



## **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 4 to 13 August 2020**

The Ukrainian Government has requested the publication of this report.

Strasbourg, 15 December 2020

*Note: In accordance with Article 11, paragraph 3, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, certain names have been deleted.*

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## EXECUTIVE SUMMARY

The main objective of the visit was to review the treatment of persons held in penitentiary institutions, in particular at two correctional colonies in the Kharkiv area, namely Colonies Nos. 25 and 100. In addition, the CPT's delegation visited, for the first time, Colony No. 77 in Berdyansk. The visit to Colony No. 100 also provided an opportunity to review the situation of prisoners sentenced to life imprisonment. Another objective of the visit was to examine the action taken by the investigative authorities in relation to complaints of ill-treatment of inmates by prison staff.

The co-operation received by the delegation throughout the visit, from both the national authorities and staff at the establishments visited, was generally very good. In particular, it enjoyed rapid access to all the establishments visited, was provided with the information necessary for carrying out its task and was able to speak in private with detained persons. However, at Colonies Nos. 77 and 100, many inmates interviewed by the delegation expressed fear of possible reprisals (including physical ill-treatment) by staff or inmates assisting staff, once the delegation had left. The CPT recommends that the Ukrainian authorities take appropriate measures in the establishments visited to ensure that no prisoner is subjected to retaliatory action by staff or fellow inmates for having spoken with the delegation and that any complaints of such action be effectively investigated and those responsible be punished accordingly.

At *Colony No. 25*, the delegation received a number of credible allegations of physical ill-treatment by prison officers in the course of 2019, consisting of punches, kicks and blows with rubber truncheons, mainly in relation to inmates who had refused to clean the premises (or accept other tasks imposed by the administration) or following instances of disobedient behaviour. The alleged ill-treatment mainly took place in the offices of operational officers, occasionally with the help of inmates (so-called "duty prisoners") who had a designated role to assist staff and were assigned supervisory tasks over other prisoners. In a few cases, the alleged ill-treatment was of such severity that it could be considered to amount to torture (e.g. extensive beating, infliction of burns to the buttocks, asphyxiation using a plastic bag, etc.). In addition, the delegation received allegations of threats of physical ill-treatment made by staff (including threats of rape with a truncheon).

In stark contrast to the above, as regards the year 2020, the delegation received hardly any allegations of physical ill-treatment by staff of Colony No. 25. It appeared that, with the change of the prison management as from early 2020, there had been a marked improvement in the treatment of prisoners. While welcoming this development, the CPT draws the attention of the authorities to the need to exercise increased vigilance in this area, by instructing staff that any form of physical ill-treatment or psychological pressure will not be tolerated. The Committee also makes observations to improve the oversight of interventions to quell disturbances in prisons.

As regards *Colony No. 100*, the delegation received several credible allegations of recent physical ill-treatment by staff from prisoners who were or had been held at this establishment. The alleged ill-treatment mainly consisted of punches, kicks, truncheon blows, twisting of the arms and/or legs, being kept in stress positions, being forced to exercise physically beyond the point of exhaustion, and squeezing of the testicles. Moreover, allegations were also heard of threats of a sexual nature, including rape. It appeared that in some cases the alleged ill-treatment had also involved "duty prisoners".

The impression gained by the delegation in the course of the visit to Colony No. 100 was that prisoners who did not always comply with staff orders ran a significant risk of being ill-treated, and that on occasion resort might be had to severe ill-treatment. Furthermore, a number of prisoners indicated that they were afraid to complain about ill-treatment to outside bodies because prison staff threatened them that this would lead to negative consequences for them. The CPT recommends that a firm message be delivered at regular intervals to the management and staff of this colony that any form of ill-treatment of prisoners, including threats, is unacceptable and will be punished accordingly. It also recommends that staff receive a clear message that any kind of threats or intimidating action to prevent prisoners from lodging complaints will not be tolerated.

The report highlights that *Colony No. 77* stood out among the establishments visited, due to the pervasive climate of fear among inmates. Prisoners were very reluctant to speak with the delegation, apparently fearing for their own safety, and many of them declined to be interviewed in private, calling out loudly that everything was normal and that there was nothing to talk about. The CPT points out that, during its many visits to the 47 Council of Europe member States over the last 30 years, it has hardly ever visited a prison with such large-scale refusals of prisoners to be interviewed.

Nevertheless, the delegation was able to gather sufficient information, including from inmates in other establishments who had previously been held in this colony, to enable it to conclude that Colony No. 77 was managed through a system of intimidation and violence. That said, it quickly became apparent that, while the management was in control, the ill-treatment of prisoners was mainly meted out by a select group of inmates (namely “duty prisoners”) – usually with the knowledge and acquiescence of the management – and had become an accepted feature of keeping order within the establishment. It would appear that, upon arrival to the colony and placement in the admission unit, inmates were ordered by prison officers to clean the territory of the unit; any inmate who refused to comply with this order was reportedly punished by the unit’s “duty prisoners”. Such punishment was said to have taken place inside the admission unit (usually in a storage room), in a recurring pattern: namely, prisoners were apparently undressed and made to lie prone on the floor and, while being held down by several inmates, beaten on the soles of the feet and/or the buttocks with a plastic pipe.

The CPT recommends that the Ukrainian authorities carry out a prompt and comprehensive inquiry from the central level into how Colony No. 77 functions and that the management and staff of this colony receive a clear message that any prison official committing or aiding and abetting ill-treatment will be held accountable.

More generally, the Committee once again expresses serious misgivings about the practice of employing selected inmates as “duty prisoners”. It stresses that any partial relinquishment of the responsibility for order and security in prisons, which properly falls within the ambit of custodial staff, is unacceptable and calls upon the Ukrainian authorities to take all necessary steps – including of a legislative nature – to put an end to this practice.

In the course of the visit, the delegation had consultations with the State Bureau of Investigation (SBI) in order to examine the action taken in the investigation of complaints of ill-treatment of prisoners at Colonies Nos. 25 and 77. In the report, the Ukrainian authorities are requested to provide updated information on the progress and outcome of these investigations. As regards more particularly Colony No. 77, the CPT regrets the fact that, in a large-scale investigation into certain specific prisoner complaints of ill-treatment and extortion by staff and “duty prisoners”, a decision had been taken by the investigator to discontinue criminal proceedings in respect of members of staff. In this regard, the Committee asks for an account of concrete steps taken by the SBI in order to establish the possible involvement of prison staff – including through instigation, consent or acquiescence – in the alleged ill-treatment of inmates by “duty prisoners” in this colony.

At the time of the visit, some 75% of the life-sentenced prisoners held at Colony No. 100 were no longer systematically handcuffed when taken out of their cells. The CPT stresses the need to build upon this positive development, making sure that routine handcuffing of prisoners is an exceptional measure, is always based on an individual risk assessment and is reviewed on a regular and frequent basis.

That said, life-sentenced prisoners continued to be subjected to certain anachronistic and demeaning practices, such as making them to run in the corridor in a half-squatting position or to walk bent over at the waist with their hands lifted during escorts. The Committee calls upon the Ukrainian authorities to put an immediate end to such practices.

The CPT was also concerned to note that the great majority of life-sentenced prisoners at Colony No. 100 continued to be locked up in their cells for 23 hours per day, their only out-of-cell activity being one hour of outdoor exercise which was taken on a cell-by-cell basis in small cubicles. The Committee calls upon the Ukrainian authorities to develop the regime for these prisoners, in particular by providing a range of out-of-cell communal activities. It also recommends that such prisoners be as a rule allowed to have contact with inmates from other cells.

Further, while taking note of the adoption of legal provisions which, in principle, make it possible for life-sentenced prisoners to be accommodated together with other prisoners after having served ten years of their sentence, the CPT underlines that the general rule remains the segregation of life-sentenced prisoners. It therefore recommends that the Ukrainian authorities review again the legislation with a view to completely abolishing this rule.

As regards health-care services in the colonies visited, the delegation observed major shortcomings in the procedures for recording and reporting injuries. The CPT calls upon the Ukrainian authorities to ensure that inmates are effectively entitled to prompt examinations by health-care professionals (in particular after a violent episode) and that prison health-care staff receive appropriate training and clear instructions on the recording and reporting of injuries observed on prisoners. The authorities are also called upon to put an end to the practice observed in all the colonies visited of placing prisoners inside a metal cage or in barred areas during medical consultations and to ensure that medical examinations of prisoners are conducted out of the hearing and – unless the doctor concerned expressly requests otherwise in a particular case – out of the sight of non-medical staff.

## 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 4 to 13 August 2020. The visit was one which appeared to the Committee “to be required in the circumstances” (see Article 7, paragraph 1, of the Convention) and was the Committee’s sixteenth visit to Ukraine.<sup>1</sup>

2. The main objective of the visit was to review the treatment of persons held in penitentiary institutions, in particular at two correctional colonies in the Kharkiv area, namely *Colonies Nos. 25 and 100*. The visit to Colony No. 100 also provided an opportunity to review the situation of prisoners sentenced to life imprisonment. In addition, the CPT’s delegation visited, for the first time, *Colony No. 77 in Berdyansk*.

