



CPT/Inf (2013) 23

Report

**to the Ukrainian Government
on the visit to Ukraine
carried out by the European Committee
for the Prevention of Torture and Inhuman
or Degrading Treatment or Punishment (CPT)**

from 1 to 10 December 2012

The Ukrainian Government has requested the publication of this report and of its response. The Government's response is set out in document CPT/Inf (2013) 24.

Strasbourg, 5 September 2013

CONTENTS

Copy of the letter transmitting the CPT's report	5
I. INTRODUCTION	7
A. Dates of the visit and composition of the delegation.....	7
B. Context of the visit and establishments visited	8
C. Consultations held by the delegation	9
D. Co-operation encountered	9
1. Co-operation aimed at facilitating the work of the visiting delegation.....	9
2. Co-operation towards implementing effectively recommendations made by the Committee	11
E. Immediate observations under Article 8, paragraph 5, of the Convention.....	12
II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED.....	13
A. Treatment of prisoners serving sentences in correctional colonies.....	13
1. Torture and other forms of ill-treatment by staff or at their instigation.....	13
2. Action to combat torture and other forms ill-treatment	16
a. driving change from the highest level and developing an ethical culture among penitentiary staff	16
b. improving staff-inmate relations.....	17
c. strengthening the role of health-care staff in the prevention of ill-treatment	20
d. better defining limits and improving training on the use of physical force, “special means” and straight-jackets, and ensuring better recording	22
e. ensuring the effectiveness of investigations into cases of possible ill-treatment ..	23
f. developing an effective national preventive mechanism.....	27
B. Other issues of a follow-up nature	28
1. The situation of women and men sentenced to life imprisonment.....	28
2. The application of disciplinary and segregative measures.....	32
3. Health care provided to prisoners suffering from tuberculosis at the hospital of Correctional Colony No. 89 in Dnipropetrovsk	34
4. The situation of Yulia Tymoshenko at Central Clinical Hospital No. 5 in Kharkiv.....	35

APPENDIX I:

List of the CPT's recommendations, comments and requests for information 39

APPENDIX II:

List of the national authorities and organisations met by the CPT's delegation..... 47

APPENDIX III:

**Photographs of objects found by the CPT's delegation
near to the offices of operational officers at Correctional Colony No. 81
in Stryzhavka (Vinnytsia Region) 49**

Copy of the letter transmitting the CPT's report

Mr Nazar Kulchytskyy
Government Agent to the
European Court of Human Rights
CPT's Liaison Officer
Ministry of Justice
Gorodetskogo street, 13
UA – 01001 Kyiv

Strasbourg, 20 March 2013

Dear Mr Kulchytskyy,

In pursuance of Article 10, paragraph 1, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, I enclose herewith the report to the Ukrainian Government drawn up by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) following its visit to Ukraine from 1 to 10 December 2012. The report was adopted by the CPT at its 80th meeting, held from 4 to 8 March 2013.

The various recommendations, comments and requests for information formulated by the CPT are listed in Appendix I. As regards more particularly the CPT's recommendations, having regard to Article 10 of the Convention, the Committee requests the Ukrainian authorities to provide **within three months** a response giving a full account of action taken to implement them.

The CPT trusts that it will also be possible for the Ukrainian authorities to provide, in their response, reactions to the comments formulated in this report as well as replies to the requests for information.

In relation to the matter raised in paragraph 8, the CPT decided to open the procedure under Article 10, paragraph 2, of the Convention. This will be the subject of a separate letter.

The CPT would ask, in the event of the response being forwarded in Ukrainian, that it be accompanied by an English or French translation.

I am at your entire disposal if you have any questions concerning either the CPT's report or the future procedure.

Yours sincerely,

Latif Hüseyinov
President of the European Committee
for the Prevention of Torture and Inhuman
or Degrading Treatment or Punishment

I. INTRODUCTION

A. Dates of the visit and composition of the delegation

1. In pursuance of Article 7 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the Convention”), a delegation of the CPT carried out a visit to Ukraine from 1 to 10 December 2012. The visit was one which appeared to the Committee “to be required in the circumstances” (see Article 7, paragraph 1, of the Convention).¹

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

- Lətif HÜSEYNOV, President of the Committee (Head of Delegation)
- Marija DEFINIS GOJANOVIĆ
- Ilvija PŪCE
- Vincent THEIS.

They were supported by Johan FRIESTEDT of the CPT’s Secretariat, and assisted by:

- Alan MITCHELL, medical doctor, Former Head of Health Care, Scottish Prison Service, United Kingdom (expert)
- Denys DANYLENKO (interpreter)
- Vadim KASTELLI (interpreter)
- Dmytro KOPYLOV (interpreter)
- Larysa SYCH (interpreter).

¹ All reports on the CPT’s previous visits to Ukraine and the related Government responses have been made public and are available on the CPT’s website: www.cpt.coe.int.

B. Context of the visit and establishments visited

3. The main objective of the visit was to re-examine the manner in which prisoners serving sentences (including life sentences) were treated in correctional colonies. For this purpose, the delegation visited four correctional colonies located in three different parts of the country, the Dnipropetrovsk, Kharkiv and Vinnytsia regions. In Dnipropetrovsk region, the delegation paid a follow-up visit to Correctional Colony No. 89, where the treatment of inmates was of particular concern when first visited by the Committee in 2009. In Kharkiv region, the delegation visited Oleksiyivska Correctional Colony No. 25 for men and Kachanivska Correctional Colony No. 54 for women. This provided an opportunity to review the situation of women sentenced to life imprisonment at Colony No. 54 and of Yulia Tymoshenko, who was accommodated in Ukrzaliznytsia Central Clinical Hospital No. 5 in Kharkiv at the time of the visit.² In Vinnytsia region, the delegation visited Correctional Colony No. 81 in Stryzhavka.

4. With an official capacity of 1,250 places, a total of 834 inmates were held at *Correctional Colony No. 89 in Dnipropetrovsk*³ at the time of the visit, including 38 life-sentenced prisoners and 44 inmates held in conditions of high security or enhanced control in the maximum-security unit. As concerns the penitentiary hospital for prisoners suffering from tuberculosis located on the premises of the colony, it was accommodating 364 patients for a capacity of 800 places.

Located in the northern part of Kharkiv city (Dzerzhynskiy district), *Oleksiyivska Correctional Colony No. 25* is a medium-security establishment for male sentenced prisoners who have served previous sentences. Its first accommodation buildings were constructed in 1959. With an official capacity of 1,476 places, it was accommodating 1,611 inmates at the time of the visit. *Kachanivska Correctional Colony No. 54* is situated in the southern part of Kharkiv city (Kominternivskiy district). It received its first prisoners in 1944 and became a labour colony for women in 1957. It is now a minimum-security establishment for sentenced women with no previous convictions. It also accommodates, within a separate medium-security unit, women serving life sentences. At the time of the visit, it was holding a total of 920 women (including 21 lifers) for an official capacity of 820 places.

Correctional Colony No. 81 is located in the village of Stryzhavka, near the city of Vinnytsia, and is a medium-security correctional colony for male prisoners with previous convictions. It was brought into operation in the late 1950s. With an official capacity of 1,249 places (including 100 places in the penitentiary hospital), it was accommodating 1,118 inmates (including 87 patients at the hospital) at the time of the visit.

² The situation of women sentenced to life imprisonment at Colony No. 54 was first examined by the CPT during its 2005 periodic visit to Ukraine. As regards Ms Tymoshenko, the Committee examined the health care provided to her when she was being held at Kyiv pre-trial establishment (SIZO) in the course of the CPT's previous visit to Ukraine in 2011.

