



## **Response**

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

**from 21 to 30 November 2016**

The Ukrainian Government has requested the publication of this response. The CPT's report on the November 2016 visit to Ukraine is set out in document CPT/Inf (2017) 15.

Strasbourg, 27 July 2017

*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.*

**Dear Mr. Gnatovskyy,**

On behalf of the Ministry of Justice I avail myself of this opportunity to convey to You our assurances of the highest consideration.

Primarily allow me to express my sincere congratulations both personally and on behalf of the Ministry of Justice as to Your re-election as a President of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment of Punishment. Your commitment and dedication to the job has promoted lots of new achievements in the sphere of prevention torture and ill-treatment. I wish You to proceed successfully all your intentions and reach the highest goals.

Starting from 2015 and still in the process Ukraine has been carrying out the comprehensive reforms of the police and penitentiary system.

Since the receipt on March 27 2017 of the Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment of Punishment following its latest ad-hoc visit to Ukraine in November 2016, the Ministry of Justice and all relevant Ukrainian authorities have studied and analyzed the practical recommendations and observations noted therein. We are very pleased that many of the improvements as a result of conducting these reforms, including the legislative and practical transformations, have been recognized and reflected in the Report.

Ukrainian authorities are encouraged to proceed the intentions and strategic plans in order to gain crucial changes and transformations in the spheres of providing better conditions for inmates, especially for remand prisoners, preventing torture, ill-treatment and inter-prisoner violence and ensuring appropriate medical support.

Following the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment of Punishment request to provide the information on implementation of the specific recommendations, the Ministry of Justice sends the response of the Government of Ukraine (enclosed).

I would like to close by reaffirming our compliments to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment of Punishment and expressing our readiness to develop our constructive cooperation.

Enclosure: the response of the Government of Ukraine on 29 pages.

Yours sincerely,

**Deputy Minister of Justice  
on the European Integration**

**Sergiy PETUKHOV**

**To Mr. Mykola Gnatovskyy  
The President of the European Committee for the  
Prevention of Torture and Inhuman or  
Degrading Treatment or Punishment  
COUNCIL OF EUROPE  
F – 67075 STRASBOURG CEDEX**

**THE RESPONSE OF THE GOVERNMENT OF UKRAINE**  
**to the Report of the European Committee for the Prevention of Torture and**  
**Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Ukraine on 21-30**  
**November 2016**

In the period of 21-30 November 2016 a delegation of the CPT conducted an ad-hoc visit to Ukraine. On 27 March 2017 the CPT submitted the Report to the Government of Ukraine and requested to provide a response within 3 months on the CPT recommendations.

The Ministry of Justice of Ukraine, as a main authority from the Government of Ukraine in charge for the cooperation with CPT, collected the relevant information from the Ukrainian state agencies with comments to the recommendations which belong to their competence.

The response of the Government of Ukraine provides information from the Ministry of Justice, the National Police, the Prosecutor's General Office and Coordinating Centre for Legal Aid Provision.

The responses to recommendations are provided in the same order as it was mentioned in the CPT Report indicating the authority providing the response.

In certain cases the response to the CPT recommendations will include information about impossibility to execute the recommendation as of June 2017 because of objective reasons with providing the relevant comments.

**General response of the National Police of Ukraine to recommendations and comments contained in Chapter «Persons detained by law enforcement agencies»**

One of the priority areas of the National Police activity is to ensure the rights and freedoms guaranteed by international legal acts ratified by Ukraine, the Constitution and laws of Ukraine, including persons held in temporary holding facilities (hereinafter referred to as ITTs).

In order to introduce recommendations of national and European human rights organizations in terms of implementation of international experience of police activity in the area of observance of human and citizen's rights and freedoms while staying in places of unfreedom, improvement of conditions of holding detained persons and persons remanded in custody, the reformation of ITTs is in the process of improving and development in the National Police.

The new concept of organization for the protection of persons is based on the principle of minimization and optimization of the system of police units which carry out these functions. In particular, when the Law of Ukraine «On National Police» came into force, the elimination of those ITTs where the conditions of detention did not meet European standards (location of such facilities in cellars and basements, absence of individual sleeping places, water supply, sanitary facilities, daylight etc.) was started.

At the date of June 1, 2017, there are 150 ITTs functioning in the country (as of 2015 there were 380 mentioned facilities). Such ITTs are located both in separate buildings and in the units of the police, equipped with centralized water supply and heating, window openings with access to daylight and air, individual sleeping places, bathrooms with running water are available in cells as well. The detained persons are provided with bedding, three-time hot meals, an opportunity to take a shower and make outdoor walks. There are also rooms for appointments and investigative actions.

In order to raise awareness of each person temporarily staying in ITT about his/her rights and obligations, each ITT is provided with information posters concerning rights of persons in the twelve common languages of the world. In addition, each ITT is provided with a sticker on which the rights and responsibilities of the detained person is printed.

During the first quarter of 2017, an experiment was conducted at the territory of Kyiv and Kharkiv region in order to inform victims, witnesses and detainees about their rights. The aim of the experiment was to hand over the reminder cards to abovementioned persons by the police officers.

The analysis of the results and materials of the experiment showed positive dynamics in increasing trust towards police officers and legal awareness of Ukrainian citizens.

Today, the issue concerning introduction of reminder cards handling to victims, witnesses and detained persons throughout the territory of Ukraine is being discussed.

Also, the National Police developed an information subsystem «Custody records», which provides a clear registration of persons held in ITTs, fixation the order of their transfer and all actions against them, which makes it possible to prevent violations of their constitutional rights, as well as to give a prompt response to such facts. At present, in 135 ITTs of the main departments of the National Police (hereinafter referred to as MDNP) a test of the information subsystem «Custody records» is carried out.

In order to introduce recommendations of national and European human rights organizations in terms of implementation of international experience of police activity in the area of observance of human and citizen's rights and freedoms while staying in places of unfreedom, improvement of conditions of holding detained persons and persons remanded in custody, the new concept of modular nutrition of persons held in temporary holding facilities is accepted.

However, we inform that as of 12 June 2017, 47 people were held in the ITTs over the ten-day period of detention. Such facts take place in ITTs within the MDNP of the Volyn and Rivne regions and the city of Kyiv.

In particular, in connection with the absence of vacant places for holding persons remanded in custody within the Lutsk ITT, five persons remanded in custody are located in ITT within the MDNP of the Volyn region. In its turn, 42 persons are holding in ITT within the MDNP of Rivne region and the city of Kyiv, on the basis of court and public prosecutor's office orders as well as order of investigators regarding application of measures to the persons remanded in custody provided for by paragraph «a» part one of Article 19 of the Law of Ukraine «On ensuring the safety of persons taking participation in criminal proceedings».

In order to regulate the activity of the police duty service, as well as to fix all actions with persons who were held (delivered) or invited to the police department, the Instruction concerning organization of the police duty service activity within the National Police of Ukraine was approved by the order of the Ministry of Internal Affairs of May 23, 2017, No. 440. In accordance with the requirements of the mentioned Instruction, police officers are obliged to record in the relevant journals the date and time of person's transportation or his/her arrival to the police department (unit) indicating the surname, the position of the employee to whom the person was transferred or invited, and to whom this person is transferred within the unit (subunit) of the police, as well as to hand over to the detained persons the reminder card concerning his/her rights.

Taking into account recommendations of the CPT it is developed nowadays by the National Police of Ukraine the new draft instructions concerning the work of temporary detention facilities and the organization of the conveying of detained persons and persons remanded in custody. It is regulate the process of staying detained persons in ITTs and their conveying from ITT to pretrial detention centers. For today, abovementioned draft instructions are agreed with interested central executive authorities, after which they will be transferred to the state registration to the Ministry of Justice of Ukraine.

Also, the National Police is carrying out operational and protective measures aimed at preventing the torture of citizens and degrading their dignity while staying in places of unfreedom within the police. To this end, mobile groups have been set up and operated by the National Police in order to ensure that police officers observe constitutional human rights and freedoms while staying in police offices and departments.

In order to prevent violations of the Convention for the Protection of Human Rights and Fundamental Freedoms, the subject «Ensuring human rights and freedoms. Freedom from torture, cruel, inhuman or degrading treatment or punishment. Practice of the European Court of Human Rights» was included to the normative part of scientific plan for initial training of police officers who were taken to police service for the first time.

The normative part of the mentioned plan for advanced training of police officers includes the study of the topic «Human Rights. Rule of Law. Constitutionalism» as well.

In addition, it was organized the systematic study of issues related to the practice of the European Court of Human Rights in cases against Ukraine within the functioning training system which is a component of police training.

The issue concerning prevention of torture and inhuman or degrading treatment or punishment is being discussed controlled.

**General information of the Prosecutor's General Office:**

The issue for ensuring the dignified conditions of detention in facilities of the penal correction system of the State Penitentiary Service of Ukraine and special institutions of the National Police of Ukraine, which is to adhere to the norms of living conditions as well as medical support services provided for by domestic law, their approach to international standards, treatment of prisoners, prevention of cases of ill-treatment of prisoners and effective investigation of information about such actions, is one of the priority directions of the prosecutorial activity.

The facts of violations of the maximum term of stay of persons in the pre-trial detention center of the Main Department of State Police in the city of Kyiv as a result of the detention of persons concerning whom the investigative measures have been applied are indicated in CPT report. Since the application of security measures falls within the competence of the pre-trial investigation bodies, the Kyiv Prosecution Office initiated the practice of transmitting such information to the relevant structural units of the Prosecutor General's Office of Ukraine in order to process it and take necessary measures.

In order to cease the practice of submitting applications concerning ill-treatment by police officers to the interested police authorities, the ITT and the SIZO organized and initiated the process of detection and recording of bodily injuries in detained and imprisoned persons, providing information about these facts to the territorial police departments at the place of detection, and informing the relevant prosecution authorities as well.

The CPT recommended to conduct all medical examinations of detainees and prisoners beyond the scope of audio and visual surveillance of police officers. The access to medical documentation should be confidential. As the National Police of Ukraine decided to reduce the number of medical staff in the ITT, an examination and interview of newly arrived people is carried out by a duty assistant to the head of institution. In all pre-trial detention centers the confidential examination of all prisoners is carried out by medical professionals of these centers. The public prosecutor should be informed concerning bodily injuries in the case of their revealing along with that this information should be recorded. The access to medical documentation should be confidential as well.