The delegation also went to the pre-trial detention facilities (SIZOs) in Kharkiv and Zaporizhia and to Temnivka Prison Hospital No. 100, in order to interview prisoners transferred from the above-mentioned correctional colonies.

3. Another objective of the visit was to examine the action taken by the investigative authorities in relation to complaints of ill-treatment of inmates by prison staff. In particular, the delegation looked into the investigation of specific complaints of physical ill-treatment of prisoners at Colony No. 25 in Kharkiv and Colony No. 77 in Berdyansk.<sup>2</sup>

4. The phenomenon of ill-treatment and intimidation of prisoners by staff at Colonies Nos. 25 and 100 had been a matter of serious concern for the CPT over the years and had been examined during several CPT visits.<sup>3</sup> In view of the Ukrainian authorities’ persistent failure to improve the situation, despite the specific recommendations repeatedly made by the Committee, the CPT set in motion in March 2013 the public statement procedure under Article 10 (2) of the Convention.<sup>4</sup> In the light of the information provided by the authorities after the 2014 visit, the Committee had reached the conclusion that decisive action was being taken by the relevant authorities to combat ill-treatment of prisoners in both establishments and decided to close the aforementioned procedure. Indeed, the findings of the CPT’s subsequent visit in 2016 indicated significant improvements at Colonies Nos. 25 and 100 regarding the manner in which prisoners were treated by staff.

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<sup>1</sup> For a full list of visits, see <https://www.coe.int/en/web/cpt/ukraine>. All the visit reports and related Government responses have been made public, either upon the authorities’ request or 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 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> The investigation into allegations of ill-treatment of newly-arrived prisoners at Colony No. 77 had also been the subject of correspondence between the CPT and the Ukrainian authorities in 2019.

<sup>3</sup> For the first time, the CPT visited Colony No. 100 in 2005 and Colony No. 25 in 2012. Both establishments were re-visited in 2014 and 2016.

<sup>4</sup> Article 10 (2) reads as follows: “If the Party fails to co-operate or refuses to improve the situation in the light of the Committee’s recommendations, the Committee may decide, after the Party has had an opportunity to make known its views, by a majority of two-thirds of its members to make a public statement on the matter”.

However, as from early 2020, the Committee began to receive reports from various sources that pointed to a deteriorating situation in these establishments, and in particular at Colony No. 25, as regards the treatment of inmates by prison officers. Given the seriousness of those reports, the CPT decided that the two colonies should be visited once again, in order to make an on-the-spot assessment of the treatment of prisoners.

The visit to Colony No. 77 in Berdyansk was also triggered by the numerous reports of physical ill-treatment, intimidation and extortion by staff and fellow inmates which the CPT received in the course of 2019.

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

- Therese Rytter, 2<sup>nd</sup> Vice-President of the CPT (Head of the delegation)
- Djordje Alempijevic
- Arman Tatoyan.

They were supported by Elvin Aliyev of the CPT's Secretariat, and were assisted by:

- George Tugushi, former Public Defender (Ombudsman) of Georgia and former CPT member (expert)
- Denys Danylenko (interpreter)
- Dmytro Kopylov (interpreter).

6. The report on the visit was adopted by the CPT at its 103<sup>rd</sup> meeting, held from 3 to 6 November 2020, and transmitted to the Ukrainian authorities on 30 November 2020. The various recommendations, comments and requests for information made by the CPT 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.

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

7. In the course of the visit, the delegation held consultations with Denys Maliuska, Minister of Justice, Olena Vysotska, Deputy Minister of Justice, and Gyunduz Mamedov, Deputy Prosecutor General, as well as with senior officials from the Ministry of Justice (including the Department for the Execution of Criminal Sanctions) and the Prosecutor General's Office. Meetings were also held with Oleksandr Babikov, First Deputy Director of the State Bureau of Investigation (SBI), and senior investigators of the SBI.

In addition, the delegation met Lyudmyla Denisova, Parliament Commissioner for Human Rights (Ombudsperson) and staff of the National Preventive Mechanism (NPM) Department, as well as representatives of non-governmental organisations active in areas of concern to the CPT.

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

8. The co-operation received by the delegation throughout the visit, from both the national authorities, notably the Ministry of Justice, and staff at the establishments visited, was generally very good. In particular, it enjoyed rapid access to those establishments (including the ones which had not been notified in advance), was provided with the information necessary for carrying out its task and was able to speak in private with detained persons.

9. However, at Colony No. 77 in Berdyansk and Colony No. 100 in Temnivka, many inmates interviewed by the delegation expressed fear of possible reprisals (including physical ill-treatment) by staff or inmates assisting staff, once the delegation had left (see also paragraph 23). In view of the palpable atmosphere of fear and intimidation prevailing in both establishments, the delegation chose not to inform the management of Colonies Nos. 77 and 100 of the allegations received of recent ill-treatment, fearing that this might lead to reprisals against prisoners.

At the end of the visit, the delegation expressed its serious concerns as to the safety of the inmates with whom it had spoken and urged the central authorities to take appropriate measures to prevent any retaliatory action against those inmates.

10. The CPT must stress that any form of retaliatory action against a detained person for having communicated with the CPT strikes at the very heart of the preventive mechanism embodied by the Committee. Clearly, any such action would be totally incompatible with the principle of co-operation set out in Article 3 of the Convention. **The CPT recommends that the Ukrainian authorities take appropriate measures in the establishments visited to ensure that no prisoner is subjected to retaliatory action by staff or fellow inmates for having spoken with the delegation. Any complaints of such action should be effectively investigated and those responsible should be punished accordingly. The Committee would like to be informed of the specific measures taken by the Ukrainian authorities in this regard.**

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

### A. Preliminary remarks

11. At the outset of the visit, the delegation was informed by senior officials from the Ministry of Justice about the ongoing reform of the penitentiary system.<sup>5</sup> It was underlined that, to date, the main focus of this reform programme has been the revision of the legislative framework for imprisonment with a view to reinforcing the rights of prisoners.

Reference was made in this context to the drafting of new legislation, notably the draft law “On the Penitentiary System” which aimed, inter alia, at optimising the structure of the prison administration, strengthening the social welfare of staff, improving material conditions of detention in prisons, providing prisoners with quality health-care services, regulating the application of physical force and “special means” by staff, and improving prisoners’ access to external complaints mechanisms. Another draft law prepared by the Ministry of Justice proposes amendments to the relevant legislation in order to increase the use of alternatives to imprisonment, further develop the probation system and introduce a new type of criminal sanction called “probation supervision”.<sup>6</sup>

Particular reference was made to the draft law “On Amendments to the Law on Pre-Trial Detention” which was under consideration by the *Verkhovna Rada* (Parliament). Most notably, the draft law provides for an increase in the official norm of living space per prisoner in pre-trial detention facilities from 2.5 m<sup>2</sup> to 4 m<sup>2</sup> (in a multiple-occupancy cell), excluding the sanitary annexe.<sup>7</sup>

The authorities also referred to recently adopted regulations, including house rules for establishments for the execution of sentences and for pre-trial detention facilities, as well as a recent ministerial order establishing the procedure for medical examination of prisoners and recording bodily injuries (see paragraph 57). Further, a strategy for health care in prisons was in the process of being elaborated in consultation with the Ministry of Health (see, in this regard, paragraph 55).

**The CPT encourages the Ukrainian authorities to pursue their prison reform agenda and would like to be kept fully informed of the progress made in this area. In this context, the Committee would also like to receive information on the measures taken or envisaged to modernise the prison estate.**

**Further, the CPT recommends that the Ukrainian authorities give a high priority to the adoption of the above-mentioned amendments to the Law on Pre-Trial Detention, a matter which is long overdue.**

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<sup>5</sup> Earlier measures taken in the context of the prison reform programme had involved abolishing the State Penitentiary Service (at central level) in 2016 and assigning its tasks to the Department for the Execution of Criminal Sanctions of the Ministry of Justice. Further, the prison administration at regional level had been reduced into six inter-regional directorates, and prison health-care services had been made more autonomous.

<sup>6</sup> The proposed new sanction consists in restricting the rights and freedoms of the convicted person, aimed at resocialising him/her without removal from society and at preventing him/her from committing new offences.

<sup>7</sup> It is also stipulated in the draft law that the distance between the opposite walls of the cell shall not be less than 2 metres and cells measuring less than 6 m<sup>2</sup> shall not be used as prisoner accommodation.

