed in the WHO Model Lists of Essential Medicines, see <https://apps.who.int/iris/bitstream/handle/10665/273826/EML-20-eng.pdf?ua=1>.

<sup>45</sup> See paragraph 15 above.

<sup>46</sup> Among other things, the management of Velykorybalske Internat submitted, on a monthly basis, relevant official requests to the district employment centre and to the Health Care Department of Odessa Regional Administration.

<sup>47</sup> As well as in case of psychiatric emergency.

28. In their letter of 18 July 2019, the Ukrainian authorities provided additional information to the Committee. They *inter alia* wrote that from 13 to 18 June 2019 Velykorybalske Internat had been visited by a team of six psychiatrists from Odesa Regional Centre of Mental Health who had examined all residents and issued recommendations to the establishment's GP on further treatment. Based on those recommendations, two residents had been transferred to a psychiatric hospital and the acting Director of Velykorybalske Internat had requested the competent court to restore legal capacity of 13 residents.<sup>48</sup>

The CPT was further informed that an agreement had been reached between Odesa Regional Centre of Mental Health and Regional Psychiatric Hospital No. 2 (also in Odesa), according to which Velykorybalske Internat would from now on receive visits by teams of psychiatrists "at least every 6 months".

29. While taking due note of the aforementioned information, the Committee must stress that the measures taken so far fall clearly short of what the CPT considers as acceptable. **The Committee calls upon the Ukrainian authorities to redouble their efforts regarding the presence of a psychiatrist at Velykorybalske Internat and to report on the results of these efforts in the response to this report. The CPT also wishes to receive unequivocal confirmation that that all residents with psychotic disorders at Velykorybalske Internat are given medication as prescribed by psychiatrists.**

30. An additional problem observed in the "internats" visited was the difficulty to arrange transfers to psychiatric hospitals for residents whose mental condition had deteriorated. This was especially the case in Viktorivka where the delegation was told that the nearest psychiatric ward (in Uman) was unwilling to admit residents, obliging the establishment to arrange lengthy transfers (180 km) to the hospital in Smila near Cherkasy. As it was complicated and expensive to arrange, there were few such transfers.<sup>49</sup> Likewise, although in principle residents from Velykorybalske could be transferred to psychiatric wards in Sarata (30 km) or Bilhorod-Dnistrovskyi (50 km), the delegation was told by the acting Director that such transfers were difficult<sup>50</sup> and that psychiatric hospitals were reluctant to admit "challenging" residents. **The Committee recommends that steps be taken to address this problem.**

31. As for somatic treatment, the three "internats" had a GP who performed *inter alia* medical (somatic) examination on arrival and attended to residents' primary health care needs; further, TB screening (using a mobile X-ray) of all residents took place once a year. Access to different somatic specialists was in principle provided but the delegation noted that dental care was not free of charge for the residents – it was thus hardly surprising that many residents had poor dentition.

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<sup>48</sup> See also paragraph 44 below.

<sup>49</sup> E.g. four in the period between 1 January and 1 April 2019.

<sup>50</sup> E.g. there had been 11 transfers in the course of 2018, although the acting Director thought that at least 20 residents would require psychiatric hospitalisation.



At Velykorybalske Internat, the delegation was told that outpatient clinics and hospitals sometimes required payment for specialist examinations (ultrasound, CT scan, MRI, etc.) and materials (such as plaster), and even for some more expensive somatic medication, arguing that they had no money allocated for this purpose in their budgets. The acting Director of Velykorybalske Internat saw no other solution but to pay for such examinations, materials and medication using the money from residents' pensions. **The CPT recommends that steps be taken to ensure free of charge somatic examinations, treatment (including dental treatment), medication and materials for all residents in the "internats" visited (and, as applicable, in all other "internats" in Ukraine).**

32. Viktorivka Internat did not have a Ministry of Health licence for the provision of health care to residents and the licence given to Baraboi Internat only covered somatic care so technically (at least pursuant to the legal interpretation the delegation heard during the meeting at the Ministry of Social Policy) any psychiatric treatment provided in those two establishments was illegal.<sup>51</sup> Considering that granting of such a licence is connected with the requirement to fulfill several criteria related with staffing, medication and premises, **the Committee recommends that urgent steps be taken to ensure that all psycho-neurological "internats" obtain, as soon as possible, a Ministry of Health licence, both for somatic and (especially) psychiatric treatment.**