³ A brief description of this establishment can be found in paragraph 118 of the report on the 2009 visit (CPT/Inf (2011) 29).

C. Consultations held by the delegation

5. At the end of the visit, the delegation met Inna Yemelianova, First Deputy Minister and Acting Minister of Justice, and Oleksandr Lisitskov, Head of the State Penitentiary Service. The CPT is pleased to note that Valeriya Lutkovska, Parliamentary Commissioner for Human Rights, was able to attend the meeting.

Further, the delegation had consultations with Viktor Pshonka, Prosecutor General, and Hryhorii Sereda, Deputy Prosecutor General.

In the course of the visit, the delegation met representatives of non-governmental organisations and other persons active in areas of concern to the CPT.

A list of the national authorities and organisations met by the delegation is set out in Appendix II to this report.

D. Co-operation encountered

1. Co-operation aimed at facilitating the work of the visiting delegation

6. During the visit, the CPT's delegation received a good level of co-operation from the *central authorities*. It appeared that the State Penitentiary Service had informed the establishments under its authority of the Committee's mandate. The delegation was also provided with up-to-date lists of establishments and all the necessary credentials to facilitate the delegation's work. The CPT wishes to express its appreciation for the assistance provided to its delegation by the Liaison Officer designated by the Ukrainian Government, Nazar Kulchytsky, from the Ministry of Justice.

7. However, the co-operation received by the delegation *from staff at the establishments visited* could at best be described as uneven.

In the Dnipropetrovsk and Vinnytsia regions, the delegation had relatively rapid access to Correctional Colony No. 89 and Stryzhavska Correctional Colony No. 81 and was provided with the relevant documentation. Further, requests for information were promptly met. At the same time, it is of serious concern that staff at Stryzhavska Colony No. 81 attempted to discover what prisoners with whom the delegation had spoken had said. Further, penitentiary officers were said to have subsequently intimidated inmates interviewed, warning them to be careful in future about what they said to the delegation.⁴

⁴ A few inmates accommodated in the hospital of Correctional Colony No. 89 also reported similar actions from certain members of staff to the delegation.

In Kharkiv region, the level of co-operation encountered was the poorest since the Committee's first visit to Ukraine in 1998. The delegation experienced long delays in gaining access to Kachanivska Correctional Colony No. 54 and Oleksiyivska Correctional Colony No. 25, notably due to the application of unprecedented, prolonged and grossly excessive security checks (e.g. more than one hour on the second day of the visit to Colony No. 54). Further, prisoners had allegedly been instructed by penitentiary staff or fellow inmates who had a designated role to assist staff not to complain or even to talk to the delegation; failing to comply with these instructions would reportedly lead to punishment (such as working longer hours in workshops or placement in disciplinary confinement at Colony No. 54 or even severe corporal punishment at Colony No. 25). A number of inmates also indicated that they had been physically prevented from approaching the delegation (either by other prisoners allegedly instructed to do so or by being made to participate in certain activities). At Colony No. 25, staff also attempted through various means to prevent the establishment of a climate of trust between inmates and the delegation (e.g. repeated interruptions of interviews by staff). Furthermore, inmates said that they had been informed upon admission to Colony No. 25 that they were to be subjected to video- and audiosurveillance during their stay in that establishment whereas the delegation was only informed about videosurveillance in disciplinary cells. The inmates therefore had good reason to believe that the delegation would be unable to guarantee the privacy of its interviews. At Colony No. 54, staff and inmates assisting staff apparently questioned inmates who had been interviewed (including life-sentenced women) about the content of their conversations with the delegation. In addition, the delegation was provided with inaccurate information by penitentiary staff on several occasions (e.g. use of CCTV in the facility accommodating Yulia Tymoshenko at Central Clinical Hospital No. 5 in Kharkiv).

The CPT must stress that actions of the kind described in this paragraph are in clear violation of various provisions of the Convention. **The Committee calls upon the Ukrainian authorities to take decisive steps to ensure that no such actions are encountered during future visits to Ukraine.**

The CPT would also like to receive details from the Ukrainian authorities on the use of audiosurveillance in penitentiary establishments, including a copy of the relevant regulations.

8. In the colonies visited, in particular in Correctional Colonies Nos. 25 and 81, the overall atmosphere was tense and a climate of fear was evident during the visit. Many inmates interviewed expressed fears about retaliatory action by staff and/or inmates assisting staff after the visit. Some of these inmates had allegedly been threatened by penitentiary officials after their first interview with the delegation.

At the end of the visit, the delegation expressed its serious concerns as to the safety of the inmates it had spoken to and requested that urgent measures be taken at the highest level to prevent any intimidatory or retaliatory action against those inmates, including through a clear message to all penitentiary staff that any such action would be severely punished.

In a letter of 18 January 2013, the Ukrainian authorities indicated that, with a view to ensuring the safety of inmates interviewed by the delegation, the attention of all penitentiary staff had been drawn to the newly-adopted ethical standards.⁵

⁵ For more details, see paragraph 19.

At the same time, the Committee was informed that, in the context of the inquiries referred to in paragraphs 11 and 35, the prosecuting authorities did not find any evidence of prior instructions given to inmates not to complain or threats of retaliatory action against those who had complained to the delegation in the establishments visited. This does not dispel the CPT's concerns. Some inmates did tell the delegation that it was made clear to them that staff knew about their complaints to the delegation and that they would have to face repercussions (including "damage to their health") for what they had said. The information gathered during the visit about incidents that had occurred following previous visits by the CPT gave credence to the fears expressed by the inmates concerned.⁶ Further, following its 2012 visit to Ukraine, the Committee has continued to receive reports of intimidatory action (including death threats) by penitentiary staff against inmates⁷ in connection with their interviews with the delegation and the subsequent inquiries conducted in these establishments after the visit.

One is dealing here with an issue going to the heart of the obligation placed on national authorities to co-operate with the CPT in the application of the Convention (cf. Article 3). As the Committee has made clear on several occasions, any intimidatory or retaliatory action against a person before or after contact with one of its delegations constitutes a clear violation of the above obligation and could result in the CPT exercising its power to make a public statement.⁸ The Committee is far from convinced that the Ukrainian authorities have taken the necessary steps to prevent such action. Consequently, it has decided to open the procedure under Article 10, paragraph 2, of the Convention in relation to this matter.⁹

2. Co-operation towards implementing effectively recommendations made by the Committee

9. The principle of co-operation set out in Article 3 of the Convention also requires that decisive measures be taken in response to the Committee's recommendations. Concerns have already been expressed, in previous visit reports, about the treatment of prisoners serving sentences in some correctional colonies, and the Committee made a number of recommendations to address this problem. Encouraging developments in this regard were observed at Dnipropetrovsk Correctional Colony No. 89. However, this is overshadowed by the information gathered in other colonies visited where the phenomenon of ill-treatment of prisoners remains a serious issue.

⁶ By way of illustration, an inmate met in 2012 who had also been interviewed during the 2005 visit to Ukraine said that he had been subjected to severe beatings after the delegation's departure in 2005 and was made to shout to other inmates – while blows were being inflicted upon him – that he would never complain to the CPT again. In another case, a prisoner interviewed had been transferred, shortly after the Committee's 2009 visit to Ukraine, to another colony where he was allegedly severely beaten upon admission for having complained to the Committee's delegation.

⁷ The CPT received complaints that police officials were also involved in such action.

⁸ See, *inter alia*, paragraph 7 of the CPT's report on the 2005 visit to Ukraine ([CPT/Inf \(2007\) 22](#)) and paragraph 40 of the Committee's 19th [General Report](#).

