Home Office

Country Information and Guidance

Ukraine: Prison conditions

Version 1.0

January 2016

Preface

This document provides country of origin information (COI) and guidance to Home Office decision makers on handling particular types of protection and human rights claims. This includes whether claims are likely to justify the granting of asylum, humanitarian protection or discretionary leave and whether – in the event of a claim being refused – it is likely to be certifiable as 'clearly unfounded' under s94 of the Nationality, Immigration and Asylum Act 2002.

Decision makers must consider claims on an individual basis, taking into account the case specific facts and all relevant evidence, including: the guidance contained with this document; the available COI; any applicable caselaw; and the Home Office casework guidance in relation to relevant policies.

Country Information

The COI within this document has been compiled from a wide range of external information sources (usually) published in English. Consideration has been given to the relevance, reliability, accuracy, objectivity, currency, transparency and traceability of the information and wherever possible attempts have been made to corroborate the information used across independent sources, to ensure accuracy. All sources cited have been referenced in footnotes. It has been researched and presented with reference to the Common EU [European Union] Guidelines for Processing Country of Origin Information (COI), dated April 2008, and the European Asylum Support Office's research guidelines, Country of Origin Information report methodology, dated July 2012.

Feedback

Our goal is to continuously improve the guidance and information we provide. Therefore, if you would like to comment on this document, please e-mail us.

Independent Advisory Group on Country Information

The Independent Advisory Group on Country Information (IAGCI) was set up in March 2009 by the Independent Chief Inspector of Borders and Immigration to make recommendations to him about the content of the Home Office's COI material. The IAGCI welcomes feedback on the Home Office's COI material. It is not the function of the IAGCI to endorse any Home Office material, procedures or policy.

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Information about the IAGCI's work and a list of the COI documents which have been reviewed by the IAGCI can be found on the Independent Chief Inspector's website at http://icinspector.independent.gov.uk/country-information-reviews/

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Guidance

Updated: 12 January 2016

1. Introduction

1.1 Basis of claim

1.1.1 Fear of being imprisoned on return to Ukraine and that prison conditions are so poor as to amount to torture or inhuman or degrading treatment or punishment.

1.2 Other points to note

1.2.1 Unless otherwise stated, the country information and guidance in this document refers to the position with regard to prisons in the government-controlled areas of Ukraine. Decision-makers should seek country information and guidance on prison conditions in other areas of Ukraine on a case-by-case basis in the normal way.

1.2.2 Where a claim falls to be refused, it must be considered for certification under section 94 of the Nationality, Immigration and Asylum Act 2002 as Ukraine is listed as a designated state.

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2. Consideration of Issues

2.1 Is the person's account credible?

2.1.1 For further guidance on assessing credibility, see sections 4 and 5 of the Asylum Instruction on Assessing Credibility and Refugee Status.

2.1.2 Decision-makers must also check if there has been a previous application for a UK visa or another form of leave. Asylum applications matched to visas should be investigated prior to the asylum interview (see the Asylum Instruction on Visa Matches, Asylum Claims from UK Visa Applicants).

2.1.3 Decision-makers should also consider the need to conduct language analysis testing (see the Asylum Instruction on Language Analysis).

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2.2 Is the person reasonably likely to be imprisoned on return?

2.2.1 Decision-makers must establish the likelihood that the person will be imprisoned on return, including if necessary whether the alleged offence constitutes an offence under Ukrainian law, and, if so, is one which is likely to be punishable by a term of imprisonment (see Criminal Code).

2.2.2 If the person is likely to be imprisoned on return, decision-makers must also consider whether the law is discriminatory or being disproportionately applied.

2.2.3 If the decision-maker believes that the person is likely to face imprisonment on return to Ukraine, consideration must be given as to whether Article 1F of the Refugee Convention is applicable.

2.2.4 For futher guidance on the exclusion clauses, discretionary leave and restricted leave, see the Asylum Instruction on Exclusion: Article 1F of the Refugee Convention, the Asylum Instruction on Discretionary Leave and the Asylum Instruction on Restricted Leave.

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2.3 Is the person reasonably likely to face the death penalty on return?

2.3.1 Ukraine abolished the death penalty in February 2000; the last time the death penalty was applied by the Government in Ukraine was in March 1997 (see Death penalty). A person would not therefore face the death penalty if returned to Ukraine.

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2.4 Are prison conditions so severe that prisoners suffer treatment contrary to Article 3 ECHR?

2.4.1 The country guidance case of PS (prison conditions; military service) Ukraine CG [2006] UKAIT 00016 (22 February 2006), which was heard in November 2005, found that prison conditions were likely to breach Article 3. A major factor in reaching that conclusion was the then reports of incidents of torture (paragraphs 88-92 of the determination).