12. At the time of the visit, the total number of prisoners in Ukraine stood at approximately 51,000<sup>8</sup> (i.e. an incarceration rate of some 143 per 100,000 inhabitants), compared to some 57,000 during the CPT's periodic visit in 2017. Thus, the positive trend towards a reduction in the prison population has continued, which is to be welcomed. Nevertheless, the CPT also noted that the proportion of remand prisoners had remained high in recent years (e.g. some 37% at the time of the visit), which indicates a likely overuse of pre-trial detention in Ukraine.

**The CPT trusts that the Ukrainian authorities will pursue their efforts to reduce the prison population. As regards more particularly pre-trial detention, steps should be taken to ensure a more restrictive approach to the use of remand in custody by setting strict limits on its use and encouraging a greater use of alternative non-custodial measures.<sup>9</sup> In this context, it is essential that appropriate action be taken vis-à-vis the prosecutorial and judicial authorities, including through training, to ensure their full understanding of – and support for – the policies being pursued, thereby avoiding unnecessary pre-trial detention practices.**

13. Correctional Colony No. 25 in Kharkiv,<sup>10</sup> a medium-security establishment for sentenced male adults, had an official capacity of 1,112 places (according to the norm of 4 m<sup>2</sup> of living space per prisoner) and was accommodating 796 inmates at the time of the visit.

Correctional Colony No. 100 in Temnivka,<sup>11</sup> a medium-security establishment for sentenced male adults, had an official capacity of 1,124 places and was holding 890 prisoners at the time of the visit (including 55 life-sentenced prisoners accommodated in two separate maximum-security units).

Correctional Colony No. 77 is located on the outskirts of the town of Berdyansk in the south-east of the country. Opened in 1960, it operates as a minimum-security colony for male adults imprisoned for the first time. Prisoner accommodation is provided in three two-storey buildings, divided into four units, each housing between 50 and 75 inmates. With an official capacity of 716 places, the establishment was accommodating 268 prisoners at the time of the visit.<sup>12</sup>

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<sup>8</sup> Not including the prison populations of the territories that are currently beyond the effective control of the Ukrainian Government (i.e. Crimea and parts of the Donetsk and Luhansk regions).

<sup>9</sup> In this context, the authorities should be guided by Recommendation Rec (2006) 13 of the Committee of Ministers of the Council of Europe to member States on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse.

<sup>10</sup> For a more detailed description of Colony No. 25, see CPT/Inf (2013) 23, paragraph 4.

<sup>11</sup> For a more detailed description of Colony No. 100, see CPT/Inf (2007) 22, paragraph 118.

<sup>12</sup> The delegation was informed that there had been no new admissions to the establishment since March 2020 due to the Covid-19 pandemic.

**B. Torture and other forms of ill-treatment**

a. Correctional Colony No. 25 in Kharkiv

14. At Colony No. 25, the delegation received a number of credible allegations of physical ill-treatment by prison officers in the course of 2019, consisting of punches, kicks and blows with rubber truncheons, mainly in relation to inmates who had refused to clean the premises (or accept other tasks imposed by the administration) or following instances of disobedient behaviour. The alleged ill-treatment mainly took place in the offices of operational officers (located in the administrative building), occasionally with the help of inmates who had a designated role to assist staff (so-called “duty prisoners”<sup>13</sup>; see paragraph 27). In a few cases, the alleged ill-treatment was of such severity that it could be considered to amount to torture (e.g. extensive beating, infliction of burns to the buttocks, asphyxiation using a plastic bag, and “waterboarding”<sup>14</sup>). In addition, the delegation received allegations of threats of physical ill-treatment made by staff (including threats of rape with a truncheon).

15. Some of the inmates interviewed gave graphic and consistent accounts of the severe physical ill-treatment to which they claimed to have been subjected at the end of 2019.

By way of example, one prisoner alleged that in late November 2019 he had been removed from a disciplinary punishment cell (where he had apparently been placed for having refused to comply with staff orders) and taken to the administration building, where he had been severely ill-treated (kicks, blows with a truncheon to the soles of the feet, asphyxiation with a plastic bag and “waterboarding”) by several staff members. Subsequently, he was allegedly stripped naked, blindfolded and tied, face up, with a rope around his entire body to a metal bed in one of the rooms in the same building. The prisoner claimed that he had remained in that position for about six days, during which time he apparently had had to urinate and defecate on the mattress.<sup>15</sup>

When examined by the delegation’s forensic doctor, the prisoner concerned displayed extensive areas of reddish and reddish-brown skin discolouration on both buttocks and the posterior regions of both thighs; and ligature marks (scars) on the posterior region of the upper part of the left lower leg and on the posterior region of the upper and lower part of the right lower leg, as well as on the anterior regions of both lower legs.

The observed areas of skin discolouration on the prisoner’s buttocks and thighs (which could be classified as a late sequel of moisture-associated skin damage) and the ligature marks on his lower legs were consistent with the allegations of prolonged exposure to excrement and of prolonged tight fixation with a rope, respectively.

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<sup>13</sup> Commonly known as “*dnevalnye*”.

<sup>14</sup> Covering the person’s mouth and nose with a wet rug and pouring water over his face, causing him to experience the sensation of drowning.

<sup>15</sup> A criminal investigation was ongoing in respect of this case at the time of the visit (see paragraph 34).

16. Moreover, the delegation received allegations that several other inmates at Colony No. 25 had been punished in a similar manner for failing to comply with orders given by staff. The delegation had the opportunity to consult investigation files concerning the criminal proceedings initiated as a result of a complaint lodged by one of these persons,<sup>16</sup> which contained a forensic report with medical findings similar to those described above (such as skin discolouration on both thighs).

17. Another prisoner interviewed by the delegation<sup>17</sup> stated that in December 2019 he had been taken to a room in the administration building, where he had been stripped naked and his arms and legs had been tied up with tape. A plastic bag had then allegedly been placed over his head with a wet towel, causing a sensation of suffocation. The prisoner alleged that he had subsequently been punched and kicked by several operational officers and “duty prisoners”, who had apparently also inflicted burns to his buttocks with a burning newspaper. He also claimed that, on another occasion, he had been sodomised with a truncheon.

Upon examination by the delegation’s forensic doctor, the prisoner concerned displayed an area measuring 4.2 x 1.7 cm of discrete superficial scarring on the bottom of the right buttock and on the posterior side of the upper part of the right thigh, which was consistent with a healed second-degree burn.

18. In stark contrast to the above, as regards the year 2020, the delegation received hardly any allegations of physical ill-treatment by staff of Colony No. 25. It appeared that, with the change of the prison management as from February 2020, there had been a marked improvement in the treatment of prisoners. Many inmates interviewed by the delegation confided that routine beatings and other severe forms of ill-treatment by prison officers (and “duty prisoners”) had stopped with the arrival of the new management and pointed to the significant changes in the attitude of staff towards them. This is to be welcomed.

That said, what apparently remained in place throughout the establishment was the widespread practice of exerting psychological pressure on prisoners (for instance, in order to prevent them from complaining to outside bodies), as well as the overall climate of fear, although the latter appeared to have decreased considerably compared to the situation observed by the CPT in 2016. **The CPT considers that the establishment’s management should demonstrate increased vigilance in this respect, by instructing staff that any form of physical ill-treatment or psychological pressure will not be tolerated and by ensuring the regular presence of senior managers in the detention areas, their direct contact with prisoners and the investigation of complaints made by prisoners.**

19. The only relatively recent violent episode at Colony No. 25 concerned the alleged use of excessive force by members of a special-purpose unit (reportedly called in to the establishment in the context of a large-scale search operation) in the early morning of 8 January 2020. According to the accounts received by the delegation, members of the intervention unit, who apparently wore full protective gear and balaclavas, took a number of inmates outside their dormitories, handcuffed them and forced them to lie down on the floor, and kicked and/or hit most of them with a truncheon (including to the head).

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<sup>16</sup> He had been released from the colony prior to the delegation’s visit.

<sup>17</sup> The interview with the prisoner concerned took place at Temnivka Prison Hospital where he had been transferred from Colony No. 25 as a protection measure imposed by the public prosecutor following his complaint of ill-treatment.

At the time of the visit, a criminal investigation was underway into allegations of the use of excessive force by members of the special-purpose unit in the context of the above-mentioned intervention (see paragraph 34).

In the CPT's view, **interventions by special-purpose units should only be sought in exceptional cases and as a measure of last resort, once repeated attempts to resolve specific situations threatening the good order within the prison have failed. Further, all planned interventions by such units should take place in the presence of an authority which is independent of both the security forces concerned and the prison administration and is charged with observing and subsequently reporting upon the carrying out of the intervention.<sup>18</sup> Consideration should also be given to video-recording all planned interventions.**

20. Some of the prisoners interviewed by the delegation claimed that the intended purpose of the above-mentioned intervention was to punish those who had complained to outside bodies about ill-treatment and other unlawful practices in the establishment. **The CPT recommends that the Ukrainian authorities take appropriate steps to ensure that prisoners who have made a complaint are not subjected to reprisals.**

b. Correctional Colony No. 100 in Temnivka

21. The delegation received several credible allegations of recent physical ill-treatment by staff from prisoners who were or had been held at Colony No. 100. The alleged ill-treatment mainly consisted of punches, kicks, truncheon blows, twisting of the arms and/or legs, being kept in stress positions, being forced to exercise physically beyond the point of exhaustion, and squeezing of the testicles. Moreover, allegations were also heard of threats of a sexual nature, including rape. It appeared that in some cases the alleged ill-treatment had also involved "duty prisoners".