Paradoxically, the only "internat" that had a licence for psychiatric care (i.e. Velykorybalske Internat) did not provide proper care as explained in paragraph 26 above. The delegation was told that the licence had been granted before the psychiatrist quit the establishment and there had been no review of whether the criteria continued being met. **The CPT recommends that such a periodic review mechanism be put in place for all psycho-neurological "internats".**

33. The offer of psycho-social therapy and other activities was generally underdeveloped in the "internats" visited,<sup>52</sup> although in Baraboi the delegation observed some beginnings of such therapy thanks to the recent (as from the end of 2018) efforts of the establishment's GP who had started drafting so-called "labour therapy plans" for every resident (containing elements such as personal hygiene, basic life skills and work) to be reviewed every 4 months.<sup>53</sup> However, it was clear that the lack of qualified staff hampered further progress in this area.

**The Committee recommends that steps be taken to develop the offer of psycho-social therapy and other activities for residents of the "internats" visited;<sup>54</sup> reference is also made to the recommendation in paragraph 24 above.**

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<sup>51</sup> According to the Ministry of Social Policy officials the delegation met, only some 50 psycho-neurological "internats" (out of the total of 151) had any type of Ministry of Health licence at the time of the visit.

<sup>52</sup> Only a small number of less disabled residents (approximately ten in Viktorivka and up to 15 in Velykorybalske) had occasional access to some organised activities (drawing, painting, music, table tennis, football, etc.) but for most of the residents the choice of available distractions was limited to watching TV/DVDs, listening to the radio, playing board games and reading.

<sup>53</sup> Unlike the establishments visited in Viktorivka and Velykorybalske, Baraboi Internat also offered physiotherapy (mostly for residents with reduced mobility and those with epilepsy) and access to some fitness equipment, exercise bikes and a massage chair.

<sup>54</sup> See also paragraph 186 of the report on the 2009 visit to Ukraine (CPT/Inf (2011) 29, <https://rm.coe.int/1680698430>) which states as follows: "The treatment of mentally disabled persons should involve a wide range of therapeutic, rehabilitative and recreational activities, such as access to appropriate medication and medical care, occupational therapy, group therapy, individual psychotherapy, art, drama, music and sports. Residents should have regular access to suitably-equipped recreation rooms; it is also desirable for

Further, **genuine individual treatment and rehabilitation plans must be drawn up for each resident<sup>55</sup> (indicating the goals of treatment and rehabilitation, the therapeutic means used and the staff member responsible) and reviewed on regular intervals according to an in-depth assessment of each resident's physical and mental state. Residents should be involved in the drafting, evaluation and review of their individual plans, and be informed of their progress.**

34. In the three “internats”, a number of residents<sup>56</sup> were allowed (or even asked, on a voluntary basis) to perform work such as cleaning, small repairs and helping with gardening or farm work (especially in Viktorivka and Baraboi).<sup>57</sup>

While the CPT acknowledges that work can play an important positive role in the psychosocial functioning of residents, **the Committee is of the view that any kind of work should be remunerated.**

## **5. Means of restraint**

35. At the outset of the visit, senior officials from the Ministry of Social Policy told the delegation that means of restraint could be legally resorted to in those of the psycho-neurological “internats” which had a Ministry of Health licence for the provision of psychiatric care; in such cases, the rules applicable would be the same as those applied in psychiatric hospitals i.e. the Ministry of Health Order No. 240 of 2016.<sup>58</sup>

As for “internats” without a licence, the legal interpretation given to the delegation by the Ministry representatives was that no recourse to means of restraint was authorised in them.

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them to be offered education and suitable work, the aim being to prepare residents for independent or at least more autonomous living.”

<sup>55</sup> The plans the delegation saw in the residents’ files in the “Internats” visited, drafted by the GPs sometimes assisted by the psychiatrist or social worker, could hardly be considered as such: they were very succinct and stereotyped. Further, residents were not involved in drawing up the plans and the review was done infrequently (at most every 2 years).

<sup>56</sup> Nine residents in Viktorivka, up to 19 in Velykorybalske and up to 25 in Baraboi.

<sup>57</sup> The pig farm in Velykorybalske was no longer operational as all the pigs had to be put down because of the ASF epidemic; since then, the only work available to residents was helping to clean and distribute food (see paragraph 22 above).