2.4.2 The US Department of State noted in its report covering 2014 that the most common complaints made by prisoners were of cruel, inhuman, and degrading treatment; public humiliation; limited communication with family members and relatives; denial of the right to legal consultation; and denial of the right to submit a complaint on actions of the administration. Prisoners also complained about inadequate medical treatment and precautions. For example, prisoners with contagious tuberculosis were not isolated from other patients. Prisoners also complained about the lack of appropriate living space and poor sanitary conditions (see Torture and mistreatment of prisoners). It was not possible to clarify the number of complaints made in each category, but the US Department of State reported that prisoners could file complaints with the Office of the Parliamentary Ombudsman for Human Rights, which received 1,752 complaints from prisoners during the first nine months of 2014 (see Prisoners' complaints and independent monitoring).

2.4.3 Since the promulgation of PS in 2006 there have been positive developments, particularly with regard to ill-treatment of prisoners. The European Committee for the Prevention of Torture (CPT) reported in April 2015 that 'On the basis of all the information at its disposal, the CPT has reached the conclusion that decisive action is now being taken by the relevant authorities to combat the phenomena of ill-treatment.' This was in relation to a visit made by the CPT to two correctional colonies, numbers 25 and 100. (See Torture and mistreatment of prisoners.)

2.4.4 The April 2015 CPT report also noted that most detainees held in connection with 'anti-terrorism' operations in Kyiv and Kharkiv reported that they had been treated 'correctly' by prison officers, although there were some causes for concern, such as an excessive use of force by SBU [State Security

Service] officers and some detainees had visible injuries (see Torture and mistreatment of prisoners).

2.4.5 The CPT further noted in the report of April 2015 that, although some improvements had been made for life-sentenced prisoners, various recommendations concerning life-sentenced prisoners, which had been made repeatedly following previous visits, had not been implemented; for example, life-sentenced prisoners remained locked in their cells for 23 hours per day and were not allowed contact with other prisoners (see Life-sentenced prisoners).

2.4.6 In July 2015 a new joint Ukraine, Council of Europe and European Union project on further support of penitentiary reform in Ukraine for 2015-2017 was launched. The programme includes, amongst other things, work on applying the rehabilitation approach during the execution of criminal penalties in accordance with European standards and European experience, improvement of procedures and practice of prison inspections and review mechanism of complaints from prisoners (see Prison reform).

2.4.7 In general, prison conditions in Ukraine remain poor (see Living conditions for prisoners) and there are reports of torture and mistreatment in some establishments. However, improvements are being made and conditions are not so systematically inhuman and life-threatening as to meet the high threshold of Article 3 of the ECHR.

2.4.8 Decision-makers should not therefore follow the guidance on prison conditions in PS. Instead, decision-makers must consider each case on its facts, taking into account up-to-date country information. For the factors to be considered and further guidance, see Section 3.4 of the Asylum Instruction on Humanitarian Protection.

2.4.9 For further guidance on assessing risk, see section 6 of the Asylum Instruction on Assessing Credibility and Refugee Status.

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2.5 If refused, is the claim likely to be certifiable as 'clearly unfounded'?

2.5.1 If it is arguable that a person will be imprisoned on return, the claim is unlikely to be certifiable as 'clearly unfounded' under section 94 of the Nationality, Immigration and Asylum Act 2002.

2.5.2 For further guidance on certification, see the Appeals Instruction on Certification of Protection and Human Rights claims under section 94 of the Nationality, Immigration and Asylum Act 2002 (clearly unfounded claims).

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3. Policy summary

3.1.1 Prison conditions in Ukraine are poor, but in general they are not so systematically inhuman and life-threatening as to meet the high threshold of Article 3. Depending on the particular circumstances of the person concerned, prison conditions may reach the Article 3 ECHR threshold in individual cases. Each case needs to be considered on its facts.

3.1.2 If, in an individual case, treatment reaches the Article 3 ECHR threshold for a Refugee Convention reason, a grant of asylum will be appropriate; where treatment reaches the Article 3 ECHR threshold for any other reason, a grant of humanitarian protection (HP) will normally be appropriate.

3.1.3 If it is arguable that a person will be imprisoned on return, the claim is unlikely to be certifiable as 'clearly unfounded' under section 94 of the Nationality, Immigration and Asylum Act 2002.

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4. Law

4.1.1 A copy of the Ukrainian criminal code and other relevant legislation can be accessed on the UNHCR Refworld website at:

http://www.refworld.org/publisher,NATLEGBOD,LEGISLATION,UKR,,,0.html

4.1.2 In September 2013, Law No 435-VII was passed which amended the Criminal Code to improve conditions for those in prisons.[1] See Living conditions for prisoners for further information.