By way of illustration, one prisoner alleged that, upon arrival at Colony No. 100 in April 2020, he had been ill-treated by staff for three days in a row until he agreed to mop the floor. The alleged ill-treatment was said to have taken place in the office of an operational officer and took the form of being placed prone on the floor, one officer sitting on his back and others pulling his legs and handcuffed arms upwards.

Another inmate claimed that in July 2020 he had been ill-treated in one of the offices of the operative staff for having refused to go to work. According to his account, prison officers twisted his arms and sat on his back, putting pressure on the chest, while he was lying face down, until he fell unconscious.

Several other inmates met by the delegation alleged that, while being held in the establishment's admission unit,<sup>19</sup> they had been forced to work for hours on end and to perform prolonged physical exercises (such as push-ups and squats), apparently with the purpose of exerting psychological pressure on them and obtaining their obedience to the administration, before their transfer to the units where they would serve their sentences.

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<sup>18</sup> The presence of such an authority would have a dissuasive effect on anyone minded to ill-treat prisoners and greatly facilitate the investigation of any allegations of ill-treatment and the correct attribution of blame.

<sup>19</sup> *Дільниця карантину, діагностики і розподілу (КДіР)*. The maximum duration of stay in the admission unit is 14 days (Section 95 of the Criminal Executive Code).

22. The impression gained by the delegation in the course of the visit to Colony No. 100 was that prisoners who did not always comply with staff orders (thus identified by staff as likely to cause trouble in prison) ran a significant risk of being ill-treated, and that on occasion resort might be had to severe ill-treatment. Furthermore, a number of prisoners indicated that they were afraid to complain about ill-treatment to outside bodies because prison staff threatened them that this would lead to negative consequences for them (see also paragraph 9).

**The CPT recommends that a firm message be delivered at regular intervals to the management and staff of Colony No. 100 that any form of ill-treatment of prisoners, including threats, is unacceptable and will be punished accordingly. Staff should also receive a clear message that any kind of threats or intimidating action to prevent prisoners from lodging complaints will not be tolerated.**

c. Correctional Colony No. 77 in Berdyansk

23. The CPT must stress that Colony No. 77 stood out among the establishments visited, due to the pervasive climate of fear among inmates. Prisoners were very reluctant to speak with the delegation, apparently fearing for their own safety, and many of them declined to be interviewed in private, calling out loudly that everything was normal and that there was nothing to talk about. It should be noted that, during its many visits to the 47 Council of Europe member States over the last 30 years, the Committee has hardly ever visited a prison with such large-scale refusals of prisoners to be interviewed.

Nevertheless, the delegation was able to gather sufficient information during the visit, including from inmates in other establishments who had previously been held in this colony, to enable it to conclude that Colony No. 77 was managed through a system of intimidation and violence. The overall impression was that of a colony ruled with an iron hand. That said, it quickly became apparent that, while the management was in control, the ill-treatment of prisoners was mainly meted out by a select group of inmates (namely “duty prisoners”) – usually with the knowledge and acquiescence of the management – and had become an accepted feature of keeping order within the establishment.

24. More specifically, it transpires from the information gathered that the means employed by staff, relying to a great extent on “duty prisoners”, were aimed at obtaining submissive behaviour from all inmates as from the first day after their admission to the establishment. Based on the detailed and consistent accounts received by the delegation, a clear pattern could be discerned in relation to the treatment of newly-arrived prisoners.

It would appear that, upon arrival to the colony and placement in the admission unit, inmates were ordered by prison officers to clean the territory of the unit; any inmate who refused to comply with this order was reportedly punished by the unit’s “duty prisoners”. Such punishment was said to have taken place inside the admission unit (usually in a storage room), in a recurring pattern: namely, prisoners were apparently undressed and made to lie prone on the floor and, while being held down by several inmates, beaten on the soles of the feet and/or the buttocks with a plastic pipe.<sup>20</sup> Other forms of alleged ill-treatment included forcing prisoners to remain for a very long time in a squatting position with both hands stretched forward or making them to squat hundreds of times.<sup>21</sup>

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<sup>20</sup> One prisoner alleged that he had been subjected to this treatment several times, until he had finally agreed to sweep the territory of the admission unit.

<sup>21</sup> Allegations were also received according to which, on the day of arrival to the colony, prisoners were instructed

25. The information gathered by the delegation also suggests that wholly compliant prisoners could generally escape physical ill-treatment and serve their sentence in relative calm, but those perceived to infringe or challenge the formal and informal rules of the colony or who made the slightest complaint about any aspect of their treatment were likely to be met with a harsh response.

The delegation also observed that Colony No. 77 had an extraordinarily low recourse to formal disciplinary sanctions, notably as regards placement in disciplinary confinement.<sup>22</sup> This fact, coupled with the preceding observations, was indicative of the existence of an informal disciplinary system employed by staff and “duty prisoners”.

26. In the light of the above, **the CPT recommends that the Ukrainian authorities carry out a prompt and comprehensive inquiry from the central level into how Colony No. 77 functions. It would like to be provided with an account of the concrete measures taken in this respect.**

**Further, steps should be taken to ensure that the management and staff working in this colony receive a clear and firm message that any prison official committing or aiding and abetting ill-treatment will be held accountable and punished accordingly.**

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27. In previous visit reports, the CPT expressed serious misgivings about the practice of employing selected inmates as “duty prisoners”, who were assigned supervisory tasks over other inmates in accommodation areas and workshops, including reporting to staff any incidents and violations of the regime. The Committee was therefore concerned to note during the current visit that this practice had remained in place. Moreover, it is regrettable that, despite the specific recommendation previously made by the CPT, the practice of employing “duty prisoners” is also formally provided for in the new Internal Rules of Establishments for the Execution of Sentences.<sup>23</sup>

As already stressed in the past, the CPT considers unacceptable any partial relinquishment of the responsibility for order and security, which properly falls within the ambit of custodial staff. Such a practice exposes weaker prisoners to the risk of abuse and exploitation by their fellow inmates.<sup>24</sup> **The Committee calls upon the Ukrainian authorities to take all necessary steps – including of a legislative nature – to put an end to this practice. No prisoner (in any penitentiary establishment in the country) should be put in a position to exercise power over other inmates.**<sup>25</sup>

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to memorise the house rules, and those who failed the “exam” the following day could be beaten up by “duty prisoners”.

<sup>22</sup> There were only seven placements in a DIZO (“disciplinary isolator”) in 2019-2020, and no placements in a PKT (“cell-type premises”) for the past several years.

<sup>23</sup> See Section XVIII, paragraph 2.

<sup>24</sup> For example, at Colony No. 77, accounts were heard of duty prisoners deciding on how to distribute the parcels sent to prisoners by relatives.

<sup>25</sup> See also Rules 62 of the European Prison Rules which states that “[n]o prisoner shall be employed or given authority in the prison in any disciplinary capacity”.

### C. Action to combat torture and other forms of ill-treatment

28. One of the most effective means of preventing ill-treatment by prison officers lies in the diligent examination of complaints (or any other information indicative) of ill-treatment and, when appropriate, the imposition of suitable penalties. This will have a significant dissuasive effect. Conversely, if the authorities do not take effective action upon complaints referred to them, members of penitentiary staff minded to ill-treat inmates will quickly come to believe that they can do so with impunity.

29. In November 2015, Ukraine adopted a law which provided for the establishment of an independent central executive body – the State Bureau of Investigation (SBI) – mandated to “prevent, detect, stop, solve and investigate crimes within its jurisdiction”<sup>26</sup> which notably includes crimes committed by law enforcement officials.<sup>27</sup> The new investigative body was formally established in February 2016 and officially commenced its work in November 2018. In terms of organisational structure, the SBI is composed of a central office in Kyiv and seven territorial directorates.<sup>28</sup>

30. In the course of the visit, the delegation held consultations with senior officials of the SBI who provided detailed information on the work of the agency. It was pointed out that the SBI was still in the process of development, including as regards recruitment of staff, and especially its operational staff.<sup>29</sup> According to the delegation’s interlocutors, the almost total lack of operational officers<sup>30</sup> represented a major challenge in the discharge of their mandate; the SBI therefore had to rely on operational units of other state agencies, which, in certain situations, could bring into question the independence of investigations. The delegation was also informed that the SBI did not yet initiate proceedings *ex officio* (i.e. without a formal complaint being lodged) into possible ill-treatment by law enforcement officials, due to the lack of operational staff.