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

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

**The response of the Coordinating Centre for Legal Aid Provision:**

To execute requirements of the Law of Ukraine «On free legal aid» (hereinafter – Law on free legal aid) and the Criminal Procedural Code of Ukraine (CPC), starting from 1 January 2013, *centres for providing free secondary legal aid* (hereinafter – regional centres) established in the regions of Ukraine and in Kyiv city, ensure providing free secondary legal aid to persons prescribed by paragraphs 3 - 7 of part 1 of Article 14 of Law on free legal aid, particularly to:

- persons taken under administrative detention or administrative arrest;
- persons who according to provisions of CPC amount to detainees;
- persons taken into custody;

in criminal proceedings regarding which due to CPC provisions a lawyer engages by investigator official, prosecutor, investigative judge or by court to carry out a legal protection by assignment (nomination) or to carry out separate procedural action;

to persons sentenced to deprivation of liberty, restriction of liberty or detention in disciplinary battalion of military servicemen.

Ensuring an early access to free secondary legal aid of persons who according to provisions of CPC amount to detainees and to persons taken under administrative detention or administrative arrest conducts by the regional centres accordingly with the Procedure of informing the centres for providing free secondary legal aid about the cases of apprehension, administrative arrest of taking into custody (hereinafter – Procedure of Informing) adopted by the Ukrainian Government (Cabinet of Ministers of Ukraine) Decree from 28 December 2011 No. 1363 (with amendments).

According to provisions of the mentioned Procedure of Informing, immediately after factual apprehension of person, subject of submission of information (police authorities and other authorities entitled to execute an apprehension) make a notification through mobile or fax connection to the regional centre regarding information about apprehended person.

The regional centre during one hour after registration of such notification appoints a lawyer for providing free secondary legal aid to apprehended person by submitting to a lawyer an appropriate order. Appointed lawyer during one hour from the moment of receiving an order arrives to apprehended person to perform a confidential meeting with such person.

As prescribed by the paragraph 9 of the Procedure of Informing, the refusal of apprehended person to accept the lawyer appointed by the regional centre should be performed by such person in the presence of that lawyer in a form of written application. Copy of such application should be submitted by that lawyer to the relevant regional centre.

In case when a lawyer appointed by the regional centre for providing free secondary legal aid does not gain an access to detained person (suspected person, accused person) the lawyer immediately informs about that situation a relevant regional centre. Following receiving of information from the appointed lawyer the regional centre prepares and sends a letter to territorial police authority of relevant region (district) or to Main Department of the Ministry of Internal Affairs of Ukraine in such region with the requirement to conduct a service verification and, if the fact of violation confirms, to apply appropriate measures of disciplinary affect to perpetrators for such violations.

Also regional centres carry out reconciliation of information about apprehended persons with the subjects of submission the information (police authorities and other authorities entitled to execute an apprehension) and conduct a monitoring of official web-sites of appropriate regional (city) offices of the Ministry of Internal Affairs of Ukraine and territorial police units.

On execution an appropriate order of the Coordinating Centre for Legal Aid Provision, regional centres quarterly provide an information on the cases of violation by competent officials of police authorities of the requirements of CPC of Ukraine and Procedure of Informing and also information on disciplinary measures or disciplinary chastisements applied to perpetrators of such violations.

According to operative information provided by regional centres, in the period of time from 1 January 2013 to 31 May 2017 the number of 338 575 orders were issued to the lawyers for providing free secondary legal aid, specifically:

24 478 orders for providing legal aid to persons to whom administrative detention has been applied;

20 104 orders for providing legal aid to persons to whom administrative arrest has been applied;



81 380 orders for providing legal aid to criminal suspect persons detained by investigation agencies and/or persons taken into custody as a form of preventive measure;

178 053 orders for providing legal aid for legal protection by assignment (nomination);

15 029 orders to participate in conducting separate procedural action;

6 102 orders for providing legal aid to persons sentenced to deprivation of liberty, restriction of liberty or detention in disciplinary battalion of military servicemen.

Thanks to professional work of the lawyers who cooperate with regional centres and provide free secondary legal aid in criminal proceedings based on the issued orders to them from 2013 to May 2017:

have been adopted 2 031 acquittals (verdicts of non-guilty) and/or criminal proceedings were closed due to absence of occurrence of criminal offence or due to absence of elements of criminal offence;

fixed approximately 3 000 denials of applications of prosecutor or investigator concerning applying for suspected or accused persons a preventive measure of taking into custody;

have been adopted 18 794 discharges on probation;

have been adopted more than 21 000 impositions of minimal terms of punishment or impositions of less severe punishment rather than prescribed by criminal law.

Special characteristics of the system for providing free secondary legal aid in Ukraine which promotes prevention and revealing of torture and ill-treatment and brings perpetrators to accountability are, in particular, that the system functions 24 hours a day/7 days a week; in all cases the lawyers are appointed for detained persons regardless of any influence by the law enforcement agencies and judiciary authorities; the lawyers should immediately arrive to detained persons (within an hour, in certain cases – within six hours from the moment of order issuance); all the lawyers pass through systematic qualification improvement courses directed on learning and introduction of the European standards on prevention torture.

According to conditions of contacts all the lawyers engaged by the centres for providing free legal aid should obligatory obey the Quality Standards for Provision of Free Secondary Legal Aid in Criminal Proceedings, approved by the Order of the Ministry of Ukraine of 25.02.2014 No. 386/5 (hereinafter – Quality Standards). Standards are a set of necessary actions to be performed by the lawyer providing free secondary legal aid, stipulated by international regulations and the legislation of Ukraine.

According to the Standard No. 6, if the lawyer finds out that the client has visible signs of bodily injuries or the client complains about intentional bodily injuries, the lawyer shall take immediate steps to ensure prompt provision of medical care for the client, document any bodily injuries, and conduct forensic medical examination. Also the lawyer shall explore the availability of instances of torture of his/her client, and other forms of cruel, inhuman, and degrading treatment by officers of operating units, pre-trial investigation agencies, the penitentiary service and other officials, and shall submit reports on a crime to the prosecutor's office and file an application containing the relevant statement with the investigating judge according to the procedure established by Article 206 of the CPC.

The lawyers bear the accountability for non-compliance with the mentioned above requirements in accordance with the legislation and terms of contract.

Additionally, aiming to prevent and combat torture and ill-treatment, Memorandums of Cooperation were concluded between the Coordinating Centre for Legal Aid Provision and Parliamentary Commissioner for Human Rights on 10 December 2013 and between The National Police of Ukraine and the Ministry of Justice of Ukraine on 12 February 2016. In

frames of mentioned Memorandums, coordination of attempts of the system of provision free legal aid is carried out of mentioned authorities and the National Preventive Mechanism.

To promote more efficient collaboration in frames of the Memorandum of Cooperation between the Coordinating Centre for Legal Aid Provision and Parliamentary Commissioner for Human Rights additions were signed to the Memorandum which expand and deepen the directives of cooperation, specifically:

- ending of practice of apprehending a person without proper registration of his/her status;
- fighting with «pocket» lawyers;
- coordination of efforts to stop the practice of ill-treatment and torture;
- involvement of the National Preventive Mechanism to monitoring the standards of quality of providing the free legal aid.

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

**The response of the Ministry of Justice:**

Part 4 of Article 110 of the Criminal Executive Code (CEC) defines the number and types of visits, provided to prisoners.

The number and types of visits are set for:

prisoners who are in heightened control, are provided with one short visit per month and one long visit per three months;

prisoners who are in station of re-socialization and adaptation, given one short-term visit per month and one long visit per two months;

prisoners who are in the section of social adaptation and rehabilitation are provided with short visits without restrictions and one long visit per month.

In addition, prisoners who are in correctional centers have short visits without restrictions, as long as visit for maximum three days once a month.

Sentenced to life imprisonment are entitled to one short-term visit per month and a long-term visit per two months with close relatives (spouses, parents, children, adopters, adopted, siblings, grandparents, grandchildren). Long-term visits may be available for couples who lived together but are not married provided that they have common minor children.

Part 5 of the article mentioned stipulates that convicts are provided with phone calls (including mobile) while being in stationary health care establishments without limiting their numbers under the administration's control.

The draft law of Ukraine of 06.07.2015 No. 2291 «On Amendments to the Law of Ukraine «On pre-trial detention» (on the implementation of certain standards of the Council of Europe) provides the rights to receive visits of their relatives or other persons at least once a week in the absence of a decision of the investigator or the court exercising criminal proceedings on the prohibition of receiving visitors (except for receiving visits of a lawyer to whom this prohibition is not applied) for the persons taken into custody.

The same draft law provides that persons detained are free to make phone calls to relatives or other persons as well as to enterprises, institutions and organizations, including cell phone calls, in the absence of a decision of the investigator or court exercising the criminal proceedings on their prohibition (except for receiving phone calls and correspondence of a lawyer to whom this prohibition is not applied).

At the date of 24 of December 2017 the Ministry of Justice of Ukraine submitted proposals and remarks to the abovementioned draft law.

Also, the Ministry of Justice of Ukraine has initiated the possibility to allow convicted persons to have online visits with their relatives.

**38. «The CPT calls upon the Ukrainian authorities to attach the highest priority to these plans and to add the SIZOs in Khmelnytskyi and Odesa to the list of establishments to be closed and replaced by new remand prisons. In order to increase the likelihood of success, the Committee invites the authorities to look for other sources of financing for these plans, in addition to the PPP procedure, e.g. from donors such as the Council of Europe Development Bank»**

**The response of the Ministry of Justice:**

On 7th of June, 2017 the Cabinet of Ministers of Ukraine in its Resolution No. 396 approved the procedure for optimization of activity of pre-trial detention centers, penitentiary institutions and enterprises which defines the optimization mechanism of pre-trial detention centers, penitentiary institutions and enterprises in order to save public funds and to reduce the depreciation share in cost of products manufactured at penitentiary enterprises.