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5. Death penalty

5.1.1 The BBC reported on the abolition of the death penalty in Ukraine on 22 February 2000.[2] The Death Penalty Information Centre listed Ukraine as a country which is 'abolitionist for all crimes.'[3] Hands Off Cain noted that the last application of the death penalty in Ukraine was in March 1997.[4]

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6. Numbers of Prisons and Prisoners

6.1.1 The US State Department's Country Report on Human Rights Practices covering events in 2014 stated that:

'According to the State Penitentiary Service (SPS), there were 92,290 individuals in 174 penal facilities during the first nine months of the year [2014]. Of that number, 1,909 were imprisoned for life; 18,347 were in pretrial detention. Approximately 4,960 were women and 496 were juveniles. Authorities generally held men, women, and juveniles in separate facilities, although there were reports that in some pretrial detention facilities there was no separation of juveniles and adults. Through August [2014] authorities

[1] Interfax-Ukraine. 'Ukrainian parliament passes law on improving prison conditions,' dated 5 September 2013. http://en.interfax.com.ua/news/general/166445.html Date accessed: 25 November 2015

[2] BBC. 'Ukraine abolishes death penalty,' dated 22 February 2000. http://news.bbc.co.uk/1/hi/world/europe/686986.stm Date accessed: 3 December 2015.

[3] Death Penalty Information Centre. 'Abolitionist and retentionist countries,' undated. http://www.deathpenaltyinfo.org/abolitionist-and-retentionist-countries Date accessed: 3 December 2015.

[4] Hands Off Cain. Ukraine, undated. http://www.handsoffcain.info/bancadati/schedastato.php?idcontinente=20&nome=ukraine Date accessed: 3 December 2015.

reported 579 individuals died in custody, including 42 by suicide. Most prisoners had some access to potable water.' [5]

6.1.2 The International Centre for Prison Studies (ICPS) provide the following information about prisons and prisoner numbers in Ukraine as at September 2015:[6]

Prison population total (including pre-trial detainees / remand prisoners)	71 089 at 1.9.2015 (national prison administration - not including prisoners in Crimea and Sebastopol and those areas of Donetsk and Luhansk that are not under the control of the Ukrainian authorities)
Pre-trial detainees / remand prisoners (percentage of prison population)	23.2% (1.9.2015 - prisoners held in pre-trial institutions)
Female prisoners (percentage of prison population)	4.8% (of convicted adults in prison colonies, 1.9.2015)
Juveniles / minors / young prisoners incl. definition (percentage of prison population)	0.5% (1.9.2015 - prisoners in young prisoner colonies)
Number of establishments / institutions	148 (2015 - 29 pre-trial institutions, 113 colonies for adults, 6 colonies for juveniles.)
Official capacity of prison system	122 184 (1.1.2013)

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7. Living conditions for prisoners

7.1.1 Little or no up-to-date, reliable information relating specifically to certain groups of detainees, such as women and juveniles or those who are sick or

[5] US State Department. 'Country Reports on Human Rights Practices for 2014;' Ukraine. Section 1 Prison and Detention Center Conditions. Dated 26 June 2015 http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dlid=236588 Date accessed: 24 November 2015

[6] International Centre for Prison Studies (ICPS). Ukraine, undated. http://www.prisonstudies.org/country/ukraine Date accessed: 25 November 2015

disabled, could be obtained. Please see the country information and guidance on Ukraine: Military service for information about imprisonment of draft evaders.

7.1.2 The US State Department's Country Report on Human Rights Practices covering events in 2014 stated that prison and detention center conditions remained poor, did not meet international standards, and at times posed a serious threat to the life and health of prisoners. Poor sanitation, abuse, and the lack of adequate light, food, and medical care were persistent problems.[7]

7.1.3 According to a June 2015 information pack produced by the British Embassy Ukraine: 'In Ukraine there are correctional facilities with different levels of security and living conditions. The living conditions depend on the crime and the provision of the law under which the individual was sentenced.

'Many of the remand buildings are very old and not equipped with adequate sanitary facilities, ventilation or exercise yards. The most common complaints received by the local social research institutes about the living conditions are lack of light and inadequate ventilation, inability to take a shower and lack of adequate food. Overcrowding is a problem in Ukrainian prisons....

'A social and psychological service has been established in prisons in order to promote prisoners' adaptation to prison life and subsequent social reintegration. All institutions for sentenced prisoners are reported to have "special psychological treatment and emotional relaxation centres".