<sup>58</sup> See a brief description of these rules in paragraph 133 of the report on the 2017 periodic visit to Ukraine (CPT/Inf (2018) 41), <https://rm.coe.int/16808d2c2a>.

36. In practice, the CPT's delegation observed that mechanical restraint (using soft strips of cloth) was occasionally resorted to in Velykorybalske<sup>59</sup> and Baraboi,<sup>60</sup> and seclusion (on various premises, including in "quarantine" rooms<sup>61</sup> and residents' own rooms<sup>62</sup>) was used in the three "internats", as was chemical restraint,<sup>63</sup> irrespective of whether the establishment concerned had the relevant Ministry of Health licence or not (see paragraph 32 above).

37. Furthermore, the legal procedure set out in the aforementioned Ministry of Health Order No. 240 was not followed. In particular, mechanical restraint and seclusion were sometimes applied by nurses and/or orderlies (without a preliminary or even *ex post* doctor's order), residents were sometimes asked to assist the nurses and orderlies in restraining fellow residents,<sup>64</sup> limitations as to duration of the measure were not observed, there was no appropriate staff supervision during the measure and resort to means of restraint was not recorded in a dedicated register. It is also noteworthy that several residents with whom the delegation spoke had experienced restraint as a form of punishment for "misbehaving".

38. In the light of the above, **the CPT recommends that the Ukrainian authorities ensure that resort to means of restraint in all psycho-neurological "internats" takes place in accordance with the law; this will require, as a first step, obtaining a Ministry of Health licence for the provision of psychiatric care** (see also paragraph 32 above).

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<sup>59</sup> Where a female resident had been fixated on a virtually permanent basis (apparently on own request, given her self-harming behaviour) for the past 14 years, without a regular review by a psychiatrist (the most recent written review dated back to October 2018 and had been performed by a psychologist).

<sup>60</sup> Where allegations were heard that one of the orderlies on Ward 3 sometimes fixated residents, especially in the context of inter-resident violence.

<sup>61</sup> E.g. in Viktorivka, where the clean, well-lit and ventilated "quarantine" room (with a separate adjoining toilet, washbasin and shower) measured some 24 m<sup>2</sup> and contained 3 beds; it is noteworthy that the delegation heard one of the residents allege that he had spent 2 days in this room. There was also a well-lit and ventilated "quarantine" room in Baraboi, measuring some 6 m<sup>2</sup> and containing a bed as well as an adjoining toilet.

<sup>62</sup> E.g. on the closed wards in Velykorybalske, where staff could lock the rooms with metal hooks; further, on Ward 7 of the same establishment the delegation saw a small storage area closed with a padlock – staff acknowledged that residents could sometimes be placed there. Residents could also be locked in their rooms at Baraboi Internat, especially on Ward 4.

<sup>63</sup> I.e. injections of anti-psychotic medication, mainly Haloperidol and Aminazin (chlorpromazine). Due to the acting Director's ban on the use of Haloperidol and Aminazin (see paragraph 26 above), chemical restraint was practiced to a much lesser extent in Velykorybalske (where residents were usually only given anxiolytics e.g. diazepam).

<sup>64</sup> Especially at Viktorivka Internat, see also paragraph 16 above.

In addition, the Committee refers to its recommendations in paragraphs 136,<sup>65</sup> 137<sup>66</sup> and 138<sup>67</sup> of the report on the CPT's 2017 periodic visit,<sup>68</sup> made in respect of psychiatric establishments but applicable *mutatis mutandis* to psycho-neurological "internats". Reference is also made to the body of the Committee's standards on the use of means of restraint, as set out in the document "Means of restraint in psychiatric establishments for adults".<sup>69</sup>

39. Further, the CPT is of the view that, as a matter of principle, means of restraint should not be applied (without their consent) vis-à-vis (formally) voluntary residents (see also paragraph 41 below). **If the application of restraint to a voluntary resident is deemed necessary and the resident disagrees, the legal status of the resident should be reviewed.**

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<sup>65</sup> "The CPT recommends that the Ukrainian authorities take measures to modify the current practice of the use of means of restraint [...] so as to ensure that:

- patients are not subjected to mechanical restraint in view of other patients (unless the patient explicitly expresses a wish to remain in the company of a certain fellow patient); visits by other patients should only take place with the express consent of the restrained patient;