⁹ Article 10, paragraph 2, reads as follows: "If the Party fails to co-operate or refuses to improve the situation in the light of the Committee's recommendations, the Committee may decide, after the Party has had an opportunity to make known its views, by a majority of two-thirds of its members to make a public statement on the matter".

The situation of life-sentenced prisoners has also been the subject of a long-standing dialogue between the CPT and the Ukrainian authorities. The delegation's findings during the 2012 visit suggest that efforts had been made as regards the conditions in which women sentenced to life imprisonment were held. However, key recommendations made by the Committee in the past in respect of male life-sentenced prisoners remain to be implemented.

The CPT urges the Ukrainian authorities to take effective steps, on the basis of detailed action plans, to improve the situation in the light of the Committee's recommendations made in this and previous reports.

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

10. In the course of its end-of-visit meetings in Kyiv, the CPT's delegation presented its preliminary observations to the First Deputy Minister and Acting Minister of Justice as well as to the Prosecutor General. On these occasions, the delegation invoked Article 8, paragraph 5, of the Convention and made an immediate observation in respect of Oleksiyivska Correctional Colony No. 25 in Kharkiv and Stryzhavska Correctional Colony No. 81. In both establishments, the treatment of prisoners serving sentences was of grave concern.

The delegation requested that:

- i) the prosecuting authorities carry out without delay, at the national level, an effective investigation into the treatment of prisoners by staff in these two colonies;
- ii) the competent authorities take preventive action to stamp out practices of ill-treating prisoners by staff or co-inmates at the instigation of staff in these two establishments, including through the delivery, at regular intervals, of a firm message of "zero tolerance" of ill-treatment to all penitentiary staff working in these colonies;
- iii) the first results of investigative steps adopted and information on preventive action taken/envisaged be provided to the CPT within one month.

The above-mentioned immediate observation was subsequently communicated in writing in a letter of 19 December 2012 from the President of the Committee.

11. By letter of 18 January 2013, the Ukrainian authorities informed the CPT of the outcome of inquiries into the treatment of prisoners held in the penitentiary establishments visited, including Correctional Colonies Nos. 25 and 81, and of other action taken/envisaged. They also provided their reaction to the delegation's preliminary observations on the situation of Yulia Tymoshenko. The CPT will consider all this information later in the report.

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Treatment of prisoners serving sentences in correctional colonies

1. Torture and other forms of ill-treatment by staff or at their instigation

12. In Dnipropetrovsk region, the delegation reviewed the treatment of male prisoners at Correctional Colony No. 89. During its previous visit to this establishment in 2009, the CPT had received numerous allegations of physical ill-treatment of prisoners by staff, in particular in the maximum-security unit. Some of the alleged ill-treatment had been of a severe nature.¹⁰

The delegation's findings during the 2012 visit suggest that there has been a definite improvement as regards the manner in which prisoners are treated by staff. It appeared that the penitentiary and prosecuting authorities, at both central and regional levels, have paid increased attention to the situation of inmates held in the maximum-security unit and that action taken had started to bear fruit. Most prisoners with whom the delegation spoke pointed to the significant changes in the attitude of staff towards them, notably after dismissals or staff re-deployments following the CPT's previous visit. This is to be welcomed.

13. The only relatively recent violent episode in the maximum-security unit expressly referred to by the inmates interviewed concerned the alleged excessive use of force and of "special means" (e.g. batons) by members of a special-purpose unit¹¹ on 5 July 2011 in the high-security prison cells (so-called "tyurma"). Members of the unit, who apparently wore full protective gear and balaclavas, without identification numbers on their uniforms, were said to have taken almost all inmates outside their cells, made them to spread-eagle themselves or to lie down in the corridor or in the exercise yards, and kicked and/or inflicted baton blows on most of them. It is noteworthy that the inmates interviewed were satisfied with the authorities' preventive action taken following their complaints and emphasised the absence of incidents thereafter.

14. Nevertheless, the delegation did hear several credible accounts of beatings by penitentiary operational officers and senior members of staff as well as by other inmates at the instigation of staff, in particular in the hospital at Colony No. 89. The ill-treatment alleged generally consisted of punches, kicks and/or baton blows. In a number of cases, the delegation's medical members observed signs of injuries consistent with the allegations made by the inmates in question.

The colony's new governor was fully aware of the remaining challenges in terms of staff behaviour and expressed his strong commitment to eradicate the ill-treatment of prisoners in the establishment. When taking up his functions, he made clear to staff that any information indicative of ill-treatment would be sent to the prosecuting authorities. The governor stressed that his general approach consisted of placing particular emphasis on medium- and long-term measures aimed at achieving a clear mentality change among penitentiary staff and developing new working methods, rather than seeking one-off solutions (e.g. dismissals).

¹⁰ For more details, see paragraph 78 of the report on the 2009 visit ([CPT/Inf \(2011\) 29](#)).

¹¹ *Підрозділ спеціального призначення*. This unit was commonly referred to as "spetsnaz" or "mosnaz" (Russian abbreviation for special-purpose force or inter-regional special-purpose force).

15. In Kharkiv region, the delegation faced difficulties in assessing the credibility of the statements made by the inmates who praised the staff's attitude in the colonies visited, considering the instructions given by penitentiary officers or inmates assisting staff not to complain to the delegation.¹²

In spite of this, the delegation gained the overall impression that the treatment of inmates was not of major concern at *Correctional Colony No. 54 in Kharkiv*. It received no complaints from life-sentenced women about staff behaviour in the medium-security unit and only heard very few individual accounts of ill-treatment of women serving fixed-term sentences in the other parts of the establishment. These cases mainly involved verbal abuse and slaps by male members of staff in the main courtyard or in a holding room. The alleged amount of force used by staff against Yulia Tymoshenko during her transfer to Central Clinical Hospital No. 5 in Kharkiv on 20 April 2012 was thus presented as fairly exceptional by a number of inmates interviewed, who still remembered her screaming when she was taken out of the colony in the evening of that day. In a separate interview at Clinical Hospital No. 5, Ms Tymoshenko claimed that she was punched by staff, mainly in the stomach area, had her arms twisted and screamed in pain.¹³

16. However, the situation of sentenced prisoners held at Correctional Colony No. 25 in Kharkiv is a source of grave concern to the CPT. It clearly transpires from the delegation's findings that the ill-treatment of male prisoners by staff or by those inmates who had a designated role to assist penitentiary personnel was far from uncommon. Further, many allegations of ill-treatment received from prisoners who were or had been held at Colony No. 25 refer to treatment of such severity that it could be considered as amounting to torture (e.g. extensive beatings, often combined with the dousing of inmates with pressurised water from a fire pump¹⁴ or while being tightly restrained in a straight-jacket; submersion of the head in water to the point of suffocation; application of handcuffs which were subsequently hit with a hammer to force them up the forearms; sexual assault at the instigation of staff). The alleged ill-treatment was mainly said to have been inflicted in the offices of operational officers (located in the administrative building) or offices of inmates assisting staff, within the disciplinary and segregation (DIZO/PKT) unit or in the first exercise yard of the DIZO/PKT unit (where the radio had allegedly been turned up loud to block out the cries of those being ill-treated).

17. In Vinnytsia region, the delegation's findings suggest that prisoners held at Correctional Colony No. 81 in Stryzhavka were routinely physically ill-treated by operational and internal security staff, including senior officials, and/or co-inmates at the instigation of staff (in particular inmates assisting penitentiary personnel). The alleged ill-treatment mainly consisted of punches, kicks, blows with wooden sticks, sticks wrapped in paper/cling film or a wooden cooking paddle inflicted in the offices of operational officers within the colony's administrative building, beatings by staff in offices located in check point No. 2 (KPP 2) or beatings by staff or prisoners assisting penitentiary personnel in the admission unit. In some cases, the alleged ill-treatment was of such severity that it could be qualified as torture (e.g. extensive beatings, prolonged handcuffing in painful positions, dousing of inmates with pressurised water while being kept outdoors for prolonged periods during the winter season).