'Prisoners who are serving a sentence in prison conditions because their crime was very serious or their behaviour in a correction facility was considered unacceptable are unlocked for only one hour a day.'[8]

7.1.4 In an email of 17 November 2015 from the Foreign and Commonwealth Office to the Home Office, it was stated that:

'The conditions in Ukrainian prisons are still very poor, however some improvements have been made in recent years (e.g. libraries in prisons, a bit better health care services, sanitary facilities, etc.). Some civilian prisons tend to have sections for certain types of convicts: e.g. former judges, militia or military servicemen who committed serious crimes. Those military servicemen who commit disciplinary violations are usually sent to military guardrooms or disciplinary battalions for some time.' [9]

7.1.5 The US State Department's Human Rights Practices Report covering events in 2014 stated: 'Conditions in police temporary detention facilities and SPS

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[7] US State Department. 'Country Reports on Human Rights Practices for 2014;' Ukraine. Section 1 Prison and Detention Center Conditions. Dated 26 June 2015 http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dlid=236588 Date accessed: 25 November 2015

[8] British Embassy Ukraine. Information Pack for British Prisoners in Ukraine, dated 1 June 2015. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/433584/Ukraine_-_Prisoner_Pack.pdf Date accessed: 25 November 2015

[9] The Foreign and Commonwealth Office. Email to the Home Office, dated 17 November 2015. Copy available on request.

[State Penitentiary Service] pretrial detention facilities were harsher than in low- and medium-security prisons. The former often lacked adequate sanitation and medical facilities.

'In the April 29 [2014] CPT report on its October 2013 visit, monitors stated they found "some cause for optimism" with regard to improvements in correction facilities in the Dnipropetrovsk, Kharkiv, and Vinnytsya regions, where there were reports of severe police mistreatment… The report also expressed concern detainees did not receive access to medical treatment and attorneys.

'Administration: Authorities kept records of prisoners in detention, but they were occasionally incomplete. Human rights groups reported instances in which authorities confiscated prisoners' passports and failed to return them upon their release. Alternative sentencing, such as fines or community service, was available for some nonviolent offenders…

'Officials generally allowed prisoners to receive visitors and observe religious services, although those in disciplinary cells could not receive visitors. Prisoner rights groups noted some families had to pay bribes to obtain permission for prison visits to which they are entitled by law.' [10]

7.1.6 In September 2013, Law No 435-VII was passed which amended the Criminal Code to improve conditions for those in prisons.[11] According to a report by Interfax-Ukraine: 'Under this law, convicts held in rehabilitation centers are allowed to wear civilian clothes, and use mobile phones and related accessories.

'The law also foresees the possibility of the submission by a criminal executive inspectorate to commute the sentence of a convict sentenced to hard labor, replacing time not served with a fine. It also regulates the procedure for granting long meetings to prisoners, with convicts being granted the right to have an extraordinary long meeting for the registration of a marriage…

'The law also stipulates that prisoners who are held in penal colonies with a minimum level of security and facilitated detention conditions, the social rehabilitation centers of the penal colonies with a minimum level of security and general detention conditions, in penal colonies with a medium level of security and in juvenile correctional facilities, may be granted short-term visits outside the colony within Ukrainian territory for a period of no more

[10] US State Department. 'Country Reports on Human Rights Practices for 2014;' Ukraine, released 26 June 2015 http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper Date accessed: 23 November 2015

[11] Interfax-Ukraine. 'Ukrainian parliament passes law on improving prison conditions,' dated 5 September 2013. http://en.interfax.com.ua/news/general/166445.html Date accessed: 25 November 2015

than seven days, not including the time required for a round-trip (no more than three days), due to exceptional personal circumstances.' [12]

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7.2 Women and juveniles

7.2.1 The US Department of State noted that men, women and juveniles were generally held in separate facilities, although there were reports that in some pretrial detention facilities there was no separation of juveniles and adults.[13]

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7.3 Life-sentenced prisoners

7.3.1 The Council of Europe's Committee for the Prevention of Torture (CPT) reported as follows on their visit to the Ukraine in September 2014: 'During its visit to Colony No. 100, the delegation also reviewed the regime and security measures applied to prisoners sentenced to life imprisonment. At the time of the visit, a total of 68 such prisoners were being held there in a separate unit (usually in double or four-bed cells).

'The CPT welcomes the fact that, following recent legislative changes, life-sentenced prisoners now benefit from the same visit entitlements as ordinary sentenced prisoners, namely one short-term visit per month and one long-term visit once every three months. It is also noteworthy that life-sentenced prisoners were offered remunerated work (sewing garment bags) in their cells.