**The CPT recommends that the Ukrainian authorities take urgent steps to ensure that the SBI’s operational units are appropriately staffed in order to facilitate their effective functioning.**

31. As concerns the investigation of cases of alleged ill-treatment by law enforcement officials, the delegation was informed that 24 of the SBI’s investigators dealt exclusively with such investigations.<sup>31</sup> In this connection, the delegation was also provided with statistics about the total number of complaints received of ill-treatment by penitentiary staff and the outcome of investigations carried out by the SBI. It was reported that, since November 2018, the SBI had processed 579 complaints about torture or ill-treatment by prison officers, and in 70 cases the agency had initiated pre-trial investigations. In total, 109 criminal proceedings had been or were being carried out, a number which included the cases referred to them by the Prosecutor General’s Office (PGO). Of these, 42 cases were closed due to lack of evidence, in one case the investigation was suspended, and in 66 cases the investigation was ongoing.<sup>32</sup> **The CPT would welcome updated statistics in this regard.**

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<sup>26</sup> Section 1 of the Law “On the State Bureau of Investigation”.

<sup>27</sup> Section 216 (4) of the Code of Criminal Procedure.

<sup>28</sup> Located in Lviv, Khmelnytsky, Mykolaiv, Melitopol, Poltava, Kramatorsk and Kyiv.

<sup>29</sup> This delay was said to be caused by the absence of relevant provisions in the Law on the SBI.

<sup>30</sup> For instance, the SBI’s territorial branch in Melitopol, which had a team of 39 investigators, only employed two operatives.

<sup>31</sup> Each of the seven territorial branches had three such investigators.

<sup>32</sup> Including the only case in which the SBI had invoked Section 127 of the Criminal Code (“Torture”).

32. The delegation also had consultations with senior representatives of the PGO, which is entrusted with supervision over compliance with the law by the SBI during its pre-trial investigations and operations, through authorised public prosecutors. The delegation's interlocutors underlined that action to improve the effectiveness of investigations into cases of alleged ill-treatment involving public officials had remained high on their agenda. In particular, reference was made to a specialised department within the PGO, providing procedural guidance to the SBI investigators in criminal proceedings into such cases.

The delegation was also informed that it was decided at a co-ordination meeting of the heads of law enforcement agencies in June 2020 "to develop, in co-operation with the Ministry of Health, a joint regulation on the procedure for informing the territorial units of the State Bureau of Investigation in cases of bodily injuries which may be indicative of torture and other forms of ill-treatment by law enforcement officials". It was reportedly also agreed at that meeting "to initiate the development by the Ministry of Health, in co-operation with the Ministry of Justice, of a uniform procedure and a form for medical institutions for recording bodily injuries on persons who have sought medical assistance in connection with the actions of law enforcement officials or held in places of detention". The CPT welcomes these initiatives and **would like to receive updated information on their implementation.**

33. As already mentioned above, the delegation looked into the investigation of complaints of ill-treatment of prisoners at Colony No. 25 in Kharkiv and Colony No. 77 in Berdyansk. It had consultations with the relevant SBI investigators in order to examine the investigative actions taken in these cases.

34. The criminal investigation into the alleged ill-treatment of prisoners at *Colony No. 25 in Kharkiv* was launched by the SBI's Poltava branch, following complaints regarding the use of excessive force in the context of the prison intervention of 8 January 2020 (see paragraph 19). The delegation was informed that, in addition to the possible use of unwarranted or disproportionate force by members of the intervention team, verification was also underway as to whether there had been sufficient grounds for summoning special-purpose forces to the colony in the context of a general search operation.<sup>33</sup>

It was indicated that all 26 alleged victims had been interviewed at the outset of the investigation; several of them also filed complaints about ill-treatment by staff of the colony at the end of 2019 (see, for example, paragraphs 15 to 17). It was pointed out that some of the complainants had been transferred to other prison establishments as a measure of protection from possible acts of intimidation. Further, nearly all the complainants had reportedly undergone a forensic medical examination immediately after the aforementioned intervention (i.e. between 9 and 12 January 2020), which inter alia concluded that the medical findings were in some cases consistent with the allegations of truncheon blows and tight handcuffing. As for other evidence, the delegation's interlocutors deplored the fact that the establishment's CCTV cameras had apparently been out of order on the day of the intervention, a state of affairs which impacted negatively the course of the investigation.

**The CPT would like to be kept informed of the progress and outcome of the above-mentioned investigation, including as regards the individual cases described in paragraphs 15 to 17 of the report.**

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<sup>33</sup> The delegation was told that an internal inquiry conducted by the Ministry of Justice into the incident had concluded that there had not been any wrongdoing on the part of the members of the intervention team.

35. The criminal investigation relating to *Colony No. 77 in Berdyansk* was launched in February 2019 by the Prosecutor General's Office as a result of complaints from eight inmates and seven inmate relatives about ill-treatment and extortion by prison staff and "duty prisoners". The proceedings were initiated under Sections 127 (torture), 189 (extortion), 364 (abuse of authority) and 365 (excess of authority) of the Criminal Code and were being conducted by the SBI's territorial branch in Melitopol.<sup>34</sup>

According to the information provided to the delegation, the SBI had interviewed all the complainants and alleged perpetrators and questioned more than 60 witnesses. The forms of alleged ill-treatment mainly consisted of blows (usually with a plastic pipe) to the soles of the feet, forced standing for the whole day and sleep deprivation. It was stated that the eight prisoners who had lodged a formal complaint had been transferred to other prison establishments as a measure of protection<sup>35</sup> and that forensic medical examinations had been performed in respect of them from March to June 2019. Bodily injuries were reportedly detected in some cases which, according to the forensic medical reports, had resulted from blows with a blunt object and might have been sustained in the time frame as claimed by the persons concerned.

That said, in the light of the delegation's findings during the visit (see paragraphs 23 to 25), it is regrettable that a decision had been taken by the investigator in charge to discontinue criminal proceedings under Sections 364 and 365 of the Criminal Code, for lack of evidence (notably witness testimonies) corroborating the allegations about the involvement of staff members in the alleged ill-treatment.<sup>36</sup> Reference was also made in this context to difficulties arising from staff shortages in the SBI (see paragraph 30 and footnote 30) as well as from failures of co-operation on the part of the management of Colony No. 77, including by delaying repeatedly the SBI's access to the establishment. **Steps should be taken to ensure that such situations do not recur.**

**The CPT wishes to be informed of the concrete steps taken by the SBI in the context of the investigation relating to Colony No. 77 in order to establish the possible involvement of prison staff – including through instigation, consent or acquiescence – in the alleged ill-treatment of inmates by "duty prisoners" (as stated in some of the complaints). In this connection, the Committee would like to know if the SBI had employed any working methods designed to guarantee the anonymity and safety of witnesses.**

**The CPT would also like to be provided with information about the outcome of this investigation.**

36. As had been the case during previous CPT visits, the delegation noted that an insufficient staff presence was a common feature in all the colonies visited. By way of illustration, at Colony No. 100, one single officer was responsible for supervising up to one hundred prisoners during the day, with the occasional help of one or two other staff members patrolling within the different accommodation areas. At night and at weekends, there was no permanent staff presence within the prisoner accommodation areas (a small team of prison officers making rounds every two to three hours).

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<sup>34</sup> After being referred by the PGO to the National Police for investigation in November 2019 (when the prosecuting authorities decided to refuse to initiate criminal proceedings against prison officials due to lack of *corpus delicti*), the case was returned to the SBI in March 2020.

<sup>35</sup> It appeared that no such measures had been taken in respect of witnesses.

<sup>36</sup> This effectively meant that the SBI had no mandate to investigate this case further.

The CPT must stress once again that a low staff complement diminishes the possibilities of direct contact with prisoners, increases staff-inmate tension, and entrenches reliance on “duty prisoners” to exercise control over the inmate population. **The Committee calls upon the Ukrainian authorities to take steps without further delay to review staffing levels at the colonies visited (and, as appropriate, in other prison establishments), in order to ensure a greater presence of custodial staff in the prisoner accommodation and work areas.**

37. During the visit, the CPT was informed about the Ukrainian authorities’ plans to increase the use of video recording in an effort to prevent the possible use of abusive use of force by penitentiary staff.<sup>37</sup> In particular, it was planned to equip prison custodial staff with body-worn cameras.

The CPT welcomes these plans. It considers that the use of video recording, through both stationary and portable devices, represents potentially an important additional safeguard against ill-treatment, in addition to being a useful security measure. **The Committee invites the Ukrainian authorities to give a high priority to the implementation of the above-mentioned plans.**

#### **D. Conditions of detention of the general prison population**

38. Material conditions of detention at *Colonies Nos. 25 and 100* had remained essentially the same as observed during the 2016 ad hoc visit.<sup>38</sup> In both establishments, the accommodation units were kept in a good state of repair and were spotlessly clean.