¹² See paragraph 7.

¹³ This case has been the subject of an ongoing dialogue between the CPT and the Ukrainian authorities. For more details, see paragraphs 37 and 38.

¹⁴ Referred to as "брандспойт" in Russian.

The delegation was inundated with graphic accounts, from inmates interviewed separately, of handcuffing to a metal barrier for days on end in KPP 2 (in the area referred to as the “*monkey pen*”,¹⁵ in front of the duty office), and of having to eat food placed on a bowl on the floor while handcuffed (“like a dog”, as several prisoners met by the delegation put it), the inmates concerned also being denied access to a toilet. It also received many accounts of placement in solitary confinement for up to several days while (tightly) handcuffed in one of the small holding rooms located in the basement of the establishment’s hospital.¹⁶

In a few cases, reference was also made to the excessive use of force employed by “in-house special-purpose forces”¹⁷ after inmates refused to undergo strip searches in corridors.

In a number of cases, the delegation made medical observations and found other evidence consistent with the allegations received. The delegation also took pictures of objects which were found near to the offices of operational officers and fully matched the descriptions given by the inmates interviewed (see Appendix III). The explanation given by the colony’s management that these items had solely been used as stakes for plants was clearly not convincing.

* *
*

18. The delegation gained the impression in Correctional Colonies Nos. 25 and 81 that the ill-treatment of inmates had become an almost accepted feature of keeping good order and combating prison subcultures. The means employed by staff, partly relying on a select group of inmates having a designated role to assist them, were apparently aimed at obtaining submissive behaviour from all inmates as from the first days after their admission. The admission period was thus said to be a particularly traumatising experience. Prisoners were allegedly forced to exercise physically beyond the point of exhaustion, whatever their state of health, and subjected to various provocations by staff (e.g. prisoners made to clean the floor or the toilets after prison officers made them dirty). Inmates refusing to or being unable to comply with the “daily regime” were said to be subjected to the treatment described in paragraphs 16 and 17. Those identified by staff as likely to cause trouble in prison remained at heightened risk of being subjected to physical ill-treatment by staff and/or by inmates assisting penitentiary personnel during their entire stay in these colonies.

Of particular concern were accounts from several inmates according to which they had been instructed by staff to assault or put undue pressure on other inmates. These prisoners had allegedly been under threat, in the event of refusal to comply with the staff’s instructions, of losing any chances of conditional release, of being left unprotected from assault by inmates who may wish to cause them harm and/or beatings by staff. In one such case, the inmate in question allegedly had a prior arrangement with members of staff to assault another inmate in exchange for his transfer to another penitentiary establishment.

¹⁵ Referred to as “обезьянник” in Russian.

¹⁶ These rooms were officially intended for stays of up to a few hours and were equipped with nothing but a bench.

¹⁷ Members of these forces were believed to be staff members working in Colony No. 81, notably due to the promptness of their interventions after they had been called in. They apparently wore helmets, balaclavas and batons. They allegedly had neither insignia nor identification numbers on their uniforms.

2. Action to combat torture and other forms ill-treatment

- a. driving change from the highest level and developing an ethical culture among penitentiary staff

19. In their letter of 18 January 2013, the Ukrainian authorities informed the CPT that a series of steps had been taken after the 2012 visit with a view to improving and promoting professional ethics within the State Penitentiary Service and ensuring better implementation of prisoners' rights.

More specifically, a Code of Ethics for Penitentiary Staff was adopted on 19 December 2012, taking into account the principles set out in the European Code of Ethics for Prison Staff,¹⁸ and circulated to all penitentiary staff. The new code contains provisions on the obligations of staff, including operational officers, not to tolerate, under any circumstances, acts of torture and other forms of ill-treatment of prisoners.¹⁹ Further, the Ukrainian authorities provided the CPT with a list of measures aimed at reinforcing the legal protection of sentenced and remand prisoners which was adopted on 25 December 2012. These measures include awareness-raising campaigns on international standards on the appropriate treatment of prisoners.

20. The CPT welcomes these measures. However, the Committee must stress that extra vigilance should be paid to the situation in certain correctional colonies. The fact that the staff's behaviour was kept under close scrutiny at Correctional Colony No. 89 is not unconnected with the improvements observed during the 2012 visit. In the light of the delegation's findings, the situations observed in Correctional Colonies Nos. 25 and 81 also require specific attention and action in future.

21. **The CPT calls upon the Ukrainian authorities to take further action to combat torture and other forms ill-treatment in correctional colonies and, in particular, to:**

- **continue to develop, circulate and monitor the implementation of standards and instructions on the penitentiary staff's obligations in relation to the treatment of inmates in their custody. All members of staff should be firmly reminded, including during initial and in-service training, that they should never inflict, instigate or tolerate any act of torture or other forms of ill-treatment, under any circumstances, including when ordered by a superior, and that they should on the contrary respect and protect the physical, sexual and psychological integrity of all prisoners, including against assault by fellow prisoners.²⁰ Proper conduct by members of penitentiary staff vis-à-vis prisoners should be fostered by doing more to require penitentiary officials to prevent colleagues from ill-treating prisoners and to report, through appropriate channels, all cases of ill-treatment involving colleagues. This implies the existence of a clear reporting line as well as the adoption of "whistle-blower" protective measures;**

¹⁸ See Council of Europe Committee of Ministers' Recommendation [CM/Rec\(2012\)5](#) of 12 April 2012.

¹⁹ See *inter alia* Sections 3.4.1., 4.2.1. and 4.2.4. of the new code.

²⁰ Cf. guidelines 12 and 13 of the 2012 European Code of Ethics for Prison Staff.

- **exercise the greatest vigilance as regards the treatment of prisoners serving sentences in Correctional Colony No. 25 in Kharkiv and Correctional Colony No. 81 in Stryzhavka and make clear to all those concerned, in particular management, operational and internal security staff working in these establishments, that any penitentiary official committing or aiding and abetting ill-treatment will be held accountable;**
- **support the new management of Correctional Colony No. 89 in Dnipropetrovsk in its commitment to eradicate the ill-treatment of prisoners by staff or at their instigation, in particular in the establishment's hospital;**
- **ensure that the management of Correctional Colony No. 54 deliver a regular message to staff working in the establishment's accommodation areas for women serving fixed-term sentences that any forms of ill-treatment of inmates (including verbal abuse) will not be tolerated;**
- **improve the training for members of special-purpose units intervening in penitentiary establishments with a view to ensuring that physical force and "special means" are only applied when – and to the extent – strictly necessary to maintain security and order, and never as a form of punishment.**

The CPT also wishes to emphasise that it is opposed to the wearing of balaclavas by special-purpose forces within penitentiary establishments. The Committee recognises that, for operational and/or security reasons, the wearing of protective helmets may be necessary. However, it should be ensured that subsequent identification of the officers concerned is always possible by the relevant authorities and by prisoners, through not only a clearly distinctive badge but also a prominent identification number on each uniform/helmet. In addition, interventions of this type should be videorecorded (e.g. with tactical cameras as part of the equipment of the penitentiary officers concerned). **The CPT recommends that the Ukrainian authorities take the necessary measures in the light of these remarks.**

The Committee would also like to receive a copy of the legal and regulatory provisions applicable to special-purpose forces operating in penitentiary establishments.