'That said, from the information gathered during the visit, it transpired that most of the specific recommendations repeatedly made by the Committee after previous visits to the country regarding the situation of life-sentenced prisoners had not been implemented. In particular, it remained the case that the prisoners concerned were:

- usually locked up in their cells for 23 hours per day;
- not allowed to have contact with life-sentenced prisoners from other cells, let alone with other sentenced prisoners;
- systematically handcuffed during all movement outside their cells;
- kept under constant video surveillance (CCTV) in their cells.'[14]

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[12] Jurist. 'Ukraine president signs law to improve prison conditions,' dated 28 September 2013. http://jurist.org/paperchase/2013/09/ukraine-president-signs-law-to-improve-prison-conditions.php Date accessed: 25 November 2015

[13] US Department of State. 'Country Reports on Human Rights Practices for 2014;' Ukraine (Section 1.c. Prison and detention centre conditions), published 26 June 2015. http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper Date accessed: 16 December 2015.

[14] Council of Europe. Committee for the Prevention of Torture. '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 9 to 16 September 2014,' published 29 April 2015, CPT/Inf (2015) 21. http://www.refworld.org/docid/5542096b4.html Date accessed: 16 December 2015.

7.3.2 In September 2013, Law No 435-VII was passed which amended the Criminal Code to improve conditions for those in prisons. Interfax-Ukraine reported: '… the law foresees the transfer of those sentenced to life imprisonment, who have served 20 years of punishment in prison cells, to common residential buildings in maximum security prisons and keeping them among other prisoners.'[15]

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7.4 Healthcare

7.4.1 Medecins Sans Frontieres (MSF) (Doctors Without Borders) reported as follows in June 2013: 'The country's prisons are a hotbed for the disease [TB], with prevalence rates more than ten times higher than in the rest of society. In the Donetsk region in eastern Ukraine, MSF now provides treatment and support to over 140 inmates and ex-inmates suffering from multidrug-resistant (MDR) TB.'[16]

7.4.2 MSF further stated: 'Inside the prisons, overcrowding, poor ventilation, and frequent prison transfers exacerbate the spread of the disease. Weak nutrition from poor diets also makes prisoners more susceptible to falling ill. Almost half of the patients hospitalised in Colony 3 are suffering from drug resistant forms of the disease… Many prisoners come from difficult socio-economic backgrounds where the burden of disease is already high.' [17]

7.4.3 On 8 April 2015 the Daily Mail (Online) reported on the prison conditions in Ukraine, stating: 'Medical supplies have also been in short supply, threatening the lives of nearly 400 prisoners who need treatment. The principal scourge: tuberculosis [TB]. The disease spreads prodigiously in jails and develops into hard-to-treat forms unless properly addressed.

'"TB is so common within the penitentiary system that many inmates don't see it as a deadly disease - they see catching TB as a normal part of life in prison," Doctors Without Borders said in a recent report. "Some even tell us they don't care if they die or not."'[18]

7.4.4 In October 2015, the de facto authorities in Donetsk told Médecins Sans Frontières to immediately stop its activities in Donetsk. MSF noted: 'Some 150 patients in the penitentiary system who live with drug-resistant tuberculosis (TB) will now no longer have access to the treatment that MSF has been providing since 2011.

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[15] Interfax-Ukraine. 'Ukrainian parliament passes law on improving prison conditions,' dated 5 September 2013. http://en.interfax.com.ua/news/general/166445.html Date accessed: 25 November 2015

[16] Medecins Sans Frontieres (Doctors Without Borders). Ukraine: Curbing the MDR-TB epidemic in prisons, dated 3 June 2013. http://www.msf.org.uk/article/ukraine-curbing-mdr-tb-epidemic-prisons Date accessed: 10 April 2015.

[17] Medecins Sans Frontieres (Doctors Without Borders). Ukraine: Curbing the MDR-TB epidemic in prisons, dated 3 June 2013. http://www.msf.org.uk/article/ukraine-curbing-mdr-tb-epidemic-prisons Date accessed: 10 April 2015.

[18] Daily Mail (Online). 'Misery, tuberculosis in prisons of war-torn east Ukraine,' dated 8 April 2015 http://www.dailymail.co.uk/wires/ap/article-3030393/Misery-tuberculosis-prisons-war-torn-east-Ukraine.html Date accessed: 10 April 2015.