- every patient who is subjected to mechanical restraint or seclusion is subjected to continuous supervision. In the case of mechanical restraint, a qualified member of staff should be permanently present in the room in order to maintain a therapeutic alliance with the patient and provide him/her with assistance. If patients are held in seclusion, the staff member may be outside the patient's room (or in an adjacent room with a connecting window), provided that the patient can fully see the staff member and the latter can continuously observe and hear the patient;

- once means of restraint have been removed, a debriefing of the patient takes place, both to explain to the patient why they have been subjected to restraint and to offer the patient an opportunity to explain his/her emotions prior to the restraint, which may improve both the patient's own and the staff's understanding of his/her behaviour;

- a specific central register is established to record all instances of recourse to means of restraint in order for the management to be able to monitor the frequency of their use. This is in addition to the records contained within the patient's personal medical file. The entries in the register should include the time at which the measure began and ended; the circumstances of the case; the reasons for resorting to the measure; the name of the doctor who ordered or approved it; and an account of any injuries sustained by patients or staff. Patients should be entitled to attach comments to the register, and should be informed of this entitlement; at their request, they should receive a copy of the full entry."

<sup>66</sup> "The CPT recommends that steps be taken to ensure that every [...] establishment has a comprehensive, carefully developed written policy on restraint. Such a policy should be aimed at preventing as far as possible the resort to means of restraint and should make clear which means of restraint may be used, under what circumstances they may be applied, the practical means of their application, the supervision required and the action to be taken once the measure is terminated. The policy should also contain sections on other important issues such as: staff training; complaints policy; internal and external reporting mechanisms; and debriefing. Further, patients should be provided with relevant information on the establishment's restraint policy.

The frequency and duration of instances of restraint should be reported on a regular basis to a supervisory authority and/or a designated outside monitoring body. This will facilitate a national overview of existing restraint practices, with a view to implementing a strategy of limiting the frequency and duration of the use of means of restraint."

<sup>67</sup> "The CPT must underline [...] that the injection of rapidly acting tranquillisers (which is a form of chemical restraint) is associated with significant risks to the health of the patient, in particular life-threatening cardiac arrhythmia, low blood pressure and respiratory depression. Their use therefore requires close medical supervision and adherence to strict protocols by all staff involved, as well as the necessary skills, medication and equipment. The CPT recommends that the Ukrainian authorities take the necessary measures to ensure that the above-mentioned principles are respected when deciding to administer chemical restraint to a patient."

<sup>68</sup> CPT/Inf (2018) 41, <https://rm.coe.int/16808d2c2a>.

<sup>69</sup> CPT/Inf (2017) 6, <https://rm.coe.int/16807001c3>.

## 6. Safeguards

40. The legal framework for placement in a psycho-neurological “internat” was described in the reports on the 2002 and 2017 periodic visits to Ukraine.<sup>70</sup> It has not changed despite the Committee’s long-standing recommendations that it be amended so as to enable legally incompetent residents to apply to a court with a view to terminating their placement, and to ensure that the need for continued placement of legally incompetent persons is automatically reviewed by a court at regular intervals or residents themselves are able to request at reasonable intervals that the necessity for continued placement be considered by a judicial authority. **The CPT calls upon the Ukrainian authorities to introduce the aforementioned amendments without further delay. The Committee also recommends that the current legislation be amended so as to ensure that residents are always offered the possibility to explain their situation in person before the district medico-social expertise commission; this is not the case at present.**

41. The delegation observed that attempts were made at Viktorivka and Baraboi Internats to apply the current legislation, including the requirement to sign “contracts” between residents (or their guardians) and the establishments’ Directors, and to carry out reviews by medical commissions and district medico-social expertise commissions; that said, reviews were performed in a perfunctory manner (e.g. all residents being seen in one day by members of the medical commission) and were poorly documented, with unclear or missing conclusions. The delegation’s impression was that the purpose was not to review the grounds for placement but to assess the residents’ health condition (including whether hospitalisation was required) and the degree of disability. The situation was of even more concern at Velykorybalske Internat where no “contracts” existed and the last review by a medical commission had reportedly (according to the health-care staff) taken place in February 2018 – but there was no documentary proof of such review to be found.

Furthermore, there was very little information available to residents in the three “internats” on the actual content of the “contracts”<sup>71</sup> and – more generally – on their rights (including on the right to complain to an outside authority).