- b. improving staff-inmate relations

22. Some penitentiary officials met during the 2012 visit considered that action to combat ill-treatment in correctional colonies should go hand-in-hand with a significant change in the current relations between staff and the prisoners. It appeared that attempts were being made by staff to engage with various categories of inmate at Correctional Colony No. 89, including in the maximum-security unit (e.g. "staff started to talk to us and to treat us like human beings", as was underlined by some inmates).

At the same time, the delegation could observe by itself during the visit that staff-inmate interaction was most often limited to the strict minimum and the approach of staff could even be described as militaristic. First-line penitentiary staff only spoke to prisoners to issue orders; they rarely sought a constructive dialogue with them. Inmates were obliged to stand to attention when in direct contact with staff or, as far as prisoners assisting staff were concerned, to report in a subaltern way. This approach was particularly visible at Colony No. 25 in Kharkiv where the management was of the view that military-like discipline was good for the inmates and illustrated this by showing prisoners standing to attention under the rain in the courtyards, closing ranks shortly after staff orders and shouting “no” with one voice to the question put by staff as to whether they had any complaints.

In-depth knowledge of the inmate population was generally left to a small proportion of penitentiary officials and to prisoners who had a designated role to assist and report to penitentiary staff.

Not surprisingly, a number of inmates interviewed during the visit felt that the only means at their disposal to make themselves heard by penitentiary staff was to go on hunger strike or self harm.

In the CPT’s view, the general approach to staff-inmate interaction should be fundamentally altered. **The Committee recommends that the Ukrainian authorities take action to improve the recruitment procedures and professional training of all penitentiary staff with a view to preparing them to adopt a new relationship with prisoners and move towards creating a dynamic rather than a purely static approach to security and order.²¹ Particular measures should be taken to develop specialised training for staff working with certain categories of prisoner (e.g. women, life-sentenced prisoners, prisoners held in conditions of high security or enhanced control, inmates with specific health needs).**

23. The fact that staff members working in direct contact with inmates were generally carrying “special means” in a visible manner (e.g. rubber batons, handcuffs) was clearly not conducive to the establishment of positive staff-inmate relations. **The CPT reiterates its view that if it is considered necessary for penitentiary staff to carry “special means” within the prisoner accommodation or working areas, these should be hidden from view.**

24. Several penitentiary officers with whom the delegation spoke partly explained the limited staff-inmate interaction by the low staff presence in prisoner accommodation or working areas. Indeed, the delegation observed that this was a common feature of the establishments visited. By way of illustration, the delegation was informed that, at Correctional Colony No. 81, one single staff member had between 60 to 100 prisoners under his responsibility during the day, with the occasional help of two or three other staff members patrolling within the different accommodation areas. At night, no more than 18 staff members supervised about 1,100 inmates.

²¹ Dynamic security is the development by staff of positive relationships with prisoners based on firmness and fairness, in combination with an understanding of their personal situation and any risk posed by individual prisoners.

Further, a number of custodial staff were working 24-hour shifts (with an interruption of up to four hours to rest). At Colony No. 89, the delegation's attention was drawn to the fact that some members of staff had at times to work for up to two days in a row in order to cope with the workload (e.g. to replace colleagues on sick leave, additional escorting duties). The situation was said to be particularly difficult for staff with little experience.

In this context, it was explained to the delegation that staff had no choice but to rely on a select group of inmates to help them keep good order within the penitentiary establishments.

25. The CPT must stress once again that a low staff complement and/or specific staff attendance and deployment systems which diminish the possibilities of direct contact with prisoners, increases staff-inmate tension and precludes the emergence of dynamic security. Further, the Committee considers that the above-mentioned 24-hour shift pattern negatively affects professional standards.

At the same time, the practice of delegating authority to inmates with a designated role to assist them to keep control over the inmate population is an abrogation of the responsibility for order and security – which properly falls within the ambit of penitentiary staff – and exposes weaker prisoners to the risk of abuse by their fellow inmates.

The CPT recommends that the Ukrainian authorities conduct an in-depth analysis of the number and/or deployment of penitentiary staff in prisoner accommodation and working areas in correctional colonies and, if necessary, revise the relevant regulations accordingly. In this context, consideration should be given to putting an end to the 24-hour shift pattern for penitentiary staff. Immediate steps must be taken to ensure that no staff member is required to work two or more shifts in a row.

In parallel, the Committee recommends that the Ukrainian authorities take action to ensure that no prisoner is put in a position to exercise authority over other inmates.

26. Staff-inmate relations should also be geared towards facilitating the social reintegration of prisoners, by providing them with the opportunity to use their time in prison positively.²² However, in most correctional colonies visited, staff-inmate relations were excessively oriented towards prisoner productivity.²³ In this context, at Colonies Nos. 25, 54 and 81, the delegation heard numerous complaints from inmates about staff or prisoners having a designated role to assist penitentiary personnel, putting undue pressure on them in order to make them work excessively long hours, irrespective of their state of health (e.g. up to 14 hours a day for up to seven days a week at Colony No. 25; more than 16 hours a day, with short breaks, and up to seven days a week at Colony No. 54 for women; on occasion, up to two or three eight-hour shifts in a row at Colony No. 81). Inmates interviewed indicated that they had been made to sign a written consent to work extra hours, without this being properly recorded and often without payment. This partly related to the inmates' inability to reach their productivity targets, which were considered unrealistic by many prisoners.

²² See paragraphs 1 and 22 of the European Code of Ethics for Prison Staff.

²³ It was indeed explained to the delegation that the products of penitentiary workshops constituted a significant source of income for the well-functioning of the colonies.

The CPT recommends that staff-inmate relations in correctional colonies be geared towards facilitating social reintegration of prisoners, safe progress towards release and reducing the risk of re-offending after release through a programme of purposeful activities tailored to their individual needs. As regards in particular work, the interests of the prisoners should not be subordinated to the pursuit of financial profit from industries in the establishments concerned (cf. Rule 26.8 of the Committee of Ministers of the Council of Europe Recommendation Rec (2006) 2 to member states on the European Prison Rules, adopted on 11 January 2006 ²⁴).

27. As was the case in the past, the delegation received a number of allegations of corrupt practices by staff (e.g. penitentiary officials requesting payment in order to facilitate conditional release, double accounting systems in relation to paid jobs offered to prisoners).

In their response to the report on the 2009 visit, the Ukrainian authorities provided information on anti-corruption measures within the penitentiary system, including on the application of sanctions. The CPT also notes that the newly adopted Code of Ethics for Penitentiary Staff contains a number of provisions on staff corruption. **The Committee would like to receive up-to-date information on action taken to combat staff corruption within the State Penitentiary Service and other agencies dealing with the penitentiary system (including on the application of sanctions in this area).**

c. strengthening the role of health-care staff in the prevention of ill-treatment

28. On many occasions, the CPT has highlighted the important contribution which health-care staff working in penitentiary establishments can make to the prevention of ill-treatment during imprisonment.

In their letter of 18 January 2013, the Ukrainian authorities referred to new instructions obliging health-care staff, whenever a prisoner displays injuries on examination, to draw up a report containing a detailed description of the injuries in question, including their size and location. The prisoner should be given a copy. In addition, the fact that injuries have been observed should be communicated to the prosecutor in writing within 24 hours and should be recorded in a special register.²⁵

29. These are positive developments. However, little or no progress has been observed in practice in correctional colonies. Many prisoners complained that access to health-care staff had been delayed or denied after having been allegedly ill-treated. When inmates did have access to a health-care professional, medical confidentiality was often not respected (e.g. a member of non-medical staff being present in the room), injuries indicative of ill-treatment were reportedly not recorded and statements made by inmates ignored. The delegation's interviews with health-care staff members gave credence to these allegations; in the course of the visit, some members of the health-care personnel explained that there was a heavy pressure put upon them from the colonies' management not to record injuries and fulfil their duties. It is also of concern that operational staff apparently had access to medical findings/statements made by the inmates during medical examinations.