To ensure implementation of the resolution of the Cabinet of Ministers of Ukraine of 7<sup>th</sup> of October 2015 No 1066 the Central-Western interregional Department on enforcement of criminal punishments and probation together with Khmelnytsky staff training center of the State Penal Service of Ukraine is conducting the activity on the demarcation of the patch of land of the mentioned center as well as using a part of it for the construction of property complex in order to transfer *Khmelnytsky pre-trial detention center* within the public-private partnership.

*Information concerning the inability to fully implement this recommendation:*

Until now, the South interregional Department on enforcement of criminal punishments and probation had not resolved the issue concerning the allocation of the suitable patch of land for the realization of the investment project on transferring *Odessa penitentiary institution (No.21)* outside the central part of the city of Odessa.

**39. «The old inadequate norm of living space per inmate in SIZOs (2.5 m<sup>2</sup>) was still in force at the time of the visit, complex rules on separation of different categories of remand prisoners continued to result in localised overcrowding in the pre-trial facilities visited, there had been no change to the regime for remand prisoners based on the concept of «isolation» (with no association between cells and nothing even remotely resembling a programme of meaningful out-of-cell activities) and, last but not least, the restrictive provisions on remand prisoners' contact with the outside world (with visits and telephone calls requiring authorisation by the competent investigator, prosecutor or court) continued to be applied. The CPT calls upon the Ukrainian authorities to take decisive steps to revise the legislation and regime for remand prisoners, taking into account the above remarks and the Committee's long-standing recommendations»**

**The response of the Ministry of Justice:**

The draft law of Ukraine from July 06, 2015 No. 2291 «On Amendments to the Law of Ukraine «On pre-trial detention (on the implementation of certain standards of the Council of Europe)» provides that the standard living space in a prison cell for one person taken into custody may not be less than 4 square meters but for a pregnant women or a women with a child is not less than 4.5 square meters.

When calculating the standard living space in a prison cell, the sanitary facilities are not considered. The distance between opposite walls of the cell cannot be less than 2 meters. Prison cells the standard living space of which is less than 6 square meters should not be used.

However, while increasing the standard living space within the pre-trial detention centers up to 4 square meters the occupancy rate in pre-trial detention centers will significantly decrease, and as a result of it almost every pre-trial detention center will not meet with normal standards.

The draft law of Ukraine from June 02, 2015 No. 2979 «On Amendments to the Law of Ukraine «On pre-trial detention» (on improvement of certain provisions) provides for amendments to the Article 8 of the Law of Ukraine «On pre-trial detention» on placement of persons taken into custody in cells taking into account their personal and psychological compatibility and a number of other requirements that facilitate the placement of prisoners is excluded.

The draft law of Ukraine from July 06, 2015 No. 2979 «On Amendments to the Law of Ukraine «On pre-trial detention» (on the implementation of certain standards of the Council of Europe) provides the rights to receive visits of their relatives or other persons at least once a week in the absence of a decision of the investigator or the court exercising criminal proceedings on the prohibition of receiving visitors (except for receiving visits of a lawyer to whom this prohibition is not applied) for the persons taken into custody. The duration of appointment is set from one to four hours depending on the possibility of space using for meetings and the number of persons to whom and with whom visits in the appropriate days are allowed. The decision concerning prohibition of visits must be justified and motivated and may set the range of persons to whom this prohibition is not applied to. The decision determines the duration of the prohibition, which should be as short as possible and may not exceed more than 30 days with the possibility of monthly extension by a separate decision in exceptional cases and with additional substantiation. The prohibition should be necessary and proportionate and may be applied in the interests of national security and public order with the aim of prevention of disturbances or crimes as well as protection of health, rights and freedoms of others. Copies of decisions indicating the appeal procedure shall be issued to a person who was taken into custody within two working days from the date of their adoption.

An absolute prohibition to receive visits of relatives or other persons is allowed in exceptional cases provided that they comply with specified requirements but cannot last more than 30 days with the possibility of one-time extension of this term by a separate decision for the same term with additional substantiation.

Amendments to the Rules of the Internal Rules for Pre-trial Detention Centers of the State Criminal-Executive Service of Ukraine provide for the possibility to attend a gym, and if possible, to change the frequency of walks by dividing it into two parts. Minors are provided with the possibility to watch TV shows, attend a gym and get psychological and educational assistance.

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

**The response of the Ministry of Justice:**

In accordance with Article 1511 of the CEC of Ukraine, the change of holding conditions for lifers is carried out in accordance with the procedure established by this code, depending on the behavior of the sentenced person and the attitude to work, if any, and the

training conditions of serving a sentence vary within one colony or by transfer to another colony. Male lifers can be transferred from the rooms of the cell type, in which two persons are kept, to the multi-seat cells type premises of the colony with highest level of security with permission to participate in educational, cultural and sporting group events - after the actual serving of not less than five years of the sentence in such premises; From the multi-seat cells to the ordinary living quarters of the colony of the highest level of security - after the actual serving in such premises of not less than five years of sentence.

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

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

**42.** «The CPT wishes to stress once again that it supports, in principle, the clear policy trend that can be observed in Europe, favouring prison health-care services being placed, to a great extent or entirely, under the responsibility of the Ministry of Health. In any event, the Committee is convinced that a greater participation of the Ministry of Health in this area (including as regards recruitment of health-care staff, their in-service training, evaluation of clinical practice, certification and inspection) will help to ensure optimum health care for prisoners, as well as implementation of the general principle of the equivalence of health care in prison with that in the wider community. **The CPT reiterates its recommendation that the Ukrainian authorities review the provision of prison health care, taking into consideration the above remarks»**

#### **The response of the Ministry of Justice:**

Despite the work done to complete the medical staff of penitentiary institutions (placement of advertisements, interviews with medical staff, etc.), the medical staff remains not fully staffed by doctors and middle medical personnel, the main reason for the shortage of medical personnel is low wages, difficult work conditions and lack of the job prestige.

Medical equipment in penitentiary institutions is used for a long time and physically and morally outdated. Since 2011, funds for the purchase of medical equipment have not been allocated. Financing is about 30% of the need specified in the Budget Request.

The treatment of prisoners in an infectious form of tuberculosis is carried out in accordance with the Procedure for the provision of medical care to tuberculosis patients sentenced or detained in penitentiary institutions approved by the Resolution of the Cabinet of Ministers of Ukraine of 25 June, 2014 No. 205.

In the Oleksiivsky Colony (No.25) the premises of the medical unit do not require major repairs. From the beginning of 2017 cosmetic repairs were carried out. Planned capital and cosmetic repairs are carried out in the premises of medical parts of other institutions. At the same time, medical equipment located in medical units and medical bodies of institutions is mostly obsolete (recent delivery of new medical equipment was in 2011), but is in working condition, and undergoes metrological calibration according to the specified terms (sterilizers, thermostats, X-ray equipment, laboratory equipment, etc.).

Medications and products of medical appointment are received centrally from the Department of Provision of the activity of the State Criminal Enforcement Service of Ukraine and purchased for budget funds exclusively under the State Register of Medicinal Products of Ukraine. Medical anti-TB drugs of the second line for the treatment of patients with multiple drug resistance (MDR-TB) are obtained by medical institutions centrally, according to the distribution from the Department of Provision of activity of the State Criminal-Enforcement Service of Ukraine. Currently, there are no supply interruptions of medicines of the second line.

As of 05.25.2017, the medical unit of the Kyiv SIZO is fully equipped with anti-TB medicines, including the second line against MRT-TB.

*The information on the impossibility to fully comply with this recommendation:*

On average, every medical part of the penitentiary institution has 4,5 posts of doctors in the state (the head of the medical unit, the therapist, the psychiatrist, the dentist, 0.5 of radiologist position) and 4,5 positions of the average medical staff (3 Paramedics, 1 laboratory assistant, 0.5 of X-ray laboratory worker position). The scope of daily medical care includes: an outpatient medical appointment in a medical unit, an outpatient doctor's appointment at separate units, the management of inpatients, the maintenance of medical records, the compilation of references on the control, the drawing up of reports, provision of excerpts from medical cards of convicts, etc. In addition, visits to patients with healthcare facilities in the area of counseling and examination, incurring duty over the institution or medical unit according to schedule. The volumes of daily work of the average medical personnel include: the implementation of medical appointments during outpatient appointments, the implementation of medical appointments at separate sections outside the medical unit, observation of departments of the social and psychological service for the purpose of checking the sanitary condition and the identification of sick prisoners, the medical appointments for inpatients, the administration of pre-medical reception, the maintenance of medical records, the preparation of reports, anti-epidemic measures in the offices and rooms of the medical unit, etc. In addition, visits to patients with health care facilities for consultations and examinations, scheduling of duty on a medical unit, and the accompaniment of sick prisoners to the psychiatric hospital at the Vilniansky Penitentiary Colony (No. 20).

Taking into account the absence of staffing posts in the staffing schedules, which is foreseen in the Ministry of Healthcare institutions (medical registrar, hostess sisters, etc.), secondary medical staff has to do the work, not related to the medical care provision. That is, unlike the classical doctor's activity and junior medical personnel of the Ministry of Healthcare (which is engaged only in the medical care provision), the staff of the medical unit during the day combines work in different directions: outpatient clinics with the provision of medical care outside the medical unit, stationery, sanitary, accompanying when exporting convicts to territorial health care institutions, etc.

Provided in paragraph 12 of Section 5 of Chapter II of the Order of the Ministry of Justice and the Ministry of Healthcare of Ukraine from 15th August, 2014, No. 13948/5/772 the provision for round-the-clock medical officer duty in the hospital of the medical unit leads to the fact that in the reality 1-2 doctors and 1-2 assistant medical assistants are providing

medical care daily. It is impossible to capture the daily work with such resources. In addition, the staff of the medical units does not have positions of junior staff (nurses).

Taking into account the abovementioned, the measure requires changes to the regulatory acts, first of all in organizational and staff orders, which determine the structure and number of personnel of medical units of institutions.

**The response of the Prosecutor's General Office:**

On 10 of October 2016 the Prosecutor's General Office of Ukraine initiated the issue of withdrawal of prisoners medical care system from the jurisdiction of the State Criminal-Enforcement Service of Ukraine and the Ministry of Justice of Ukraine and transfer of these powers to the Ministry of Health of Ukraine.

The reason is due to the fact of dependence of health workers on the heads of institutions, and therefore doubts about the timeliness, impartiality and effectiveness of the provision of such medical care exist.