'"There is a huge risk that the health of these patients will deteriorate soon," said Janssens [Bart Janssens, MSF Director of Opertions]. "Any interruption of treatment of patients with drug-resistant TB is known to reduce dramatically the prospects of cure, even if they restart treatment later. Prisons in Ukraine are known to have very high numbers of drug resistant TB, and if these treatments are interrupted, this will lead to a major risk to public health."' [19]

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7.5 Prisoners' complaints and independent monitoring

7.5.1 The US Department of State's Country Reports on Human Rights Practices for 2014 stated: 'There was no prison ombudsman. Prisoners could file complaints with the Office of the Parliamentary Ombudsman for Human Rights, which conducted prison monitoring. During the first nine months of the year, the ombudsman's office received 1,752 complaints from prisoners…

'Prisoners and detainees may file complaints about conditions in custody with the parliamentary ombudsman for human rights, but human rights organizations noted prison officials continued to censor or discourage complaints and penalized and abused inmates who filed them. Rights groups reported legal norms did not always ensure confidentiality of complaints.' [20] The report noted that prison officials penalized prisoners for talking to CPT monitors. It further stated: 'The government generally permitted independent monitoring of prisons and detention centers by international and local human rights groups, including the CPT.'[21]

7.5.2 See the sub-section on Prison reform for further information on prison inspections and prisoners' complaints.

7.5.3 See the section on Torture and mistreatment of prisoners for further information on protection of prisoners who make complaints.

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7.6 Prison reform

7.6.1 On 3 July 2015 a new joint Ukraine, Council of Europe and the European Union project on further support of penitentiary reform in Ukraine for 2015-2017 was launched. The purpose of the project is to implement the activities of bodies and institutions involved in the management of the State Penitentiary Service of Ukraine, the mechanisms of applying the

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[19] Médecins Sans Frontières (Doctors Without Borders). 'MSF Forced to End Activities in Donetsk, Leaving Thousands Without Health Care,' dated 23 October 2015. http://www.doctorswithoutborders.org/article/msf-forced-end-activities-donetsk-leaving-thousands-without-health-care Date accessed: 25 November 2015

[20] US Department of State. 'Country Reports on Human Rights Practices for 2014;' Ukraine, published 26 June 2015. http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper Date accessed: 16 December 2015

[21] US Department of State. 'Country Reports on Human Rights Practices for 2014;' Ukraine, published 26 June 2015. http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper Date accessed: 16 December 2015

rehabilitation approach during the execution of criminal penalties in accordance with European standards and European experience, improvement of procedures and practice of prison inspections and review mechanism of complaints from prisoners. To ensure proper cooperation of the State Penitentiary Service of Ukraine with the Office of the Council of Europe on implementation of the tasks of the Project of CoE a Memorandum of Understanding between the State Penitentiary Service of Ukraine and the Council of Europe Office was signed on 20 July 2015.[22]

7.6.2 The FINANCIAL, a Georgian news website, reported in October 2015 that: 'A new framework for internal prison inspections was presented to senior officials of the State Penitentiary Service of Ukraine and the Heads and Deputies of pilot prisons in Kyiv, as part of a joint EU-Council of Europe prison reform project in Ukraine.

'A feasible European model was proposed. Initial examples on inspection standards offered and their development tested in a group. The next steps were agreed, including the establishment of a Working Group on internal prison inspections and prisoners' complainants involving the Heads of pilot prisons, senior managers on inspection issues and external partners.

'The same project also recently held a workshop on general prison management issues and the importance of rehabilitative approach, aiming to emphasise the importance of prison leadership styles, managing transition and concepts of prison as a tool for rehabilitation, according to EU Neighbourhood Info.

'These activities are undertaken in the framework of the joint EU-CoE project for "Further Support for Penitentiary Reform in Ukraine".'[23]

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8. Torture and mistreatment of prisoners

8.1.1 The US Department of State reported as follows in its Country Reports for Human Rights Practices for 2014, published in June 2015:

'The most common complaints were cruel, inhuman, and degrading treatment; public humiliation; limited communication with family members and relatives; denial of the right to legal consultation; and denial of the right to submit a complaint on actions of the administration. Prisoners also complained about inadequate medical treatment and precautions. For example, prisoners with contagious tuberculosis were not isolated from other

[22] Council of Europe. Additional Response of the Ukrainian Government to the request for information in paragraph 44 of the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Ukraine from 9 to 16 September 2014. 18 November 2015. http://www.cpt.coe.int/documents/ukr/2015-24-inf-add1-eng.pdf Date accessed: 25 November 2015.
[23] The FINANCIAL. 'Ukraine: Prison reform in focus of joint EU-CoE project,' dated 6 October 2015. http://finchannel.com/index.php/world/ukraine/item/50067-ukraine-prison-reform-in-focus-of-joint-eu-coe-project Date accessed: 25 November 2015.

patients. Prisoners also complained about the lack of appropriate living space and poor sanitary conditions....