²⁴ Hereafter "European Prison Rules".

²⁵ Ministry of Justice's Order No. 710/5/343 of 10 May 2012.

The examination of the medical documentation also revealed that descriptions were often superficial. In some instances, it became evident that health-care staff deliberately recorded misleading information (e.g. self-inflicted injuries).

30. In the CPT's view, the current inaction of health-care staff is aiding and abetting the ill-treatment of prisoners in the correctional colonies. **The CPT calls upon the Ukrainian authorities to ensure that prisoners are effectively entitled to prompt examinations by health-care professionals while in prison, in particular after a violent episode, and that all relevant staff are provided with further instructions and appropriate training on medical examinations of prisoners. In particular:**

- **all medical examinations of prisoners should be conducted out of the hearing and – unless the health-care professional concerned requests otherwise in a particular case – out of the sight of non-medical staff;**
- **the record drawn up following the medical examination of a prisoner should contain: (i) a full account of statements made by the person concerned 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 (including appropriate screening for injuries), and (iii) the health-care professional's observations, in the light of (i) and (ii), indicating the consistency between any allegations made and the objective medical findings;**
- **any statements made by the prisoners concerned in the context of such examinations, the objective medical findings and medical conclusions should not be accessible to non-medical penitentiary staff or other inmates (health-care staff examining the prisoners may inform relevant staff members on a need-to-know basis about the state of health of an inmate, including medication being taken and particular health risks);**
- **whenever injuries are recorded which are consistent with allegations of ill-treatment made by an inmate (or which, even in the absence of allegations, are indicative of ill-treatment), the record should be systematically brought to the attention of the prosecuting authorities, regardless of the wishes of the prisoner concerned. Inmates and their lawyers, if any, should be entitled to receive a copy of that record at the same time. Health-care professionals (and the inmates concerned) should not be exposed to any form of undue pressure or reprisals from management staff when they fulfil that duty.**

The CPT must also stress that, **whenever a prisoner presents injuries indicative of ill-treatment or makes allegations of ill-treatment to health-care staff, he or she must be promptly seen by a doctor with recognised forensic training.**

Further, in order to increase the professional independence of health-care staff working in penitentiary establishments, **the CPT recommends that steps be taken to review the health-care staff's administrative subordination to the establishment's management.** More generally, **consideration should be given to a greater involvement of the Ministry of Health in the provision of health-care services in prison.**

- d. better defining limits and improving training on the use of physical force, “special means” and straight-jackets, and ensuring better recording

31. The use of physical force, “special means” (e.g. handcuffs, rubber or plastic batons, tear gas) and straight-jackets against prisoners is governed in detail *inter alia* by Section 106 of the Criminal Executive Code and paragraphs 59 to 61 of the Internal Rules of penitentiary establishments (hereafter “Internal Rules”).

In the CPT’s view, certain provisions leave the door open to abuse (e.g. penitentiary staff are entitled to use physical force, batons and tear gas in the context of “transfers to DIZO/PKT, a single disciplinary (“kartzler”) cell ... when staff *have grounds to believe that the inmates may harm themselves or others*”²⁶). Further, the Committee considers that the circumstances in which each type of force may be used should be clearly specified in the regulations,²⁷ which does not appear to be the case as regards physical force, batons and tear gas.²⁸

The CPT recommends that the Ukrainian authorities review the legal framework on the use of physical force, “special means” and straight-jackets, in the light of the delegation’s findings and the above remarks, and provide penitentiary staff with improved training. In particular, it should be made clear that:

- **where it is deemed essential to handcuff a given inmate, the handcuffs should under no circumstances be excessively tight and should be applied only for as long as is strictly necessary. Further, a prisoner should never be handcuffed to fixed objects; in the event of an inmate acting in a highly agitated or violent manner, the person concerned should rather be kept under close supervision in an appropriate setting. In case of agitation brought about by the state of health of a prisoner, penitentiary officials should request medical assistance and follow the instructions of the health-care professional;**
- **batons should only be used when there is a risk to life or limb and only to address that threat directly;**
- **tear gas canisters should not be part of the custodial staff’s standard equipment and should not be used in a confined area.**

32. The CPT is pleased to note that, in addition to the data contained in prisoners’ individual files, a specific register for cases of use of force, “special means” and straight-jackets has been established in the penitentiary establishments visited. However, it transpires from the delegation’s interviews with the prisoners and staff members as well as from the examination of the specific registers and other relevant material that the use of force, “special means” and/or straight-jackets has, in many instances, gone unrecorded. In some other cases, important data appears to be missing (e.g. length of time for which handcuffs were applied, regular examination of whether the continued application of handcuffs was necessary, whether and when a health-care professional was requested to examine the prisoner concerned).

²⁶ Emphasis added.

²⁷ See, in this respect, Rule 65 of the European Prison Rules.

²⁸ See paragraph 61 of the Internal Rules.

In short, the delegation's findings revealed that the recording of the use of force, "special means" and straight-jackets could not be considered as fully reliable. **The Committee recommends that extra vigilance be paid to ensure that any use of force, "special means" and/or straight-jackets against prisoners is systematically and duly recorded in the relevant reports and registers.**

- e. ensuring the effectiveness of investigations into cases of possible ill-treatment

33. The CPT has emphasised in the past the importance of the effective investigation of any information indicative of ill-treatment and, where appropriate, the imposition of a suitable penalty. This will clearly have a dissuasive effect on those minded to ill-treat prisoners.

The criteria which an investigation into cases of alleged ill-treatment must meet in order to be qualified as "effective" have been established through an abundant case-law of the European Court of Human Rights, and these criteria were highlighted in the CPT's 14th General Report. In particular, the investigation should be thorough, it should be conducted in a prompt and expeditious manner and the persons responsible for carrying out the investigation should be independent from those implicated in the events.

34. As indicated in paragraph 10, the CPT's delegation made an immediate observation in accordance with Article 8, paragraph 5, of the Convention and requested that the prosecuting authorities carry out without delay, at the national level, an effective investigation into the treatment of prisoners by staff in Oleksiyivska Correctional Colony No. 25 in Kharkiv and Stryzhavska Correctional Colony No. 81.

In this connection, the delegation highlighted that prosecutors apparently faced a lack of trust from prisoners in these two colonies. The majority of inmates interviewed did not perceive local prosecuting authorities as impartial and considered that complaining to them would serve no purpose or might even have negative consequences for them.

35. In their letter of 18 January 2013, the Ukrainian authorities informed the CPT that the prosecuting authorities had conducted an inquiry into the treatment of prisoners in the four colonies visited, together with representatives of other monitoring bodies, the civil society and health authorities. Almost all prisoners accommodated in these colonies were consulted within the framework of a written inquiry.²⁹ About 700 inmates held at Colonies Nos. 25 and 81 were heard together with members of monitoring bodies and of the civil society. Further, at Colony No. 25, nearly 100 inmates were examined by a forensic medical doctor. The situation of prisoners held in the colonies visited was also examined by a commission of the State Penitentiary Service, comprising outside partners, from 13 to 19 December 2012.³⁰

²⁹ The exception being Colony No. 54 for women in Kharkiv where only life-sentenced prisoners were apparently consulted.

³⁰ Reference is made to Order No. 375-12 adopted by the Head of the State Penitentiary Service on 12 December 2012 and Order No. 840/OD-12 of 12 December 2012 on the establishment of a commission/working group entrusted with the task of examining the situation of prisoners.