On 2 March 2017 the Prosecutor's General Office of Ukraine initiated the adoption of a Resolution of Government to transfer the functions of provision of medical care to patients in the institutions of the State Criminal-Enforcement Service of Ukraine from the Ministry of Justice to the Ministry of Health.

As a result of a series of interagency meetings, a decision was made to apply a set of measures to ensure further reform of the medical services of the State Criminal-Enforcement Service of Ukraine with the planned transfer of the functions of provision of medical care to detainees and sentenced persons from the Ministry of Justice to the Ministry of Health of Ukraine.

Also, during the current year, prosecutor's offices with the involvement of specialists from the institutions of the Ministry of Health of Ukraine, State Service of Ukraine on medicines and Drug Control, representatives of public human rights organizations, conducted inspections on compliance of medical care for sentenced persons in colonies and medical institutions of State Criminal-Enforcement Service of Ukraine with the legislation of Ukraine.

The results of the inspections showed that the activity of the bodies and institutions of the criminal-executive service on the provision of medical care was inadequate and ineffective without the proper execution by the administration of bodies and institutions determined by law of the necessary medical requirements for the health protection of sentenced persons.

To eliminate the revealed violations, the prosecutors issued 140 response documents, according to the results of their consideration 95 servicemen were brought to disciplinary responsibility, 23 criminal proceedings were initiated on the facts of possible misconduct of professional duties by medical workers.

The Ministry of Justice of Ukraine prepared and registered amendments to the departmental regulations of the procedure for providing medical assistance to detained and sentenced persons, as well as the possibility of a timely decision on the release of the sentenced person from serving a sentence due to illness.

In addition, changes have been made to the Ministry of Justice health care management structure and also the sector of organization of the control for medicines and medical products has been established.

**43. «The CPT calls upon the Ukrainian authorities to take urgent steps to increase both custodial staff levels and presence at the establishments visited (and, as applicable, in other penitentiary establishments) in order to ensure that there is an adequate presence of staff at all times; for this, a recruitment strategy should be developed based on proper funding and enhanced conditions of service, including competitive salaries. Further, the Committee recommends that efforts be stepped up to fill all the vacant posts, especially as regards custodial staff»**

**The response of the Ministry of Justice:**

As of 01.06.2017 the absence of the penitentiary personnel is 5265 positions, or 14% from the overall staff number - 37 586.

To increase salaries, social security and motivation of prison staff and management of the bodies and institutions of the State Criminal Enforcement Service, the Ministry of Justice prepared propositions on increasing the salaries of this category of staff which were supported by the Government.

The Resolution of the Cabinet of Ministers of Ukraine of 28 December 2016 No. 1036 amends the Resolution of the Cabinet of Ministers of Ukraine of 07 November 2007 No. 1294 «On arrangement of structure and conditions of financial support of military personnel, officers and management and certain other persons», so that the salaries of prison staff and management of the bodies and institutions of the State Criminal Enforcement Service of Ukraine increased in 1,7-2 times of 1 January 2017 that will improve their material and social level.

In addition, the Ministry of Justice in cooperation with project office under the Ministry of Justice developed Draft Law of Ukraine «On the penitentiary system», which provides a significant increase of social security of penitentiary institutions and pre-trial detention centers staff, in particular in terms of financial, material and housing provision.

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

**The response of the Ministry of Justice:**

The order of the Ministry of Justice from 17 of March, 2015, No. 21/5 «On Approval of the Guidelines for the Provision of the Regime, Protection and Supervision of Persons Maintained at the pretrial detention centers of the State Criminal Enforcement Service of Ukraine» provides a 24-hour and 12- hour service schedules.

According to the Instruction on the organization of supervision of sentenced serving sentences in penitentiary institutions, approved by the order of the Ministry of Justice from 22 April, 2016, No. 30, the regular services and operational groups in penitentiary Colony No. 25 and penitentiary Colony No.100 is organized in 24-hour schedule.

The lack of personnel on 01.06.2017 in institutions is:

- Oleksiivska Colony (No.25): 22 positions or 8% from scheduled staff;
- Temnivska Colony (No.100): 21 position or 7% from scheduled staff;
- Kharkivska Colony (No.27): 72 positions or 16% from scheduled staff;
- Odesa Colony (No.21): 42 positions or 14% from scheduled staff;
- Kyiv SIZO: 84,5 positions or 16% from scheduled staff;



- Khmelnytsky SIZO: 33 positions or 16% from scheduled staff.

If necessary, heads of the Inter-Regional Offices of Execution of Punishments and Probation on the Submission of heads of Execution Offices and SIZOs change the schedules of service.

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

**The response of the Ministry of Justice:**

Disciplinary sanctions against sentenced persons are used in accordance with Articles 134, 135 of the CEC of Ukraine. When imposing measures, the reasons are taken into account, the circumstances and reasons for committing the violation, the behavior of sentenced person, the number and nature of the previously imposed penalties, as well as the explanation of the convicted person regarding the nature of the misdemeanor. Superimposed charges correspond to the gravity and nature of the offender's sentence. The question of the expediency of applying penalties to persons serving sentences in the form of imprisonment is decided collectively at the meeting of the disciplinary commission of the penitentiary institution.

In addition, since April 2017, amendments to the Criminal Code of Ukraine on the procedure for imposing disciplinary penalties on convicts have entered into force.

Thus, the issue of the expediency of applying penalties to persons serving sentences in the form of imprisonment is decided at the meeting of the disciplinary commission of the penal institution. The disciplinary commission of the penal institution operates on a permanent basis.

Other persons whose presence is appropriate for establishing the circumstances of the commission of the offense and determining the extent of liability are also invited to the meeting of the Disciplinary Commission. Members of observation commissions in the respective territory have the right to be present at the meeting of the disciplinary commission and have the right to an advisory vote.

A person serving sentences in the form of deprivation of liberty must be informed of the place and time of the meeting of the disciplinary commission not later than one day prior to its execution. According to the convict's statement, this term may be extended, but not more than two days.

A person serving a sentence in the form of imprisonment has the right to use the services of a lawyer or specialist in the field of law of his own choice during the preparation of a disciplinary committee meeting that will represent her interests during a commission meeting. If a person serving a sentence of imprisonment has no access to a lawyer or specialist in the field of law, the administration of the penal institution must provide him with the opportunity to apply for legal aid to the entities providing such assistance.

During the session of the disciplinary commission, explanations of the convict and his representative, witnesses, other persons, the administration of the penal institution, the person who initiated the prosecution, and those who have the right to an advisory vote.

The decision to bring to justice is taken by a majority of the members of the disciplinary commission.

Placing a sentenced person in a cell-type room (single cell) is conducted by court decision.

The decision on bringing to disciplinary proceedings against a person serving a sentence must be motivated in detail and may be appealed by the person serving the sentence in the form of imprisonment or by his representative to the higher level penal institution, the prosecutor or the court.

*Comments on abolishing the section 391 of the Criminal Code:*

On 19 of May 2017 the XII meeting of working group on reforming penitentiary system of the Committee on Legislative Support of Law Enforcement took place, during the meeting a Draft Laws of 03.03.2015 No. 2292 «On amendments to some legislative acts of Ukraine on a substitution of life imprisonment by more lenient punishment» concerning an application of paroled to this category of sentenced persons and of 12.11.2015 No. 2708 «On amendments to some legislative acts of Ukraine on responsibility for a persistent disobedience to requirements of an administration of institutions of punishments execution» according to an abolishment of an article 391 of the Criminal Code of Ukraine «Persistent disobedience to requirements of an administration of institutions of implementation punishments» were discussed.

At the same time, the abolition of Article 391 of the Criminal Code of Ukraine is premature since the article mentioned is a deterrent factor to the prevention of offenses among convicted and negatively convicted prisoners against the administration.

**47. «The Committee reiterates its recommendation that the Ukrainian authorities take steps, including at the legislative level, to ensure that officers of operational divisions no longer investigate criminal offences committed by prisoners outside the prison and no longer take statements from prisoners in relation to such offences»**

**The response of the Ministry of Justice:**

In accordance with the requirements of Article 41 of the Criminal Executive Code of Ukraine, operational units carry out investigatory (wanted) actions and secret investigative (search) actions on written instructions of the investigator, prosecutor.

Authorized operational (investigative) units do not have the right to conduct procedural actions in criminal proceedings on their own initiative.

In accordance with the amendments to the Criminal Procedure Code of Ukraine, the investigation units of the State Criminal-Enforcement Service of Ukraine were created, which will conduct pre-trial investigation of criminal proceedings on the facts of committing offenses in the territory and premises of the State Criminal-Enforcement Service of Ukraine.

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

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

**The response of the Ministry of Justice:**

In order to realize the right of sentenced to life imprisonment, serving a sentence in the sector of highest level of security of the Temnivska Colony (No. 100) and the possibility of their transfer on the basis of Art. 151-1 of the CEC of Ukraine from small premises of the cell type, in which there are two persons, to a multi-seat cell-type premises with the permission to participate in group events of educational, cultural and physical-recreational character, after the actual serving of not less than five years of the sentence in such premises. In accordance with Art. 100 of the CEC of Ukraine, a multi-seat cell premise, designed for 10 people was created in the institution.

In order to ensure the rights of sentenced to life imprisonment and for the possibility of their transfer on the basis of Art. 151-1 of the CEC of Ukraine from the multi-room cell-type premises to the ordinary residential premises of the colony of the highest level of security - after the actual departure in such premises of not less than 5 years of the sentence, the issue is raised about the creation of the highest level of security in the institution for the detention of the convicts, the maximum level of safety with holding in ordinary living quarters is defined.

The operating department of the Temnivska Colony (No. 100) did not receive information on inappropriate treatment and intimidation of persons sentenced to imprisonment held in the sector of the highest level of security of the institution by the part of the staff of the institution or other persons.

Measures of physical or moral pressure on sentenced persons of the specified category from the side of the representatives of the administration were not applied and are not applying. The conditions of detention are fully in line with the requirements of the current legislation of Ukraine.

In addition, the institution is systematically visited by representatives of governmental and non-governmental organizations that monitor the observance of human rights in places of deprivation of liberty.