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<sup>70</sup> See paragraph 145 of CPT/Inf (2004) 34, <https://rm.coe.int/1680698411> and paragraph 170 of CPT/Inf (2018) 41, <https://rm.coe.int/16808d2c2a>. According to Section 23 of the Law on Psychiatric Care (LPC), committal to a neuro-psychiatric “internat” requires a personal request on the part of the prospective resident (or, in the case of a legally incompetent person, his/her guardian), conclusions of a medical commission (composed of doctors representing various specialties including obligatorily a psychiatrist) and signing a “contract” (*dozovip*) between the resident (or his/her guardian, if legally incompetent) and the “internat”. Once committed, the resident must be examined at least once a year by the aforementioned medical commission and – at least every two years – his/her situation must be reviewed by a district “medico-social expertise commission” which should as a minimum comprise a psychiatrist, a psychologist and an educator to determine whether he or she should continue to be held in the “internat”. Under Section 24 of the LPC, a resident may be discharged at his or her request if the medical commission concludes that he or she is able to support him or herself; the resident may also be discharged by a court decision if the court finds that the resident in question was committed to the “internat” illegally.

<sup>71</sup> Many of the residents with whom the delegation spoke could not remember whether they had signed a “contract” and/or what they had signed; none had a copy of the “contract” with them and it was obvious that staff made little effort to explain the meaning of the “contracts” to residents.

It is to be added that in the three “internats” the delegation met many residents (especially on closed wards) who stated spontaneously and insistently that they did not wish to stay there; in Velykorybalske in particular, the impression was that a very large proportion of residents were *de facto* deprived of their liberty,<sup>72</sup> without benefiting from any legal safeguards.

**The CPT calls upon the Ukrainian authorities to ensure that residents in the three “internats” visited, and especially at Velykorybalske Internat, benefit from the legal safeguards offered by the LPC. The Committee also reiterates its recommendation that written information (e.g. in the form of a brochure) on daily routine, residents’ rights, and complaints bodies and procedures<sup>73</sup> be made available to all residents of “internats” in Ukraine. Any residents unable to understand this brochure should receive appropriate assistance.**

42. In neither of the “internats” visited was any attempt being made to obtain consent to treatment from those of the residents who were receiving psychotropic medication. In this context, **the CPT recommends that all residents (and, if they are incompetent, their guardians) be provided systematically with information about their condition and the treatment prescribed for them, and that doctors be instructed that they should always seek the resident’s consent to treatment prior to its commencement. This could be done by means of a special form for informed consent to treatment, signed by the resident and (if he/she is incompetent) by his/her legal representative. If a resident is competent and refuses treatment, legal provisions should guarantee the possibility of another, independent, medical assessment to authorise administration of specific medication on an involuntary basis for a specific period. Relevant information should also be provided to residents (and their legal representatives) during and following treatment.**

43. At the outset of the visit, the delegation was informed by senior officials from the Ministry of Social Policy about draft amendments to the Civil Procedure Code concerning legal incapacitation and guardianship. In particular, incapacitation would no longer be full and unlimited in time (the court would be required to specify the type of incapacitation and there would be automatic review of incapacitation decision at least every two years), and incapacitated residents would be allowed to initiate review irrespective of the opinion of the guardian.<sup>74</sup>

If adopted by the Rada and entered into force, these amendments would indeed represent a major improvement to the legal framework for guardianship. **The Committee would like to be informed whether the aforementioned amendments to the Civil Procedure Code have entered into force and whether it is planned to review all the existing incapacitation decisions concerning residents in psycho-neurological “internats” in the light of the new provisions; the CPT would also like to be informed of the envisaged time-frame for this review.**

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<sup>72</sup> It is noteworthy that, in the three “internats”, Directors told the delegation that any residents who would abscond would be searched for and, once found, brought back to the establishment by the police.

<sup>73</sup> See also paragraph 46 below.

<sup>74</sup> At the time of the visit, the procedure for restoring legal capacity of a resident could in fact only be initiated by the Director of an “internat” (in theory, the procedure could also be initiated by the guardian – if the resident had one – or *ex officio* by the court, but this was virtually unheard of). The procedure was long, cumbersome and traumatising for the residents concerned (as it required temporary hospitalisation – usually at least a month – on a psychiatric ward and a new psychiatric assessment) and – as the delegation was told in the three “internats” visited – courts rarely accepted the Directors’ requests (e.g. only one resident had had his legal capacity restored in Viktorivka in 2018, four in Velykorybalske and one in Baraboi, although the Director had made the relevant request in respect of some 20 residents).