The Ukrainian authorities affirm that no evidence of recent ill-treatment of inmates was found in the colonies visited: no complaints of ill-treatment were received from the inmates consulted, no injuries were observed on the prisoners subjected to a forensic medical examination at Colony No. 25 in Kharkiv, no medical or other evidence was found in the medical documentation at Colonies Nos. 25 and 81 and no violations had emerged upon the examination of the registers on the use of force, “special means” and straight-jackets. At the same time, the commission of the State Penitentiary Service received, at Colony No. 81, complaints of “untactful treatment” and threats of use of force by staff members who were no longer working in the establishment.

36. The CPT welcomes the promptness of the Ukrainian authorities’ reaction to the delegation’s immediate observation. It also appreciates the efforts made to include representatives of the civil society and outside bodies in the process. However, all the indications are that the investigation failed to meet the criterion of thoroughness.

First, it is clear that the prosecuting and penitentiary authorities wished to obtain results within a very short period of time (i.e. within ten days after the visit), which led to the use of methods of dubious value in the context of such an investigation (e.g. written consultation of a maximum of inmates, with an indication of the delegation’s findings). From the information already provided by the delegation in its preliminary observations at the end of the visit, the risk of intimidation of inmates by staff in the context of such a consultation should have been foreseen; however, nothing was apparently done to counter that risk. As was to be expected, the CPT has received reports that inmates were strongly advised by staff to make positive remarks in response to this consultation; this in itself already casts doubts on the effectiveness of the investigation.

Further, the information at the CPT’s disposal clearly suggests that the Ukrainian authorities have failed to gain the trust of the prisoners and staff who could have provided useful information. And this is scarcely surprising. In the course of their inquiries, prosecutors were apparently accompanied by members of local staff, including penitentiary officers who had allegedly been involved in recent ill-treatment, and they allegedly did not seek to have interviews in private.

It is also noteworthy that the results of the above-mentioned inquiries were also based on records which were found to be partly unreliable by the delegation.³¹

The CPT recommends that the investigation be re-opened, in the light of these remarks and the criteria of an effective investigation referred to in paragraph 33.

³¹ See paragraphs 29 and 32.

37. As regards the case of alleged ill-treatment of Yulia Tymoshenko described in paragraph 15,³² it should be recalled that, in a letter of 27 April 2012, the CPT requested that the Ukrainian authorities provide information on the results, provisional or final, of the investigation into the alleged ill-treatment by penitentiary staff during her transfer to Central Clinical Hospital No. 5 in Kharkiv on 20 April 2012.

In their letter of 4 May 2012, the Ukrainian authorities indicated that this case had been investigated by the regional penitentiary and prosecuting authorities. They stressed that Ms Tymoshenko first complained about ill-treatment by staff on 23 April 2012 (i.e. a few days after the alleged incident), when visited by a regional prosecutor after her return to Colony No. 54. In the course of the subsequent investigation, more than 80 persons, including witnesses, had been interviewed. On 24 April 2012, Ms Tymoshenko showed her injuries to the head of the establishment's medical unit and two other members of health-care staff (a doctor and a nurse), who drew up the relevant reports. Ms Tymoshenko refused twice to undergo a forensic medical examination, on 24 and 26 April 2012.³³ On 24 April 2012, the regional penitentiary authorities concluded that there was no breach of the legislation during her transfer to Clinical Hospital No. 5. On 3 May 2012, the regional prosecuting authorities decided to refuse to initiate criminal proceedings against penitentiary officials in the absence of a *corpus delicti*.

38. The CPT notes the promptness of the prosecuting authorities in conducting an investigation after they had received a complaint of ill-treatment from Ms Tymoshenko. At the same time, the delegation's findings during the 2012 visit raise questions as to whether the competent authorities made determined efforts to find out what happened.

In particular, whereas the Ukrainian authorities underline that Ms Tymoshenko did not complain of ill-treatment by staff until 23 April 2012, the reasons for delaying access to her lawyer for two days after the incident remain unclear. Further, the delegation received allegations that at least some of the subsequent meetings with a lawyer were subjected to audiosurveillance.³⁴

Of serious concern are the accounts received by the delegation during the 2012 visit according to which potential witnesses in this case had been intimidated, asked to withdraw their statements in support of Ms Tymoshenko's version of events or transferred to other penitentiary establishments. This suggests that prosecutors did not take all the necessary measures to interview all potential witnesses and did not ensure that statements made by the persons interviewed were made voluntarily.

* *
*

³² The CPT notes that this matter is being dealt with by the European Court of Human Rights in the context of application No. 49872/11, lodged on 10 August 2012.

³³ It is, however, noteworthy that Ms Tymoshenko apparently requested a medical examination (including forensic medical examination) on her own initiative on 23 April 2012.

³⁴ For instance, so-called confidential conversations which were considered as going beyond the examination of criminal cases concerning Ms Tymoshenko were apparently cut short by penitentiary staff.

39. The CPT cannot conclude that the requirements of an “effective” investigation have been met in the above cases. On the one hand, it appeared that prosecutors placed a heavy reliance on the material provided by the State Penitentiary Service in their decisions as to whether or not to open criminal proceedings. On the other hand, the lack of confidence expressed by many prisoners interviewed in the capability and determination of the prosecuting authorities to carry out investigations worthy of the name into cases of alleged ill-treatment by penitentiary staff (or fellow inmates at the instigation of staff) must be taken into account. At the end of the 2012 visit, the delegation raised this particular issue with the Prosecutor General.

In the CPT’s view, if a body in charge of investigations of this type is to enjoy public confidence, it should not only be independent but should also be seen to be independent of the penitentiary and other law enforcement services.

The CPT recommends that steps be taken to set up without delay a national specialised team, whose role is to carry out investigations throughout the country into cases involving alleged ill-treatment inflicted by members of penitentiary staff (or at the instigation of such staff) or any other public officials (such as police officers), and to provide it with its own support staff for the operational conduct of the investigations. Further, the Committee recommends examining the feasibility, in the medium term, of completely separating such a team from the Prosecution Service so as to establish a genuine independent specialised agency for investigations of this type.³⁵

40. The CPT must stress that prisoners’ unrestricted access to their lawyers can contribute to the “effectiveness” of investigations into their allegations of ill-treatment. In this context, the confidentiality of meetings with lawyers should be observed. Indeed, a lawyer is well placed to provide appropriate advice and take the requisite action when his/her client alleges recent ill-treatment. In this context, it is of concern to the Committee that some prisoners alleged that they had been forced to waive their right of access to their lawyer, in particular at Colony No. 25.³⁶

The CPT recommends that the Ukrainian authorities take action to ensure the effective implementation of the prisoners’ right to receive legal assistance from lawyers or other appropriate legal professionals. In particular, access to the prisoners’ lawyers should be prompt and should include the right for the inmates concerned to talk to them in private (e.g. without audiosurveillance or penitentiary officials being present).

41. The CPT wishes to emphasise that failing to provide effective protection to alleged victims and potential witnesses of ill-treatment can seriously hamper any efforts to establish the facts, identify the persons responsible for the alleged ill-treatment and bring them to justice. **The CPT recommends that steps be taken to ensure the effective protection of alleged victims and witnesses of ill-treatment by penitentiary staff or at the instigation of staff whenever it is required by the circumstances, taking due account of the recommendations made by the Committee of Ministers of the Council of Europe in Rec (2005) 9 on the protection of witnesses and collaborators of justice and Rec (2006) 8 on assistance to crime victims.**

³⁵ See, in this respect, the recommendation made in paragraph 20 of the report on the 2009 visit (CPT/Inf (2011) 29).

³⁶ Access to a lawyer or other appropriate legal professionals is provided for in Section 107 of the Criminal Executive Code.