*The possibility of creating amateur organizations among the sentenced to life imprisonment is stipulated in the draft Rules of the internal order of penitentiary institutions.*

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

**The response of the Ministry of Justice:**

On 12 September 2016, in the collective unit of the Kharkiv Colony (No. 27), a duty paramedic recorded bodily injuries in convicted S. T. who arrived from the October district court in Kharkiv.

According to the mentioned fact, in accordance with paragraph 4 of the Order of the Ministry of Justice of Ukraine No. 302/5 of 8 February, 2014, materials were registered in the Book of Registration of applications and reports on criminal offenses committed and other events of the Kharkiv Colony (No. 27) under No. 403 of 12.09.2016.

To make a relevant decision, according to article 214 of the Criminal Procedural Code of Ukraine, the materials were delivered to Zhovtnevyi police unit of the MDNP in Kharkiv region, the Kharkiv city prosecutor's office No. 2 and Kharkiv regional prosecutor's office were notified about that fact.

Also, according to the mentioned fact, an official inspection was carried out at the institution, during which the convicted S. T. refused to give an explanation and his cellmates

and other prisoners explained that no unlawful actions were taken against him both by the staff and the detainees.

Also, by the results of the inspection, the paramedic-on-duty of the institution, the head of the medical unit and the staff of the duty shift No. 1, who served in the team for the reception and transferring of prisoners, were indicated for a proper performance of their official duties.

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

**The response of the Ministry of Justice:**

In the pre-trial detention centres are constantly carried out a complex of operative, investigative and regime measures to counter attempts to establish in the institutions so-called «criminal traditions», to identify individuals who are capable of organizing unlawful actions aimed at destabilizing the operational situation in an institution.

Preventive and educational work is constantly being conducted with the convicted and negatively oriented prisoners. Persons with a negative orientation, who seek to revive the so-called «criminal traditions» and able to influence the operational situation in institutions, are obligatory followed with operational supervision. In order to prevent their negative impact on the general mass of convicts and prisoners, it is not allowed to hold the above mentioned category of inmates in multi-seat cell.

Operational employees are focused on obtaining information about the negative processes among convicts who are on prophylactic records in institutions, and belong to the category of so-called «totally excluded».

Aiming to prevent emergencies the attention is drawn to the prevention conflict situations among inmates through prophylactic interviews.

**52. «The Committee would also like to be informed of the outcome of the investigation into the death of prisoner B. G. at Kyiv SIZO on 17 November 2016»**

**The response of the Ministry of Justice:**

The official investigation was conducted by the Office of the State Penitentiary Service of Ukraine in Kyiv and Kyiv region on the fact of the death of the remand inmate B. G.

The main reasons and conditions that contributed to this emergency were the failure to comply with job descriptions and severe violation of the requirements of departmental orders, in terms of proper supervision and control over the behavior of prisoners (convicts) at the internal duty, the procedure of opening the door of the cells and the placement of prisoners (convicts) by the junior inspector of the regime and security department and by the senior on the corps division of the regime and security department.

According to this fact, the criminal proceedings were initiated under Part 2 of Article 121 of the Criminal Code of Ukraine, and pre-trial investigation is ongoing.

**The response of the Prosecutor's General Office:**

The Investigative Department within the Main Department of the National Police in the city of Kyiv is carrying out a pre-trial investigation in the criminal proceeding No. 12016100100014618 of November 17, 2016 upon the fact of death of B. G. on the grounds of a criminal offense provided for in paragraph 2 of Article 121 of the Criminal Code of Ukraine.

During the pre-trial investigation it was found out that on November 17, 2016 B. G. was identified in the cell No. 168 of the Kiev Pre-trial Detention Centre with visible bodily injuries. He was hospitalized in a medical institution, where he subsequently died.

B. G.'s cellmates were interrogated as witnesses and as a consequence it was noticed that he lost his composure as well as behaved aggressively against other prisoners. During his stay in the cell attack of nerves has happened to him as a result of which the cellmates were forced to bend him so he would calm down. At the date of November 17, 2016 B. G. showed strong signs of aggression as a result of which the cellmates were obliged to tie him and put him on the bed, however, B. G. broke away, came to the metal door and began to beat his head against the door. Later the medical staff of SIZO was called.

According to the conclusion of a forensic medical examination B. G.'s death was a result of an open cranio-cerebral injury.

Currently pre-trial investigation in criminal proceeding is reportedly continuing.

**«The CPT requests to be provided with information on the outcome of investigation into another violent death of a 20-year old remand prisoner at Kyiv SIZO, which occurred in the end of January 2017»**

**The response of the Ministry of Justice:**

The investigation was conducted by the administration of the State Penitentiary Service of Ukraine in Kyiv and the Kyiv region on the fact of death of M. P.

The main causes and conditions of an emergency were an inappropriate attitude to the performance of their duties as a psychiatrist of a medical unit.

According to this fact, criminal proceedings were initiated under Part 2 of Article 121 of the Criminal Code of Ukraine, and pre-trial investigation is ongoing. The guilty officials have been disciplined.

**The response of the Prosecutor's General Office:**

The Investigative Department within the Main Department of the National Police in the city of Kyiv is carrying out a pre-trial investigation in the criminal proceeding No. 12017100100000713 of January 21, 2017 upon the fact of death M. P. on the grounds of a criminal offense provided for in paragraph 2 of Article 121 of the Criminal Code of Ukraine.

It was stated during pre-trial investigation that at the date of December 5, 2016, M. P., a person suspected of committing a crime provided for in paragraph 2 of Article 121 of the Criminal Code of Ukraine, was taken to a Kyiv pretrial detention centre.

During the initial review by a duty medical assistant M. P. was found to have a forehead and parietal part of the head injuries. From the moment of admission to the Kyiv pretrial detention centre, M. P. was under supervision of a psychiatrist of the medical unit of the institution.

Thus, at the date of September 9, 2016 bodily injuries in the form of paraparorbital hematomas of both eyes was found in M. P. and documented as well.

In connection with unbalanced behavior of M. P. at the date of December 13, 2016, he was examined by a psychiatrist who diagnosed the acute psychosis of uncertain origin. These

circumstances became the basis for transferring him to the chamber for those who need enhanced psychiatric supervision.

Along with that at the date of December 29, 2016 an outpatient forensic psychiatric expert examination was conducted. During the examination M. P. was in the psychomotor agitation (he beat his head against the metal grid, fell on the floor). According to the expert's opinion at the date of December 29, 2016 it was established that contact with the patient was unproductive, his thoughts were inconsequential, he felt verbal pseudohallucinations, the behavior of M. P. was impulsive and aggressive.

During the stay of M. P. in Kiev pre-trial detention centre at the date of January 20, 2017, abrasions over his left eye were revealed by a duty medical assistant.

Due to the fact that on January 20, 2017 the state of his health was substantially deteriorated an ambulance was urgently called and M. P. was taken to hospital with a diagnosis severe closed head injury, brain contusion, acute subdural hematoma over the left hemisphere of the brain, infected wounds of both hands, and lower third of the right leg.

At the same time, in spite of the treatment, the state of health of M. P. did not improve and at the date of January 25, 2017 at 04:45 doctors recorded his death.

M. P. cellmates were interrogated as witnesses and it was stated that at the end of December 2016, M. P. was placed in the cell. He had bodily injuries in the form of scars on his head. Being in the specified cell, M. P. did not communicate with other prisoners, expressed his aggression to others, beat his head against the wall, behaved aggressively against other prisoners. At the date of January 1, 2017 M. P. was sleeping in his bed. Approximately at lunch time, he suddenly began to wheeze and his cellmates called the doctor. The cellmates stated that they did not cause any bodily injuries to M. P.

Forensic psychiatrist of the Kyiv Center for Forensic Psychiatry who was interrogated as a witness gave an evidence that at the date of December 29, 2016, according to the investigator's decision on the appointment of outpatient forensic psychiatric expert examination, examined M. P. who was taken by a convoy from a Kyiv pre-trial detention center. M. P. was examined inside the cell as far as he refused to enter the doctor's office due to his mental condition. His behaved inappropriately (he beat his head against the metal grid, fell on the floor). During the interview, it was possible to establish that he heard voices in his head, he was partially oriented in time and place. M. P. was recommended to be under supervision of psychiatrist of the Kyiv pre-trial detention centre as far as his mental condition gave rise to doubt and he constantly needed supervision because of unbalanced behaviour.

According to the conclusion of the forensic medical examination, his death occurred as a result of open craniocerebral injury with the cerebral hemorrhage.

According to the results of pre-trial investigation at the date of April 26, 2017 the Investigative Department of the Shevchenkivskiyi Police Department within the Main Department of the National Police in the city of Kyiv made a decision to dispose criminal proceeding on the basis of paragraph 1 part 1 of the Article 284 of the Criminal Code of Ukraine.

As of today, the materials of the criminal proceedings have been transferred to the Kyiv Prosecutor's Office with the aim to verify the legitimacy of the decision.

**53. «The CPT recommends that the frequency of prisoners' access to a shower be increased, at Colony No. 25 and throughout the prison system, taking into consideration Rule 19.4 of the European Prison Rules»**

**The response of the Ministry of Justice:**

The procedure and conditions of using a bathhouse by remand and sentenced prisoners are regulated under the Rules on arranging the bath and laundry servicing of the persons who are kept in the prisons and detention centres approved by the Ministry of Justice of 08.06.2012 No. 849/5 (as amended).

A possibility to take a hygienic shower (excluding mandatory weekly washing in the bath) is provided to prisoners by the management of the institution through changes in routine.

Frequency of access of the prisoners and convicts to a shower is regulated under the Rules of Internal regulations of SIZO's and penitentiary institutions. Convicts involved in the work are able to shower daily and the cooks and bakers twice a day.

The Ministry of Justice has instructed the management of the Interregional departments to provide a possibility to increase a frequency of access of prisoners to the bath, taking into consideration Rule 19.4 of the European Prison Rules.

**54. «However, there had also been a reduction in the offer of activities, with approximately half of the inmates having a job and some 160 being enrolled in vocational training courses and/or attending secondary school. The Ukrainian authorities should pay closer attention to this issue, with a view to improving prisoners' access to organised activities at Colony No. 25»**

**The response of the Ministry of Justice:**

At the enterprise of the Oleksiivska Colony (No. 25) a work was carried out concerning a search and introduction into production of the new types of products. In the first half of 2017 it is planned to introduce into the production six types of products, estimated production volume will make 5.5 mln. UAH.