44. The delegation was very concerned to note that several residents in Viktorivka<sup>75</sup> and the vast majority of those in Velykorybalske and Baraboi had the “internat” as acting guardian,<sup>76</sup> reportedly because courts frequently failed to appoint guardians for residents.<sup>77</sup>

As stressed by the CPT more than once in the past, entrusting guardianship to the very same establishment in which an incapacitated person is placed may easily lead to a conflict of interest and compromise the independence and impartiality of the guardian. **The Committee again calls upon the Ukrainian authorities to search for alternative solutions which would better guarantee the independence and impartiality of guardians.**

45. Concerning contact with the outside world, residents could receive visitors without restrictions. Further, some residents were taken out by their families for weekends, holidays or longer periods, following prior approval by the Director. Some residents were also allowed to leave the establishment’s grounds without supervision.

However, residents without own mobile phones (of whom there were many, especially in Velykorybalske) had no (or very limited) access to a telephone.<sup>78</sup> **The CPT recommends that steps be taken to facilitate residents’ access to a telephone, especially for those who do not possess their own mobile phones.**

46. As regards inspections, the delegation noted that the three “internats” had been visited by staff of the Ombudsperson’s Office and the NPM.<sup>79</sup> More generally, the Ombudsperson told the delegation that visiting psycho-neurological “internats” was one of her priorities for 2019<sup>80</sup> and that a special report on this type of establishment would be prepared, focusing *inter alia* on treatments available. **The Committee would like to receive a copy of this report once adopted.**

However, there was no formal complaints system in place in the “internats” visited. **The CPT recommends that such a formal complaints system be set up in all “internats” in Ukraine. The Committee also recommends that steps be taken to ensure that residents are informed of possibilities to lodge such formal complaints, on a confidential basis, with clearly designated outside bodies. This information should form part of the “contracts” signed by residents or their legal guardians.** Reference is also made to the recommendation in paragraph 41 above.

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<sup>75</sup> 13 residents, to be precise.

<sup>76</sup> For those residents, the “contracts” were signed by the Director (in his/her capacity as acting guardian) and the authorised representative of the regional social care department responsible for guardianship issues. It is noteworthy that it was often unclear in the relevant documentation who the guardian was, especially in case when the resident had been transferred from another “internat”; the transfer of guardianship between establishments was thus apparently problematic too.

<sup>77</sup> E.g. in Velykorybalske, the acting Director told the delegation that the last time a court had appointed a guardian for one of the residents had been 12 years ago.

<sup>78</sup> In practice, they had to rely on the generosity of other residents or staff who might allow them to make a call using their mobiles.

<sup>79</sup> Baraboi Internat was visited in 2015, Velykorybalske in 2017 and Viktorivka twice, last time in 2018. In addition, the three “internats” received regular internal inspections by the relevant regional authorities.

<sup>80</sup> She also informed the delegation that 38 psycho-neurological “internats” had been visited in 2018.

**APPENDIX:**

**List of the authorities with which the CPT's delegation held consultations**

**Ministry of Social Policy**

Oleksandra Churkina	Deputy Minister
Yulia Gaidarzy	Director General, Directorate for Social Services and Integration
Olena Fartushnaya	Deputy Head, Unit of Integrated Social Services
Olena Kondratiuk	Chief Specialist, Division of International Affairs and Protocol

**Ministry of Health**

Serhii Shum	Director, Institute of Social and Forensic Psychiatry and Drug Addiction
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**Ministry of Justice**

Svitlana Rohozianska	Deputy Director, International Law Department
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**Office of the Parliament Commissioner for Human Rights (Ombudsperson)**

Lyudmyla Denisova	Parliament Commissioner for Human Rights(Ombudsperson)
Vyacheslav Petliyevaniy	Representative of the Parliament Commissioner for Human Rights in charge of Places of Deprivation of Liberty and Procedural Rights
Olena Andriets	Head of the Division for Monitoring the Observance of Human Rights, NPM Department
Irina Savitskaya	Head of Division for the Legal Protection of Human Rights, NPM Department
Olena Temchenko	Deputy Head of Division for Inspection of Objects of Control, NPM Department