At Colony No. 100, continued efforts were being made to further improve material conditions of detention, in particular by converting large-capacity dormitories into smaller ones<sup>39</sup> and carrying out refurbishment works in accommodation areas. As regards Colony No. 25, the accommodation units mainly comprised smaller bedrooms (e.g. about a dozen rooms with up to ten beds each in Unit 1), although some accommodation units still possessed large-capacity dormitories (e.g. a dormitory with 56 beds in Unit 4).

39. Despite the age of the premises, prisoner accommodation areas in *Colony No. 77* were generally well maintained. They were found to be in a decent state of repair, clean, well lit and sufficiently ventilated. Of the four accommodation units, two consisted of large-capacity dormitories (namely, Units 1 and 2 having dormitories with up to some 70 beds), while the other two comprised smaller dormitories (between eight and 24 beds).

40. The CPT wishes to recall that it has objections to the very existence of accommodation in large-capacity dormitories; such dormitories frequently hold prisoners in extremely cramped conditions, subject to a constant lack of privacy. The Committee has also found that the risk of intimidation and violence in such dormitories is high, and that proper staff control is extremely difficult. Further, an appropriate allocation of individual prisoners, based on a case-by-case risk and needs assessment, becomes an almost impossible task. The CPT has therefore long advocated a move away from large-capacity dormitories towards smaller living units.<sup>40</sup>

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<sup>37</sup> At Colony No. 25 in Kharkiv, the delegation was informed that an additional 60 CCTV cameras had been installed throughout the establishment in the course of 2020.

<sup>38</sup> See CPT/Inf (2017) 15, pages 53 and 56.

<sup>39</sup> The colony still had a few dormitories left with 50 or more beds.

<sup>40</sup> The various drawbacks of large-capacity dormitories are described in the CPT’s 11<sup>th</sup> General Report (see paragraph 29).

**The CPT would like to be informed of steps taken or envisaged by the Ukrainian authorities to move away from the system of large-capacity dormitories in prison establishments towards a system of smaller living units.**

41. In all the three colonies visited, showers were usually only available to prisoners once a week. **The CPT reiterates its recommendation that the frequency of prisoners' access to a shower be increased throughout the prison system.**<sup>41</sup>

42. As for activities, according to the information provided by the management of *Colony No. 25*, 135 prisoners had paid jobs in various workshops (producing furniture, car trailers, etc.) and some 30 inmates were employed in the establishment's general services (maintenance, boiler house, canteen, etc.). Further, about 50 prisoners were reportedly involved in vocational training (for professions such as welders, turners and carpenters).<sup>42</sup>

In this connection, perusal of the registers of presence in some units and interviews with inmates (including "duty prisoners") suggested that the number of prisoners employed in the establishment's production facilities was actually significantly higher than the number given by the management.<sup>43</sup> It was alleged, however, that prisoners were encouraged to work without payment, in exchange for small amounts of groceries and cigarettes or the administration's support in obtaining early conditional release. **The CPT wishes to receive the Ukrainian authorities' observations on this matter.**

43. At *Colony No. 100*, about 300 prisoners worked in the establishment's production facilities (mainly metal work), between 40 and 50 inmates were engaged in vocational training (for welders, turners, etc.) and some 40 were employed on various household duties.<sup>44</sup>

At *Colony No. 77*, some 30 inmates were involved in domestic duties and approximately 70 prisoners were employed in the establishment's workshops (sewing, producing fishing nets, etc.) at the time of the visit (i.e. about 37% of the inmate population).<sup>45</sup> However, the delegation was told that, given the remote location of the colony, businesses were not particularly interested in placing orders for their products and, as a result, the offer of work for prisoners was rather irregular.

**The CPT encourages the Ukrainian authorities to increase their efforts to provide more employment opportunities (preferably of a vocational value) to prisoners at Colonies Nos. 77 and 100.** It should be underlined in this regard that the provision of work to prisoners should not be determined solely by market forces; an active State policy, based, if necessary, on special incentives for the placing of orders for prison production, should be introduced.

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<sup>41</sup> See, in this regard, Rule 19.4 of the European Prison Rules.

<sup>42</sup> That is, some 215 prisoners in total (i.e. about 27% of the inmate population).

<sup>43</sup> It became clear from the registers seen by the delegation that far higher numbers of prisoners were normally absent during the day from the units concerned than at the time of the delegation's visit. For example, out of 45 prisoners held in Unit 2, 27 were present in the unit on the day of the visit (which was a workday). However, according to the register, this number had usually varied between five and eight on the preceding workdays, for at least several weeks.

<sup>44</sup> I.e. about 43% of the inmate population.

<sup>45</sup> Vocational training courses were suspended due to the Covid-19 pandemic.

**E. Situation of life-sentenced prisoners**

44. As already mentioned above, there were 55 prisoners serving a life sentence (all men) at Colony No. 100 at the time of the visit.<sup>46</sup>

It should be noted at the outset that the delegation received no allegations of recent physical ill-treatment of life-sentenced prisoners by staff.

45. The delegation was informed by representatives of the Ministry of Justice at the beginning of the visit that the longstanding practice of systematic handcuffing of life-sentenced prisoners when escorted by staff inside the prison was being progressively abandoned throughout the prison system. Indeed, when visiting Colony No. 100, the delegation noted that about 75% of the establishment's life-sentenced prisoners were no longer routinely handcuffed during such escorts.<sup>47</sup>

This represents a positive development which needs to be built upon. As the CPT has stressed in the past, **routine handcuffing of prisoners when taken out of their cells should be an exceptional measure, always based on an individual risk assessment, and should be reviewed on a regular and frequent basis.**

46. That said, it is a matter of concern that, despite the specific recommendation repeatedly made by the Committee after previous visits, life-sentenced prisoners continued to be subjected to certain anachronistic and demeaning practices, such as making them to run in the corridor in a half-squatting position (e.g. while being taken for outdoor exercise) or to walk bent over at the waist with their hands lifted during escorts or inmates being obliged to stand up and face the wall with their hands behind their backs each time the cell door opened.

The Committee must stress once again that such practices are unnecessary from a security standpoint and do nothing to promote positive relations between staff and prisoners. **The CPT calls upon the Ukrainian authorities to put an immediate end to such practices.**

47. As regards life-sentenced prisoners' conditions of detention, it is noteworthy that a new accommodation unit was opened in 2017, which provided improved living conditions and increased possibilities for association among themselves.<sup>48</sup> The unit consisted of a spacious dormitory equipped with ten beds (where prisoners could also watch television and play board games), a sewing workshop, a well-equipped kitchen and an outdoor exercise area.<sup>49</sup>

That said, the CPT must stress that it does not favour such large accommodation facilities; it would be far preferable for prisoners to be accommodated in smaller-capacity sleeping rooms with common association areas. **The Committee trusts that this will be taken into account in any future construction plans.**

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<sup>46</sup> There was a total of 1,523 life-sentenced prisoners (including 22 women) in Ukraine at the time of the visit.

<sup>47</sup> By comparison, at the time of the CPT's 2016 visit, only three inmates were not subjected to routine handcuffing (out of 62).

<sup>48</sup> After having served five years in cell-type accommodation, prisoners could apply for transfer to this unit (see paragraph 50).

<sup>49</sup> The unit was located on the ground floor of the administration building and, at the time of the visit, was accommodating eight inmates. The remainder of the life-sentenced prisoners continued to be held in the old unit.

48. Material conditions of detention in the old unit remained generally satisfactory. In particular, cells offered sufficient living space<sup>50</sup> and had adequate access to natural light and ventilation. However, prisoners could not see outside their cells, due to cell windows being partially fitted with frosted glass. Further, in the unit's double cells, the in-cell toilets were only partially partitioned.

**The CPT recommends that steps be taken in the old unit for life-sentenced prisoners at Colony No. 100 to review the design of the cell windows in order to allow inmates to see outside their cells and to ensure that the in-cell toilets are also fully partitioned in the double cells.**

49. The CPT was very concerned to note that, despite the Committee's long-standing recommendations, for the great majority of life-sentenced prisoners at Colony No. 100 (i.e. those accommodated in the old unit) the regime had not improved. They continued to be locked up in their cells for 23 hours per day (many of them doing in-cell work<sup>51</sup>), their only out-of-cell activity being one hour of outdoor exercise which was taken on a cell-by-cell basis in small (some 13 m<sup>2</sup>) cubicles. As in the past, these prisoners were not allowed to associate with life-sentenced prisoners from other cells.