Every year the enterprise of the Oleksiivska Colony (No. 25) participates in the implementation of the programs of economic and social development of the region (Regional program), according to which products and services are produced to more than 1.5 mln. UAH. These measures provide an additional opportunity to hire at the enterprise more than 50 prisoners.

With aim of increasing the level of employment of the convicts at counterparty's sites the Oleksiivska Colony (No. 25) has concluded an agreement with LLC «Ukrainian Tent Company» on use of labour force of 10 persons.

The level of involving of the convicts in secondary and professional-technical education is 100%.

*Comments on reduction in the number of inmates involved in paid work at Colony No. 25:*

The reduction in the number of the convicts involved in paid work occurred primarily due to the decrease in the number of prisoners, detained in the institution, thus, in September 2014, there were detained 1,292 persons in the institution, in April 2017 the number of prisoners detained in the institution is 664 persons.

Secondly – most regular customers, which concluded long-term contracts on its own initiative stopped cooperation (10 customers) or decreased twice (more than 430.0 thousand UAH. monthly) production volumes, manufactured at the enterprise.

Thirdly – level of prisoners involved in paid work at counterparty sites was decreased. The main reason was an increase in wage for one convicted of charges to 4800 UAH. month, (the Law of Ukraine of 21.12.2016 No. 1801-VIII «On the State Budget of Ukraine for 2017» has set minimal wage in the amount 3200 UAH and payroll for wages of prisoners in the amount of 50% in accordance with paragraph 7 of the Cabinet of Ministers of Ukraine Resolution of 22.04.1999 No. 653).

**The response of the Prosecutor`s General Office:**

The inspection carried out by the Prosecution Office of Kharkiv region has detected that the administration of the Oleksiivska Colony No.25 fulfills the requirements of Art. 102 of the CEC of Ukraine in the part of compliance with the punishment serving regime by the convicts. The disciplinary measures in respect of the prisoners including the placing into a disciplinary isolator and the premises of cell type are implemented under the requirements of Articles 132, 134, 135 of the CEC of Ukraine.

The bath and laundry service for the prisoners in the Oleksiivska Colony No.25 is carried out under the requirement of the Regulation on arranging the bath and laundry servicing of the persons who are kept in the prisons and detention centres, approved by the order of the Ministry of Justice of 08.06.2012 No. 849/5. At this, the persons employed at the production facilities of this institution have access to the shower every day after the end of the work shift. Additionally, in accordance with the Rule 19.4 of the European Prison Rules the prisoners who expressed a relevant desire are allowed to the bath and laundry complex more than once a week.

It is also found that in accordance with Art. 118 of the CEC of Ukraine the prisoners are attracted to the socially useful work taking into account the available production capacities considering their age, efficiency, a state of health and speciality. The main criterion by which the convicts are involved in labor is their own desire.

With aim of the complete involvement of the prisoners to the socially useful work, the Kharkiv Local Prosecutor's Office No. 1 issued in the past and current years 2 instructions to eliminate violations of the law that were considered and satisfied by the administration of the Oleksiivska Colony No.25.

**56. «The only noteworthy problems concerning material conditions were the partially screened in-cell toilets in the disciplinary unit and the fact that showers were accessible only once a week. The Committee reiterates its recommendation that in-cell toilets in all prisoner accommodation areas be fully partitioned (i.e. up to the ceiling)»**

**The response of the Ministry of Justice:**

Bath and laundry complexes are equipped with all needed techniques. They are washing machines, centrifuges, drying cupboard for clothes, ironing drum, disinfectants cameras, as well as the built separated partitions in a room for washing. Washing of the prisoners in the prisons is arranged in accordance with a schedule so that each person had a chance to visit the bath once a week, the washing of clothes as well as compulsory substitution of bed linen is also carried out once a week. Disruption of washing and laundry schedule of is not allowed.

A possibility to take a hygienic shower (excluding compulsory weekly washing in the bath) is provided to the convicted and prisoners by the manager of the institution through changes in daily routine.



*Comments concerning inability to fully meet the recommendation as of June 2017:*

The implementation of measures concerning separation of sanitary facilities in cells up to the ceiling are possible to perform when carrying out comprehensive overhaul of the buildings for prisoners and detainees.

The capital expenditures for construction, reconstruction and repair of objects of the State Criminal-Executive Service of Ukraine should be taken into account when preparing a draft law of Ukraine «On the State Budget of Ukraine for 2018».

**57.** «As at Colony No. 25, there had been a decrease in the number of prisoners involved in organised activities, especially paid work (the usual daily number of working inmates being between 250 and 300, as compared with almost 600 in September 2014)»

**The response of the Ministry of Justice:**

At the enterprise of the Temnivska Colony (No.100) there had been searched and introduced into production the new types of products. In the first half of 2017 it is planned to introduce into production 4 types of products those estimated production volume will make 2.5 mln. UAH.

Every year the enterprise of the Temnivska Colony (No.100) participates in the implementation of the programs of economic and social development of the region (Regional program), according to which there are manufactured products and provided services to more than 2.5 mln. UAH. For the purpose of loading the production capacities of the enterprise, increasing the level of employment of the convicts, the managers of the institution has taken measures for increasing the volumes of products at the request of the Public Joint Stock Company «Kharkiv Tractor Factory» amounting to 1,0 million UAH monthly and the volume of the order for recycling of secondary raw materials has been increased almost twice or to 500,000 thousand UAH monthly. These measures provide an additional opportunity to employ at the enterprise more than 50 prisoners.

With the aim of increasing the level of employment of the convicts at counterparty's sites, the Temnivska Colony (No.100) has concluded an agreement with LLC «Ukrainian Tent Company» on the use of labour of 15 persons.

The level of involving of the convicts in secondary education is 96% (2 persons are not involved) and in vocational-technical education is 100% as well.

*Comments on reduction in the number of inmates involved in paid work at Colony No.100:*

The reduction in the number of the convicts involved in paid work occurred primarily due to the decrease in the number of prisoners, detained in the institution. Thus in September 2014 there were detained 1285 persons, in April 2017 the number of prisoners detained in the institution is 757 persons.

Secondly, the most regular customers which concluded long-term contracts have decreased the production volumes manufactured at the enterprise twice or by 500,0 thousand UAH monthly.

Thirdly, the level of involving the prisoners in paid work at counterparty sites was decreased. The main reason was salary increase for one convicted up to 4800 UAH in a month (the Law of Ukraine of December 21, 2016 No.1801-VIII «On the State Budget of Ukraine for 2017» has set minimal salary in the amount of 3200 UAH as well as charge of payroll for prisoners in the amount of 50% in accordance with paragraph 7 of the Resolution of April 22, 1999 No. 653 of the Cabinet of Ministers of Ukraine).

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

- **an immediate end is put to the practice of routinely handcuffing life-sentenced prisoners within the prison perimeter. Handcuffing of such prisoners outside their cells should be an exceptional measure, always based on an individual risk assessment and should be reviewed on a regular and frequent basis;**
- **the anachronistic, excessive and degrading practices described in paragraph 61 are abolished;**
- **all life-sentenced prisoners are offered a range of purposeful out-of-cell activities (such as work, education, sports, recreational activities);**
- **life-sentenced prisoners are as a rule allowed to have contact with life-sentenced prisoners from other cells (including during outdoor exercise);**
- **life-sentenced prisoners are as a rule allowed to receive short-term visits in open conditions (i.e. table visits).**

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

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

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

#### **The response of the Ministry of Justice:**

Use of handcuffs on life-sentenced prisoners is carried out under paragraph 2 of the Chapter XXXII of the Rules on the internal order of penitentiary institutions and paragraph 2.7 of the Section 2 of Chapter V of internal rules of the pre-trial detention centers.

During the special training courses and specific briefings, the personnel of the institutions is instructed on preventing the use of anachronistic, excessive and degrading practices against convicted persons. In the educational institutions of the State Criminal-Executive Service of Ukraine the thematic classes are held with the personnel during the training.

In order to attract the life-sentenced prisoners to a wide range of activities, the following work is carried out:

- for those who do not have secondary education, the counselling centres are created where they receive general secondary education. Also the life-sentenced prisoners are able to receive higher education remotely;
- convicted persons are attracted to work taking into consideration requirements of their detention in cell-type accommodation;
- after having served five years in prison, the prisoners at their personal request can join to the group activities of educational, cultural and sports-health nature;

- convicted persons have the opportunity to hold religious services (including within separated premise located in the territory of a maximum security level sector).

The supervision in criminal-executive institutions includes constant surveillance by security service staff as well as other officials over the convicted persons in places of their residence and work. The surveillance cameras are installed in the institutions where convicted persons located and they work around the clock in a real time mode.

Use of the mentioned video surveillance by the administration of the institutions is carried out under Article 103 of the Criminal Execution Code of Ukraine in order to prevent the convicted persons from escaping and other crimes, the violations of the established procedure and conditions for serving sentences as well as to obtain the necessary information about the behaviour of the convicted persons, which does not contradict the European Prison Rules (adopted by the Committee of Ministers of the Council of Europe on February 02, 1987), the Standard Minimum Rules for the Treatment of Prisoners (adopted by the United Nations on May 25, 1984) and other international human rights instruments.

All convicted persons are acquainted with the procedure of using regarding them the audio and video surveillance. They should be informed in writing and this information must be attached to the personal materials file.

In addition, the video cameras are set up so that the video signal does not reflect the public location.

According to the Article 151<sup>1</sup> of the Criminal Code of Ukraine the change of the conditions of detention of the life-sentenced prisoners is carried out concerning the procedure prescribed by this Code, that is, depending on the behavior of the life-sentenced prisoners and his/her attitude to work, in the case of its presence as well as education, the conditions for the serving of sentence may change within a single colony or life-sentenced prisoners may be transferred to the colony of another type. The life-sentenced men can be transferred from the building of the cell type, in which two persons are kept, to multi-room building of the cell type of a colony with the maximum security level with granting the permission to participate in group activities of educational, cultural and sports-recreational nature but after the actual serving in such premises not less than five years of the term of punishment; life-sentenced prisoners may be transferred from the multi-room building of the cell type to the usual accommodation of the colony with the maximum security level in case of actual serving in such building not less than five years of the term of the punishment.