'Improvements: The CPT's [The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment] April 29 [2014] report noted marginal systemic improvement in the treatment of prisoners, compared with its previous visits. It also observed marked improvement of the treatment of prisoners at Correctional Colony No. 81 in the Vinnytsya region and noted the country's free legal aid system, which helped to combat mistreatment of prisoners by law enforcement officials.'[24]

8.1.2 The US Department of State's Country Report covering 2014 further noted:

'On April 29 [2014], monitors from the Council of Europe's Committee for the Prevention of Torture (CPT) released a report based on site visits to facilities operated by the Ministry of Internal Affairs and to temporary detention facilities in Kyiv, Crimea, Dnipropetrovsk, Odesa, and Vinnytsya. The CPT noted some reduction in both the severity and frequency of mistreatment of persons in custody. Nevertheless, the report stated many detainees held by the Ministry of Internal Affairs alleged officers continued to mistreat them physically, including with punches, kicks, and truncheon blows. In some cases the alleged mistreatment was of such severity it could be considered torture. In a number of instances, monitors found medical evidence consistent with the allegations.'[25]

8.1.3 The report by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), published in April 2015 following a visit to Ukraine in September 2014, described the situation of persons who had been detained in Kyiv and Kharkiv in the context of ongoing 'anti-terrorism' operations, stating:

'…The majority of persons detained in the context of "anti-terrorism" operations who were interviewed by the delegation stated that they had been treated correctly whilst in the hands of law enforcement officials. Further, the delegation received no allegations of ill-treatment by custodial staff at the detention facility of the State Security Service (SBU) in Kyiv and the pre-trial establishments (SIZOs) in Kyiv and Kharkiv.

'That said, some allegations were received of excessive use of force by SBU officers at the time of apprehension and/or of illtreatment during subsequent questioning by SBU officers. In addition, a few allegations were heard of excessive use of force by soldiers at the time of apprehension. In a few cases, the persons concerned displayed visible injuries which were appeared to be [sic] consistent with the allegations made….

[24] US Department of State. 'Country Reports on Human Rights Practices for 2014;' Ukraine, published 25 June 2015. http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper Date accessed: 3 December 2015.
[25] US Department of State. 'Country Reports on Human Rights Practices for 2014;' Ukraine, published 25 June 2015. http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper Date accessed: 3 December 2015.

'Further, a number of persons interviewed by the delegation claimed that they were hooded (with a bag) for many hours during transportation from the place of apprehension to Kyiv…

'The CPT recalls that the fundamental safeguards against ill-treatment (namely the right to have one's detention notified to a relative or another person and the rights of access to a lawyer and a doctor) should always be granted as from the very outset of the de facto deprivation of liberty. From the interviews with detained persons it transpired that the implementation in practice of the above-mentioned safeguards did not pose major problems once the persons concerned had been transferred to an SBU establishment.

'However, it is a matter of serious concern that the delegation received a number of consistent allegations from detained persons that they had been held de facto in incommunicado detention on the premises of a military establishment for several days (and, in a few cases, for more than ten days), prior to their transfer to the SBU detention facility…

'As far as the delegation could ascertain, all persons detained in the context of "antiterrorism" operations who were met by the delegation had been subjected to medical screening upon admission to either SIZO or the SBU detention facility. According to the medical files, most of the persons concerned had not displayed any visible injuries upon arrival.

'That said, in those cases where injuries had been recorded, the quality of the medical records left something to be desired. In particular, at the Kharkiv SIZO, the description of injuries was rather superficial. Further, at the SBU Detention Facility, custodial officers had allegedly been present during medical examinations.' [26]

8.1.4 The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) also reported on their visit to two correctional colonies in the Kharkiv area, namely Colonies Nos.25 and 100, in order to review the treatment of prisoners. During previous visits, in particular to Colony No. 25, the CPT had heard many allegations of physical ill-treatment and/or torture of prisoners by prison officers. The CPT reported as follows:

'At Colonies Nos. 25 and 100, the delegation once again received a significant number of allegations of severe physical ill-treatment and/or torture of prisoners by prison officers (including senior members of staff). The delegation gained the distinct impression that, in both establishments, physical ill-treatment was used as a tool to maintain internal order. Further, the delegation was struck by the overall climate of fear in both

[26] Council of Europe. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). Report to the Ukrainian Government on the visit to Ukraine, 29 April 2015 CPT/Inf (2015) http://www.cpt.coe.int/documents/ukr/2015-21-inf-eng.pdf Date accessed: 18 December 2015

establishments and the reluctance of prisoners to be interviewed. Many allegations were received that prisoners had been warned by staff not to say anything negative to the delegation. At Colony No. 100, allegations were also received that prisoners had been beaten up by prison officers after they had complained to a prosecutor or a representative of the Parliamentary Commissioner of Human Rights. Moreover, the CPT expressed concern about the frequency of allegations received in both colonies regarding corruption and exploitation of prisoners for economic reasons.