**The CPT once again calls upon the Ukrainian authorities to develop the regime for life-sentenced prisoners at Colony No. 100, in particular by providing a range of out-of-cell communal activities. The Committee also recommends that steps be taken at this establishment to enlarge exercise yards for life-sentenced prisoners (so as to allow real physical exertion) and to ensure that such prisoners are as a rule allowed to have contact with inmates from other cells (including during outdoor exercise).**

50. According to Section 151-1 of the Criminal Executive Code, after having served at least five years of imprisonment and following an assessment of their individual behaviour and attitude to work, life-sentenced prisoners may be transferred from smaller cell-type premises to multiple-occupancy cells/dormitories in a maximum-security prison, allowing them to participate in group activities (educational, cultural and sports), and further progress to ordinary prisoner accommodation in a maximum-security prison after another five years of imprisonment. In other words, having served ten years of their sentence, life-sentenced prisoners can, in principle, be accommodated together with other prisoners.<sup>52</sup>

Nevertheless, the general rule remains the segregation of life-sentenced prisoners.<sup>53</sup> The CPT must therefore reiterate that the placement of persons sentenced to life imprisonment should be the result of a comprehensive and ongoing risk and needs assessment, and not merely a result of their sentence. In this context, it is difficult to justify all life-sentenced prisoners being required to serve at least the first ten years of their sentence segregated from the rest of inmate population. **The Committee recommends that the Ukrainian authorities review again the legislation with a view to completely abolishing the segregation of persons sentenced to life imprisonment.**<sup>54</sup>

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<sup>50</sup> Cells with double and quadruple occupancy measuring respectively some 8 and 14 m<sup>2</sup> (excluding the toilet area). It should be noted that the latter cells only held up to three inmates.

<sup>51</sup> Making slippers and gift boxes.

<sup>52</sup> In addition to life-sentenced prisoners, maximum-security prisons hold persons serving a determinate prison sentence for extremely serious crimes.

<sup>53</sup> See Section 150 (2) of the Criminal Executive Code.

<sup>54</sup> In so doing, the authorities should be guided, inter alia, by Recommendation Rec (2003) 23 of the Committee of Ministers of the Council of Europe on the management by prison administrations of life sentence and other long-term prisoners.

51. In its previous reports, the CPT has repeatedly expressed misgivings about life-sentenced prisoners being subjected to systematic and permanent CCTV surveillance inside their cells. In the Committee's opinion, such a systematic practice appears to be disproportionate; it severely infringes upon the privacy of prisoners and also renders the whole regime even more oppressive, especially if applied for prolonged periods.<sup>55</sup>

Regrettably, the delegation observed once again during the visit that all the cells of life-sentenced prisoners at Colony No. 100 were under permanent CCTV surveillance. The Committee acknowledges that video-surveillance inside prison cells may be justified in individual cases, for example when a person is considered to be at risk of self-harm or suicide or if there is a concrete suspicion that a prisoner is carrying out activities in the cell which could jeopardise security. However, any decision to impose such surveillance on a particular prisoner should always be based on an individual risk assessment and should be reviewed on a regular basis. **The CPT once again reiterates its recommendation that the Ukrainian authorities review the use of video surveillance inside the cells at Colony No. 100 (and, as appropriate, in other penitentiary establishments), in the light of the above remarks.**<sup>56</sup>

52. The delegation noted that, in the old unit for life-sentenced prisoners at Colony No. 100, there were notices on the cell doors giving a brief account of the crimes committed by the prisoners concerned. In the CPT's view, **this practice should be discontinued as it serves no justifiable purpose and, in addition to being stigmatising, has the effect of damaging staff-prisoner relations.**

53. The Ukrainian legislation still does not offer a realistic prospect of conditional release to prisoners, including those serving a life sentence. Life-sentenced prisoners are entitled to conditional release only after their life sentence has been commuted by Presidential pardon to a fixed-term sentence of no less than 25 years.<sup>57</sup>

In this regard, the CPT received the following information from the Ukrainian authorities: "The Ministry of Justice is developing a draft law in order to bring the legislation in line with the practice of the European Court of Human Rights, in particular, to implement the judgment "*Petukhov v. Ukraine (No. 2)*" (12 March 2019; application no. 41216/13).<sup>58</sup> The draft law proposes to amend the Criminal Code, the Criminal Procedure Code and the Criminal Executive Code, as well as the Law "On Administrative Supervision of Persons Released from Penitentiary Institutions" and implement a mechanism of mitigation of punishment in the form of life imprisonment. The draft law proposes to amend Article 82 of the Criminal Code, which determines the possibility for a person serving a life sentence to replace the unserved part of the sentence with a milder one after the actual serving of at least 10 years of imprisonment. In this case, the penalty of life imprisonment may be replaced by imprisonment for a term of 15 to 20 years." **The CPT would like to receive updated information on this matter.**

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<sup>55</sup> On the other hand, the installation of CCTV cameras may be an important additional means to ensure security in common detention areas (corridors, sports rooms, etc.) and outdoor exercise yards.

<sup>56</sup> See also the judgment of the European Court of Human Rights in the case of *Gorlov and Others v. Russia* (2 July 2019; applications nos. 27057/06, 56443/09, 25147/14).

<sup>57</sup> See Section 87 (2) of the Criminal Code.

<sup>58</sup> In *Petukhov v. Ukraine (No. 2)*, the Court found a violation of Article 3 of the ECHR because the applicant had no prospect of release or possibility of review of his life sentence. The Court also held that Ukraine should reform its system of reviewing whole-life sentences by examining in every case whether continued detention was justified and by enabling whole-life prisoners to foresee what they had to do to be considered for release and under what conditions.

## F. Health care-related issues

54. Given the targeted nature of the visit, the delegation did not carry out a full assessment of the health-care services in the colonies visited. It mainly focused on the role of prison health-care services in preventing ill-treatment and security arrangements during medical procedures.

55. At the outset of the visit, the delegation was informed about measures taken by the Ministry of Justice to improve the quality of health care provided in prisons and ensure better co-ordination with the Ministry of Health in this area. Notably, it was pointed out that, over the preceding two years, the staffing of hospitals and health-care units of the Health-Care Centre<sup>59</sup> of the State Criminal Executive Service had been increased significantly and that considerable investments had been made to upgrade medical equipment.<sup>60</sup>

Further, reference was made to an interdepartmental working group at the Ministry of Health established shortly before the visit, with the objective of “developing and implementing measures to further reform the activities in the field of health care for remand and sentenced prisoners, and [defining] the possibility and scope of transfer of management functions on this issue from the Ministry of Justice to the Ministry of Health of Ukraine”.<sup>61</sup>

The CPT welcomes the efforts made by the Ukrainian authorities towards improving the quality of prison health-care services. Further, **the Committee would like to receive an update on the progress made by the above-mentioned working group, in particular as regards the implementation of the authorities’ long-standing plans for the transfer of responsibility for prison health care from the Ministry of Justice to the Ministry of Health.**

56. In its previous visit reports, the CPT has repeatedly highlighted the important contribution which health-care staff working in penitentiary establishments can make to the prevention of ill-treatment, through a thorough examination of prisoners, methodical recording of injuries and the provision of information to the relevant authorities. The accurate and timely documenting and reporting of such medical evidence would greatly facilitate the investigation of cases of possible ill-treatment and the holding of perpetrators to account, which in turn would act as a strong deterrent against the commission of ill-treatment in the future.<sup>62</sup>

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<sup>59</sup> The Health-Care Centre is a state institution under the Ministry of Justice responsible for the prison health-care services.

<sup>60</sup> Such as digital X-ray fluorography equipment, dental equipment, electrocardiographs, air sterilisers, microscopes, and electric and photo calorimeters.

<sup>61</sup> The first meeting of the working group was scheduled for August 2020.

<sup>62</sup> See also the substantive section of the CPT’s 23<sup>rd</sup> General Report: “Documenting and reporting medical evidence of ill-treatment” CPT/Inf (2013) 29.

57. In this context, the CPT noted that the revised *Procedure for Organising Medical Care for Prisoners* had been approved on 1 July 2020 by a joint order (No. 2256/5/1491) of the Ministers of Justice and Health. The order notably obliges prison health-care staff to medically examine all newly-arrived prisoners on the day of admission and, whenever an inmate displays bodily injuries, to draw up a report containing inter alia: the prisoner's explanations relating to the examination, a comprehensive description of the state of health of the prisoner, a detailed description of the injuries in question (including their size and location) and "assumptions of the medical worker in view of the information provided by the prisoner and medical indicators, as well as justification of their relationship." Further, photographs should be taken of the prisoner's injuries, which are attached to the report, and the prisoner should receive a copy of the report. In addition, the fact that injuries have been found should be immediately communicated in writing to the competent prosecutor and the prison management by health-care staff and should be recorded in the logbook of detection of bodily injuries on newly-arrived prisoners.

These provisions are to be welcomed; if duly implemented, they may substantially contribute to the prevention of ill-treatment.