#### **The response of the Prosecutor's General Office:**

Regarding the operation of the Temnivska Colony No. 100, it is stated that the administration of this institution imposed to the sentenced to life imprisonment cruel and humiliating measures, in particular: excessive physical violence, chains, bullying, permanent video surveillance, etc.

In addition, the CPT received complaints from prisoners about food. Also, the Commission's remarks highlighted the fact that the shower for prisoners is allowed only once a week, and also negative tendency to reduce the number of sentenced persons involved in labor.

The inspection of the mentioned facts has found that the regime conditions of serving the punishment by lifers in the Temnivska Colony No. 100 meet the requirements of art. 92, 107 of the CEC of Ukraine and the Rules of the internal order of penitentiary institutions, approved by the order of the Ministry of Justice of Ukraine of 29.12.2014 No. 2186/5, including the keeping of the mentioned category of the prisoners separately from other categories, permanent video surveillance and handcuffing them when exiting the cells or conveying on the territory of the sector of the highest security.

The inspections didn't find any facts of implementation by the representatives of the administration of the Temnivska Colony No. 100 of illegal measures of physical impact to the persons who serve the punishment in the form of the life imprisonment.

Reduction of the number of the convicts, including lifers, attracted to the socially useful work in the Temnivska Colony No. 100 is explained by the fact that in accordance with art. 118 of the CEC of Ukraine only those convicted who expressed a desire may be involved to work.

According to the provisions of the Regulation on arranging the bath and laundry servicing of the persons who are kept in the prisons and detention centres, approved by the order of the Ministry of Justice of 08.06.2012 No. 849/5, the convicts who serve the punishment in the Temnivska Colony No. 100 are ensured to attend the bath and laundry complex at least once a week.

During the complex inspection carried out by the Kharkiv Local Prosecutor's Office in January in the current year in the Temnivska Colony No. 100 also have been studied issues of feeding of the prisoners. Any facts of violations of the Regulation on the organisation of the feeding of persons who are imprisoned in the penitentiary institutions and investigative isolators of the State Criminal Enforcement Service, approved by the order of the Ministry of Justice of Ukraine of 08.06.12 No. 850/5, and the Methodological recommendations regarding the acceptance and storing of food in the penitentiary institutions, investigative isolators and in the Central provision base of providing of the State Department of Ukraine for execution of the punishments, approved by the State Department of Ukraine for execution of the punishments on 18.07.2011 have not been detected.

In addition it should be noted that during the past and the current years the Department have prepared and sent to the regional prosecutors 3 letter-orientations in which had been addressed attention of the managers of the Prosecution Office to the need when carrying out the supervision over the providing of medical care during the execution of the judgments in the criminal proceedings and other measures of coercive nature, first of all, to find out the completeness and timeliness of the initial examination of the detained and sentenced persons during the 24 hour, providing them with adequate medical care (hospitalization), the accuracy of the information contained in medical records, about the state of their health, observance of the right to choose a doctor and access to a doctor, provision of necessary treatment conditions, feeding and organization of medical care (procurement, procedure of use of medicines, equipment, etc.) and so on. To pay special attention to the right protection of seriously ill, disabled and other most vulnerable categories of persons, in particular, those suffering from HIV, tuberculosis, hepatitis, mental, venereal and other especially dangerous diseases, as well as ensuring of coercive treatment of sentenced persons.

### **63. «The CPT calls upon the Ukrainian authorities to take immediate steps to remedy this worrying state of affairs»**

#### **The response of the Ministry of Justice:**

In accordance with the Order of the Cabinet of Ministers of Ukraine of 7 October 2015 No. 1066 «Some issues of reforming the system of functioning of penitentiary institutions and investigative isolators» the work is carried out on searching the private partners to implement investment projects for transfer of the Kyiv SIZO, Odessa Colony (No.21) and Khmelnytsky SIZO beyond the central parts of Kyiv, Odessa and Khmelnytsky cities.

In Odessa Colony (No.21) a repair was carried out of the corridors and cells of the medical institution, a cosmetic repair of senior regime building, wiring replaced, empty cells cleared of garbage, the walk yards are being repaired.

All premises of the Kyiv SIZO need repairs and the worn-out engineering networks need to be replaced. For the last 5 years the funds to conduct the repairs did not allocated at all. The administration of the Kyiv SIZO each year includes into the plan of a capital repairs the necessary expenses for carrying out of these works. However, the necessary funding to bring up the conditions to international standards of detention is not allocated. Along with this, despite the existing level of financing, by means of establishing contacts with charitable organizations, the administration of the mentioned investigative isolator organized and carried out a repair of two cells, an infectious isolator and sanitary facilities.

The administration of the Khmelnytsky SIZO set the allocation of the prisoners in cells in compliance with the requirements of the legislation.

*All institutions which were the subject to the CPT inspection are the state institutions which are financed from the general fund of the State Budget. In the current year the expenditures for repairs in the mentioned institutions are not foreseen. The additional funds for bringing the conditions of detention in conformity are needed.*

#### **The response of the Prosecutor's General Office:**

**Regarding Kyiv SIZO.** During 2014-2017 the funding for carrying out the comprehensive renovation and current repair works of the building have not been provided. Over the period of 2016-2017 the tendency for occupancy rate of living space per inmate in Kyiv SIZO has been maintained.

The specialists of the Department of Health of the Kyiv City State Administration (including the phthysiatricians), the State Service of Ukraine for Food Safety and Consumer Protection, State Emergency Service of Ukraine are engaged in the process of inspection which carrying out by the Kyiv Prosecution Office.

16 acts of prosecutor's response were brought to the elimination of violations in the activities of the SIZO during 2016 (6 acts of such response have taken place during 2017) and according to the results of their consideration the officials who are responsible for these actions were brought to disciplinary responsibility.

**Regarding Odessa SIZO.** The inadequate material and living conditions in the regime buildings and the medical part of the institution are among the problematic issues in the activity of the Isolator of the Odessa Penitentiary Colony No. 21.

During 2013-2017, funds were allocated centrally and substantially from the State Budget of Ukraine for repairs: in 2013 - 151 thousand UAH; in 2014 - 3 thousand UAH; in 2015 - 393,700 UAH; in 2016 - 19,8 thousand UAH; in 2017 - no funds were allocated.

Separate rooms of the medical unit were unsuitable for operation and were closed for repair. Also, at this time, repair works are being carried out in emergency buildings and in the premises for food.

At the same time, according to the results of inspections carried out by the prosecutor's offices on issues of material provision of prisoners during the 2016-2017 year, 6 documents of the prosecutor's response have been filed, 6 of them have been brought to justice, and the rights of 2 prisoners have been restored.

During 2016-2017, in the Odessa penitentiary colony No. 21, four cases of domestic violence among prisoners took place. For each of them, the administration of the colony conducted official inquiries and measures were taken to prevent such cases in the future.

The Prosecutor's Office of the Odessa region has introduced 2 documents of the prosecutor's response in which 2 guilty persons are brought to justice.

Also in CPT report, the attention was paid to improper heating, non-compliance with the temperature regime in the cells and the allocation of smoke.

It was established that the Odessa penitentiary colony No. 21 in 2016 concluded a contract for the purchase of heat energy for public funds. The heating season 2016-2017 has

started in time, the temperature regime in the cells and other premises of the institution is adhered in accordance with the requirements of the legislation. At the same time, at the start of the heating equipment, there have been emissions of smoke, as stipulated by the technological requirements for the operation of the equipment.

In addition, the CPT report states that prisoners are not offered any activity outside the cells, except for walks. In accordance with the requirements of the Law of Ukraine «On pre-trial detention» and the Rules of internal regime of pre-trial detention centres of the State Criminal-Enforcement Service of Ukraine, approved by the order of the Ministry of Justice of Ukraine of 18 March 2013, No. 460/5, the detention of remand prisoners does not provide for any activity outside the cells, except for walks.

However, in accordance with the requirements of Art. 16 of the Law of Ukraine «On pre-trial detention», prisoners are involved for work related to the creation of proper sanitary and domestic conditions and the ordering of the place of pre-trial detention without payment. For these works, individuals are involved alternately at a free time of investigative actions and not more than two hours during the day. Prisoners may be engaged in paid work only with their consent and with the permission of the investigator or the court conducting criminal proceedings.

In general, in 2016-2017, according to the results of the inspections carried out at the Odessa penitentiary colony No. 21, the Prosecutor's Office of the Odessa region submitted 34 documents of the prosecutor's response, which resulted in the consideration of which 21 persons were brought to justice.

**Regarding Khmelnytskyi SIZO.** The administration of the institution has taken appropriate measures to address disadvantages in material-housing conditions of the regime premises and medical part of the institution. In particular, during the past year and this year, the maintenance of the regime building No. 1, the sector of maximum safety level, the repair of individual cells has been conducted

During the current year, the repair was carried out in the premises of the sector of maximum security level, one of the cells of the sector was transformed into the premises of sanitary facility with boiler installation and repairs made.

The Khmelnytsky SIZO has 16 walk yards, the total area of which is 499.5 square meters. (In 2017, repairs were carried out). The indicated yards meet the established requirements, they have protection from atmospheric precipitations, benches for sitting, bars, and in the courtyards for minors' walks - also tennis tables and basketball hoops.

In 2016 - 2017, appeals to the prosecutor's offices of the Khmelnytsky region regarding the failure to provide daily walks for prisoners, in particular women were not received, such cases were not detected by the prosecutor's office.

The incidents of an arrival of prisoners with bodily injuries that they may have received as a result of inappropriate treatment by police authorities are reported to the relevant prosecutor and verifications are carried out.

In particular, in 2016, information was added to the Unified Register of Pre-trial Investigations and the Investigatory Division of the Office of the Prosecutor of the region in the criminal proceedings filed an investigation into two such facts. These criminal proceedings are closed on the basis of Part 1 of Art. 284 of the CPC of Ukraine. In the current year, according to one such fact, information was submitted to the Single register of pre-trial investigations, the pre-trial investigation continues.