'In its preliminary observations, the delegation called upon the Ukrainian authorities to carry out a prompt, independent, thorough and comprehensive inquiry from the central level into how Colonies Nos. 25 and 100 function (especially as regards the allegations of ill-treatment of prisoners) and to take appropriate measures to ensure that prisoners were not subjected to any retaliation for having spoken with the delegation.'[27]

8.1.5 The CPT report detailed the subsequent action taken by the Ukrainian authorities in response to the concerns raised by the CPT:

'By letters dated 11 and 23 February 2015, the Ukrainian authorities provided detailed information on the measures taken in response to the preliminary observations. In particular, inspections had been carried out of Colonies Nos. 25 and 100 by representatives of the General Prosecutor's Office (with the involvement of the Parliamentary Commissioner of Human Rights and various NGOs) as well as by a joint commission of the Ministry of Justice and the State Penitentiary Service (also with the involvement of several NGOs). The Directors of both colonies had been dismissed and criminal investigations had been initiated regarding two complaints of ill-treatment of prisoners by staff at Colony No. 100. Following a meeting with representatives of the CPT, the Minister of Justice issued a detailed set of instructions to the Directors of all prisons in the country regarding the measures to be taken to prevent ill-treatment and intimidation of prisoners and to improve the procedures for the investigation of allegations of ill-treatment. In addition, the Minister of Justice instructed the State Penitentiary Service to monitor the treatment of prisoners in Colonies Nos. 25 and 100 on a monthly basis (with the involvement of civil society organisations).

'In the visit report, the CPT welcomes the measures taken thus far by the relevant Ukrainian authorities regarding the allegations of ill-treatment and/or intimidation of prisoners in Colonies Nos. 25 and 100. On the basis of all the information at its disposal, the CPT has reached the conclusion that a page is being turned and that decisive action is now being taken by the relevant

[27] Council of Europe. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). Report to the Ukrainian Government on the visit to Ukraine, 29 April 2015 CPT/Inf (2015) http://www.cpt.coe.int/documents/ukr/2015-21-inf-eng.pdf Date accessed: 16 December 2015

authorities to combat the phenomena of ill-treatment and intimidation of prisoners in colonies.' [28]

8.1.6 The CPT report of April 2015 set out the detailed set of instructions which the Ukrainian authorities had issued to Directors of all prisons:

'Further, by letter of 23 February 2015, the Ukrainian authorities informed the CPT that, on 12 February 2015, the Minister of Justice had issued Order No. 178/5 which contains a detailed set of instructions to the Directors of all prisons in the country regarding the measures to be taken to prevent ill-treatment and intimidation of prisoners and to improve the procedures for the investigation of allegations of ill-treatment. The Order inter alia stipulates that:

- it is necessary to take urgent steps to ensure that prisoners could quickly report on cases of ill-treatment, not being afraid of official or unofficial punishment through sanctions or misuse of powers. Persons who complain about ill-treatment or other signs of improper treatment should not be subjected to intimidation or abuse for what they have done;
- the principle that prisoners should be able to file complaints of ill-treatment without fear of retribution could mean that if necessary, in special cases, such prisoners shall have the right to request a transfer to another institution;
- intimidation or the imposition of penalties for communication with the monitoring agencies should be classified as a separate disciplinary violation;
- tools for correspondence should be available to prisoners and envelopes for complaints that allow communication with the relevant authorities without censorship (in particular, with the Prosecution service and the Ombudsman) should be available in several locations in the prison, and their presence should not depend on a specific request;
- meetings between prisoners and members of the monitoring services must take place in conditions that ensure the confidentiality of discussions. Prison staff should not make any attempt to find out the contents of interviews with prisoners;
- prison staff should be obliged to report cases of ill-treatment even if the prisoner has not filed a complaint;
- the professional independence of doctors must be enhanced and the trust of prisoners in doctors must be restored;
- any attempt by prison staff to infringe medical confidentiality shall result in disciplinary punishment.'[29]

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[28] Council of Europe. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). Report to the Ukrainian Government on the visit to Ukraine, 29 April 2015 CPT/Inf (2015) http://www.cpt.coe.int/documents/ukr/2015-21-inf-eng.pdf Date accessed: 23 November 2015

[29] Council of Europe. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). Report to the Ukrainian Government on the visit to Ukraine, 29 April 2015 CPT/Inf (2015). Para 43, page 21-22. http://www.cpt.coe.int/documents/ukr/2015-21-inf-eng.pdf Date accessed: 23 November 2015

8.1.7 See also the sub-section on Prisoners' complaints and independent monitoring for further information on this subject.

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Version Control and Contacts

Contacts

If you have any questions about the guidance and your line manager or senior caseworker cannot help you or you think that the guidance has factual errors then email the Country Policy and Information Team.

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance then you can email the Guidance, Rules and Forms Team.

Clearance

Below is information on when this version of the guidance was cleared:

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