That said, the CPT considers that **it should be made clear to health-care staff working in prisons that, in addition to medical examinations performed upon admission, the above-described provisions should also apply in the context of injuries sustained by inmates during imprisonment (e.g. following a violent incident in prison).**

58. As regards the recording and reporting of injuries, the observations made by the delegation during the visit suggested that the practice in the colonies visited remained far from satisfactory, despite the Committee's repeated recommendations on this subject. Several prisoners indicated that, after they had been physically ill-treated, access to health-care staff had been delayed until there were no visible traces left or totally denied to them. The delegation's findings gave credence to these allegations. For instance, the delegation noted that hardly any injuries had been recorded by health-care staff at Colony No. 100 in Temnivka since January 2019. It is highly unlikely for an establishment of this size (i.e. some 900 prisoners) not to have any traumatic injuries (be it accidental, self-inflicted or violence-related) for more than a year and a half.

Further, the examination of the medical documentation in the colonies visited also revealed that in those rare cases when injuries were recorded,<sup>63</sup> health-care professionals made no attempts to assess the consistency between the medical findings and any statements made by the inmates concerned as to the origin of the injuries, including when the explanation given by the prisoner seemed to be inconsistent with the type of injury sustained.<sup>64</sup>

Moreover, it appeared that information on injuries was communicated by health-care staff to the prison management, but not to the prosecutor's office (as should be the case).

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<sup>63</sup> It should be noted that the delegation was not in a position to assess the quality of the recording of injuries at Colonies Nos. 77 and 100, due to the extremely low number of injuries recorded by health-care personnel. As regards Colony No. 25, the description of injuries was not always detailed.

<sup>64</sup> Such as in the case of a prisoner at Colony No. 77 in Berdyansk, who had claimed to have sustained a displaced fracture of the lower end of the left radius "as a result of falling".

59. As already mentioned above, the CPT considers that prison health-care services can make a significant contribution to the prevention of ill-treatment, through the systematic and proper recording of injuries and, when appropriate, the provision of information to the relevant authorities. Consequently, the Committee was very concerned to note that this preventive role was far from being fulfilled by the health-care services in the colonies visited. Moreover, in the CPT's view, the above-described inaction of prison health-care staff could, in certain cases, be considered as aiding and abetting the ill-treatment of prisoners.

**The CPT calls upon the Ukrainian authorities to ensure that prisoners are effectively entitled to prompt examinations by health-care professionals (in particular after a violent episode) and that prison health-care staff receive appropriate training and clear instructions on the relevant requirements of the revised Procedure for Organizing Medical Care for Prisoners and the CPT's long-standing recommendations on this subject.<sup>65</sup> The Committee would like to receive an account of the concrete steps taken by the Ukrainian authorities in this regard.**

60. It is also a matter of concern that, in all the colonies visited, the delegation observed the presence of cages or metal partitions in medical rooms, where prisoners were usually placed during medical consultations or interventions (e.g. the administration of injections).

As repeatedly stressed by the CPT in the past, the Committee acknowledges that special security measures might be called for in specific cases; however, the systematic practice of placing prisoners during medical procedures/consultations infringes upon the dignity of the prisoners concerned, prohibits the development of a proper doctor-patient relationship and is possibly detrimental to the establishment of objective medical findings. **The CPT calls upon the Ukrainian authorities to immediately remove cages and barred areas in health-care facilities and put an end to such practices in all prison establishments.**

61. According to the revised Procedure for Organising Medical Care for Prisoners, medical examinations of prisoners should be performed "out of hearing, as well as out of sight of persons who do not belong to medical staff, except when the doctor asks penitentiary staff to be present for security reasons or when a prisoner requests it."

In this regard, the CPT feels obliged to stress that **medical examinations/consultations of prisoners should *always* take place out of the hearing of prison officers, and only within the latter's sight if so requested by the health-care staff.**

62. It appeared that, in total disregard of the above-mentioned legal provision (and repeated recommendations of the CPT), medical examinations/consultations of prisoners at Colonies Nos. 25 and 77 were, as a rule, carried out in the presence of custodial staff.

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<sup>65</sup> See, most recently, CPT/Inf (2018) 41, paragraph 88.

The Committee must reiterate that there can be no justification for prison officers being systematically present during medical examinations. Their presence is detrimental to the establishment of a proper doctor-patient relationship and is usually unnecessary from a security standpoint. Moreover, the presence of penitentiary staff may well deter prisoners from providing accounts of the origins of any injuries they have sustained. **The CPT once again calls upon the Ukrainian authorities to take steps throughout the prison system to ensure that the precept set out in the previous paragraph is fully respected during medical examinations of prisoners.**

Further, the delegation observed that, in all the colonies visited, the personal medical files of inmates were accessible to the “duty prisoners” assigned to the health-care unit. **The CPT recommends that immediate steps be taken to put an end to this state of affairs.**

## **G. Discipline**

63. Section 132 of the Criminal Executive Code, which describes the types and range of possible disciplinary sanctions, provides that sentenced male adults may be subjected to disciplinary solitary confinement for up to 14 days. Further, such prisoners may be placed (by court decision) in disciplinary segregation in a multiple-occupancy “PKT” cell<sup>66</sup> for up to three months. The CPT considers that **it would be preferable to lower the maximum possible period of disciplinary solitary confinement for sentenced prisoners.**<sup>67</sup> **Further, care should be taken to ensure that placement in a PKT cell does not amount to solitary confinement.**

64. The CPT has repeatedly recommended that Section 391 of the Criminal Code, according to which prisoners may be sentenced to an additional term of up to three years of imprisonment for repeated violations of discipline, be abolished.<sup>68</sup> The Committee is therefore very concerned to note that this recommendation remains unimplemented; **it calls upon the Ukrainian authorities to abolish Section 391 of the Criminal Code without further delay.**

65. The delegation noted that there was no excessive resort to disciplinary sanctions at Colonies Nos. 25 and 100 (as regards Colony No. 77, see paragraph 25).

Further, it gained the impression that disciplinary procedures were generally carried out in accordance with the legal framework.<sup>69</sup> However, it appeared that at Colony No. 25 prisoners were not always given a copy of the disciplinary decision (although they were informed verbally of their right to appeal the decision). Further, none of the prisoners interviewed by the delegation at Colonies Nos. 25 and 100 had apparently been informed about their right to have access to a lawyer and to apply for legal aid.

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<sup>66</sup> “Cell-type premises” (*приміщення камерного типу*).

<sup>67</sup> See the 21st General Report of the CPT, paragraph 56 (CPT/Inf (2011) 28).

<sup>68</sup> See paragraph 46 of CPT/Inf (2017) 15 and paragraph 103 of CPT/Inf (2018) 41.

<sup>69</sup> See Section 135 of the Criminal Executive Code.

**The CPT recommends that steps be taken at Colonies Nos. 25 and 100 (and, as appropriate, in other prison establishments in Ukraine) to ensure that prisoners subjected to a disciplinary sanction are systematically given a copy of the decision. Steps should also be taken to ensure that prisoners are informed about their right to have access to a lawyer and to apply for legal aid in the context of disciplinary proceedings.**

66. Material conditions in the disciplinary punishment cells in the colonies visited were generally adequate, with the exception of some cells at Colony No. 77 which only measured about 4.5 m<sup>2</sup> (i.e. approximately 3 m x 1.5 m). **The CPT recommends that any cells measuring less than 6 m<sup>2</sup> (excluding the sanitary annexe) be either enlarged or withdrawn from service and that there be a distance of at least two metres between the opposite walls of each cell in use.**<sup>70</sup>

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<sup>70</sup> See, in this regard, CPT/Inf (2015) 44: "[Living space per prisoner in prison establishments: CPT standards](#)".

**APPENDIX**

**List of the national authorities and non-governmental organisations  
with which the CPT's delegation held consultations**

**A. National authorities**

**Ministry of Justice**

Denys MALIUSKA	Minister
Olena VYSOTSKA	Deputy Minister
Serhiy HRECHANYUK	Acting Head of the Department for the Execution of Criminal Sanctions
Petro TITOVETS	First Deputy Head of the Department for the Execution of Criminal Sanctions
Vyacheslav RUDENKO	Deputy Head of the Department for the Execution of Criminal Sanctions
Volodymyr TROKHYMCHUK	Head of the Department of Penitentiary Inspections
Svitlana ROHOZYANSKA	Deputy Head of the Department of International Law

**State Bureau of Investigation**

Oleksandr BABIKOV	First Deputy Director
Maksym BORCHAKOVSKYI	Head of the Main Investigation Department
Serhii KOSTIN	Acting Head of the Pre-Trial Investigations Department
Yevhenia ZINCHENKO	Head of the International Co-operation Department

**Office of the Prosecutor General**

Gyunduz MAMEDOV	Deputy Prosecutor General
Roman ROMANCHUK	Acting Head of the Department for Supervision over Observance of Laws during the Enforcement of Judicial Decisions in Criminal Proceedings and other Coercive Measures in Places of Deprivation of Liberty

**Office of the Parliament Commissioner for Human Rights (Ombudsperson)**

Lyudmyla DENISOVA                      Ombudsperson

Olena ANDRIYETS                      Head of the NPM Implementation Department

**B.     Non-governmental organisations**

Kharkiv Human Rights Protection Group