**64. «The CPT would like to know whether the heating problem has now been solved in the establishments visited and, more generally, throughout the prison system»**

**The response of the Ministry of Justice:**

The Oleksiivska Colony (No.25), the Kyiv and the Khmelnytsky SIZOs are provided by the central heating system of the city heating systems.

The Temnivska Colony (No.100) and the Kharkiv Penitentiary establishment No. 27 are provided with heat from own boilers, there were no complaints of the convicted and prisoners in this institutions for low temperature in the premises.

In order to improve the conditions of detention (heating and hot water) in the Odesa Penitentiary Colony No. 21 in 2016 a sided organization had been attracted – an investor for installing the autonomous systems of heating and hot water supply.

The problem of proper heating is one of the most acute in the Penitentiary system, given the dilapidation of heat engineering equipment and lack of budget capital expenditure to upgrade the boilers and heating systems.

Due to the fact that the centralized purchase of solid fuel in 2016 was cancelled, in September 2016 all financing for the purchase of solid fuel was allocated between the institutions for independent provision of the heating period 2016-2017.

The heating system in the Odessa Penitentiary Colony (No. 21) is brought into compliance and for the present time a preparation for a new heating period is underway.

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

**The response of the Ministry of Justice:**

An additional technical examination and repair of the cell doors has been carried out in the Kyiv SIZO.

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

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

**The response of the Ministry of Justice:**

There have been carried out an audit of filling of the cells of the regime corpuses of the institution No.1, 2, 4, 5, 6 and the prisoners have been moved to the cells, area of the cells is mandatory taken into consideration, norms of the square per prisoner and compliance with the requirements of Art. 8 of the Law of Ukraine «On pre-trial detention».

Dismantling of the installed over the norm sleeping places in the cells of the institution have been carried out. The work is started on a refurbishment of premises of the division of social and psychological service to the block system with aim to accommodate in one block no more than 12 prisoners with one-tiered accommodation.

The measures have been taken on proper maintenance of all communal facilities and compliance with sanitary and hygienic standards in the regime corpuses in good condition: the cosmetic repairs are carried out of the cells and the premises of the regime corpuses during which the walls of the cells are painted in light colors, the works are carried out to repair plumbing equipment and other repair works.

The Ministry of Justice of Ukraine have sent an instruction to the Interregional Departments for the execution of criminal punishments and probation concerning bringing the conditions of detention in the investigative isolators and penitentiary institutions into conformity, including on rational accommodation in the cells in compliance with the norms of the living space.

*During the elaboration of the draft Law of Ukraine «On the State Budget of Ukraine for 2018» it is necessary to take into account the capital expenditures on construction, reconstruction and overhaul of the facilities of the State Criminal Enforcement Service of Ukraine.*

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

**The response of the Ministry of Justice:**

The Administration of the Khmelnytsky SIZO has ensured appropriate conditions of the right of the prisoners to walk.

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

**- all medical examinations are conducted out of the hearing and – unless the health-care professional concerned expressly requests otherwise in a given case – out of the sight of staff not carrying out health-care duties;**

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

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

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

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



- special training is provided to health-care professionals working in SIZOs. In addition to developing the necessary competence in the documentation and interpretation of injuries, as well as ensuring full knowledge of reporting obligations and procedures, the training should cover the technique of interviewing persons who may have been ill-treated;

- custodial staff having no health-care duties only have access to medical information strictly on a need-to-know basis, with any information provided being limited to that necessary to prevent a serious risk for the prisoner or other persons. There is no justification for giving staff having no health-care duties access to information concerning the diagnoses made or statements concerning the cause of injuries»

#### **The response of the Ministry of Justice:**

On 13 January 2017 the Ministry of Justice prepared and delivered to the Interregional Departments on execution of punishments and probation an instruction regarding harmonizing the procedure of conducting medical examinations of detained and sentenced persons with CPT requirements.

General Order of the Ministry of Justice of Ukraine, Ministry of Healthcare of Ukraine of 15.08.2014 No. 1348/5/572 «On approval the Procedure of providing medical support for sentenced persons» registered at the Ministry of Justice of Ukraine on 20.08.2014 by No. 990/25767 (with amendments) of 10.05.2017 No. 1517/5/503 «On approval Amendments to certain legal acts» registered at the Ministry of Justice of Ukraine on 13.05.2017 by No. 609/30477 approved the Procedure of providing medical support for sentenced persons which clearly regulates the mechanism of fixation and registration of body injuries revealed on sentenced persons upon their arrival (paragraphs 1, 2, 3, 4 of Chapter II – Medical support for sentenced persons in the medical units).

According to abovementioned paragraphs, in case of identifying body injuries in sentenced person relevant medical personnel must urgently notify about that the management of penitentiary establishment and issue the certificate in three examples which contains detailed information about type of injuries, their shape and location. Two examples of the certificate should be attached to materials of personal profile of sentenced person and medical card No. 025/p, the third example should be issued personally for sentenced person.

About the fact of identifying body injuries in sentenced person the management of penitentiary establishment during 1 day from the moment of identifying body injuries should notify prosecution bodies in a written form, and also record in the Accounting Register of identified body injuries on the persons upon their arrival to the penitentiary establishment.

Also, by the indicated legal acts stipulated conducting a medical examination of sentenced and persons, taken into custody, out of sight of non-medical staff (if medical employee doesn't want else in every specific case).

Mechanism of fixation and registration of body injuries on the detained persons upon their arrival to the pre-trial detention centres (SIZOs) prescribed by the paragraph 2.1 of the Chapter II of the Order of the Ministry of Justice, Ministry of Healthcare of 10.02.2012 No. 239/5/104 «On approval the Procedure of coordination of healthcare institutions of the State Criminal-Enforcement Service of Ukraine with the general healthcare institutions on the issues of providing medical assistance for persons taken into custody» registered at the Ministry of Justice of Ukraine on 10.02.2012 by No. 212/20525.

By paragraph 2.1 of chapter 2 of the Procedure of cooperation of health institutions of the State Criminal Enforcement Service of Ukraine with health care institutions on provision of health care for people, taken into custody approved by the Order of the Ministry of Justice of Ukraine, the Ministry of health of Ukraine of 10.02.2012 No. 239/5/104 (with changes) also stipulated the mechanism of fixation and registration of body injuries found in arrivals, taken into custody.

The issue about fixation, identification and registration of body injuries was repeatedly raised to medical staff during appropriate service trips of the personnel of the Medical Division of the Ministry of Justice of Ukraine to penitentiary establishments and pre-trial detention centres of the State Criminal-Enforcement Service of Ukraine and during working organizational meetings.

Moreover, in the framework of the State Criminal Enforcement Service of Ukraine reform it is stipulated withdrawal of medical service from subordination of administrations of institutions with an aim of creation of separate medical vertical, which will be operated in its activity only by professional principles.

### **Additional information of the Prosecutor's General Office on protection of sentenced juvenile's rights**

The prosecution authorities provide comprehensive supervision of the observance of the rights of children who have problems with law.

Particular attention is paid to ensure an effective investigation of criminal proceedings concerning minors, protection of prisoners and detainees, prevent illegal actions and ill-treatment against them, ensuring appropriate conditions of detention.

In particular, prosecutors provided procedural guidance on 15.6 thousand criminal proceedings against minors, in which prosecutors provided almost 2.8 thousand instructions aimed on a quick, complete and impartial pre-trial investigation. 3.3 thousand criminal proceedings took place in the current year, and almost 900 instructions were provided.

During 2015-2016 years 9,2 thousand indictments were brought to court, of which 654 - with agreements on reconciliation and recognition of guilt, 312 petitions on the release of juveniles from criminal liability, and 794 petitions for the use of compulsory measures of educational nature. 1,2 thousand criminal proceedings against them were closed.

More than 1.8 thousand indictments were brought to court in current year 152 of which - with agreements on reconciliation and recognition of guilt, 63 petitions on the release of juveniles from criminal liability and 207 criminal proceedings were closed.

The repressive activity was refocused to the restorative nature of juvenile responsibility

Due to the widespread use of alternative to imprisonment forms of preventive measures, in particular home arrest, transfer of children under the supervision of parents, etc., the number of detained juveniles in detention facilities during the 2014-2016 has halved (in pre-trial detention centers from 322 to 156 people, In ITTs - from 1552 to 809, in rooms for detained and delivered to duty units of the territorial police departments - from 56 to 25)

Due to the intervention of prosecutors from places of detention 16 illegally detained juveniles were released during the 2015-2016 years, this year - 2.

Thus, according to the order of the prosecutor (Rivne region), a young man was dismissed from the detention facility, who was sentenced of 12 December 2016 to 30 days of arrest for committing a crime of moderate gravity, and contrary to the requirements of Part 2 of Art. 492 of the CPC of Ukraine the court chose a preventive measure in respect of him - detention. At the appeal of the prosecutor the sentence has been changed, the juvenile was sentenced to punishment not connected with imprisonment

The measures of the prosecutor's response renewed the rights of children to personal freedom and inviolability, education, proper conditions of detention, social protection, health care, etc.

As an example, only due to the intervention of the prosecutor the fluorography and medical examination of 7 juveniles held in the Dnipro Colony No. 4, have been provided, the necessary treatment for minors was prescribed, incl. One teenager underwent surgery of the disease, which for more than 2 months has been ignored by the medical staff of the institution.

Two young children staying in the Kropivnitskyi Colony No. 14, together with their mothers, have not been provided with diagnostics in a children's regional hospital, approved by a doctor-cardiologist. In accordance with the prosecutor's instruction, the children were examined, and the issue of bringing the guilty officials of the institution to responsibility was solved in May this year.

A scholarship in favor of sentenced juveniles serving a sentence and simultaneously studying at vocational schools in the Kremenchutska Colony was levied last year by a suit of the Kremenchug local prosecutor's office in the Poltava region.

In response to the violation of the rights of children held in places of deprivation of liberty, during 2015-2017 prosecutors began 57 criminal proceedings, submitted more than 2 thousand reaction documents, according to the results of consideration of which disciplinary liability brought more than 1 thousand Officials of the National Police, State Criminal Enforcement Service, 18 juveniles were released from the places of deprivation of liberty in accordance with the prosecutors instructions; 12 acts of state authorities were brought into compliance with the requirements of the Law, More than 1.2 thousand sentenced and imprisoned persons were reinstated in their rights.