- f. developing an effective national preventive mechanism

42. In their letter of 18 January 2013, the Ukrainian authorities have drawn the CPT's attention to the recent steps towards developing a national preventive mechanism in order to fulfil their obligations under the Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).³⁷ The Ukrainian authorities opted for the setting-up of an "Ombudsman plus"-based model (i.e. by extending the pre-existing functions of the Parliamentary Commissioner for Human Rights to encompass the mandate of a national preventive mechanism with the involvement of civil society actors) and amended the Law on the Parliamentary Commissioner to that effect.³⁸ An expert council, which includes NGO representatives, was put in place within the Secretariat of the Parliamentary Commissioner and held its first meeting in January 2013.

43. As previously indicated, the fact that the Parliamentary Commissioner for Human Rights attended the delegation's end-of-visit meeting with the First Deputy Minister and Acting Minister of Justice was a step forward. This subsequently allowed the Parliamentary Commissioner to send teams to penitentiary establishments visited by the delegation in order to follow up matters of concern raised by the delegation. However, it appeared that time and resource limitations have prevented an in-depth review of the treatment of inmates in the establishments concerned.

Particular care should be taken to ensure, including through Council of Europe assistance, that the national preventive mechanism meets the key requirements as laid down in the OPCAT and subsequently elaborated upon by the Subcommittee on the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) in its Guidelines on national preventive mechanisms (independence, expertise and experience, resourcing issues, etc.).

³⁷ Ukraine ratified the OPCAT on 19 September 2006.

³⁸ Act No. 5409-VI amending the Law on the Parliamentary Commissioner for Human Rights of 2 October 2012.

B. Other issues of a follow-up nature

1. The situation of women and men sentenced to life imprisonment

44. In the course of the 2012 visit, the delegation reviewed the situation of the 21 women sentenced to life imprisonment held in the medium-security unit of Correctional Colony No. 54 in Kharkiv and the 38 male life-sentenced prisoners in the maximum-security unit of Dnipropetrovsk Correctional Colony No. 89. It also met one life-sentenced prisoner in the hospital of Correctional Colony No. 81.

45. Following an amendment to the Criminal Executive Code in 2010, the national minimum standard of living space per prisoner was increased to 4 m² in correctional and educational colonies.³⁹ This is a step in the right direction.

However, it appeared during the 2012 visit that this standard was not always respected in dormitories/cells accommodating female and male prisoners serving life sentences. For instance, at Colony No. 54, up to four women were accommodated in a dormitory of about 12 m². Nevertheless, this state of affairs was alleviated by the open-door policy within the confines of their unit. At Colony No. 89, the situation of men was worse. By way of example, three men spent most of their time locked up in a cell measuring some 10 m² (including the in-cell toilet) and equipped with four beds.

The CPT recommends that the Ukrainian authorities take action to ensure that the minimum standard of at least 4 m² of living space per prisoner is fully applicable and respected in dormitories and cells accommodating inmates serving life sentences. In this connection, the Ukrainian authorities should:

- **review as a matter of priority the intended occupancy levels in each of the dormitories/cells accommodating life-sentenced prisoners in correctional colonies (i.e. number of beds per dormitory/cell) in the light of the minimum standard of 4 m², and revise the overall official capacities of the respective units accordingly. The area taken up by sanitary annexes/in-cell toilets should not be included in this calculation;**
- **examine, at regular intervals, in all correctional colonies, the actual living space per inmate serving a life sentence in dormitories/multi-occupancy cells.**

With regard to single-occupancy cells, any cells of this type should measure at least 6 m² (not counting the area taken up by in-cell toilets) and care should be taken to ensure that they have a width of at least 2 metres between the walls.

³⁹ Section 115 of the Criminal Executive Code, as amended by [Law No. 1828-VI](#) of 21 January 2010.

46. The CPT is pleased to note that the material conditions of detention of women sentenced to life imprisonment at Colony No. 54 had significantly improved since the 2005 visit.⁴⁰ At the time of the 2012 visit, the dormitories in which women were accommodated were in a good state of repair, well equipped and included a fully partitioned sanitary annexe. Further, at Colony No. 89, the delegation noted that some repair works had been carried out in the cells.

However, in both establishments, access to natural light and ventilation was somewhat restricted, and prisoners could not see outside their dormitories/cells; indeed, opaque plexiglas shutters were attached to windows and/or windows were fitted with frosted glass in many dormitories/cells visited. This deficiency was particularly problematic in Colony No. 89 as male lifers spent almost the whole day in their cells. Further, at Colony No. 89, in-cell toilets were only partially partitioned. **The CPT recommends that steps be taken:**

- **to improve access to natural light and ventilation in the dormitories/cells for lifers at Colonies Nos. 54 and 89;**
- **to review the design of the windows in both establishments so as to allow inmates to see outside their dormitories/cells;**
- **to ensure that the in-cell toilets are fitted with a full partition (i.e. up to the ceiling) in the cells for lifers at Colony No. 89.**

Further, **the Committee invites the Ukrainian authorities to pursue their efforts to improve the state of repair of cells for lifers at Colony No. 89.**

47. Almost all inmates serving life sentences had access to at least one hour of outdoor exercise every day, the exception being the lifer held at the hospital of Colony No. 81. The exercise yards seen by the delegation were *inter alia* equipped with means of rest, but were too small, in particular at Colony No. 89 (e.g. some 16 m²). **The CPT recommends that exercise yards for life-sentenced prisoners at Correctional Colony No. 89 be enlarged so as to allow real physical exertion. Further, steps should be taken at Colony No. 81 to ensure that any life-sentenced prisoners being cared for in the hospital whose health so permits have access to one hour of outdoor exercise per day.**

48. As regards activities, 12 women worked in a sewing workshop designed for them. There was nevertheless no other structured activity on offer. As for the male lifers, they were confined to their cells for up to 23 hours a day, without any programme of activities worthy of the name. The only possibility for men to take part in organised activities was to be transferred to ordinary prisoner accommodation (see paragraph 54). **The CPT again calls upon the Ukrainian authorities to develop a programme of purposeful activities for prisoners sentenced to life imprisonment (including work, education, association, sports and cultural activities, as well as targeted rehabilitation programmes).**

⁴⁰ During the 2005 visit, the inmates concerned were temporarily held in the establishment's disciplinary and segregation (DIZO/PKT) unit (see paragraph 108 of document CPT/Inf (2007) 22).

49. The CPT is concerned to note that no review of the grossly excessive security arrangements applicable to male life-sentenced prisoners has been carried out since previous visits. The prisoners concerned continued to be systematically handcuffed when taken out of their cells, with escort staff always required to be accompanied by a member of the dog-support unit and a guard dog. Guard dogs were allegedly kept unmuzzled and sometimes provoked into barking.

The CPT once again calls upon the Ukrainian authorities to ensure that the routine handcuffing of male life-sentenced prisoners when taken out of their cells is discontinued at Correctional Colony No. 89 in Dnipropetrovsk, as well as in any other establishments holding men sentenced to life imprisonment. The application of handcuffs should be exceptional, on the basis of an individual and comprehensive risk and needs assessment carried out by appropriately trained staff.

Further, guard dogs should not be used for routine prison duties involving direct contact with inmates. **The Committee recommends that an end be put to the systematic practice of using guard dogs in the above circumstances. If necessary, the relevant regulations should be amended.**

50. Security arrangements applicable to male life-sentenced prisoners requiring health care are also of particular concern to the Committee. As a rule, lifers were medically examined by health-care staff through the bars of their cells. When a transfer to health-care facilities outside the maximum-security unit was deemed necessary, inmates allegedly experienced significant delays (e.g. for up to several days in a case of medical emergency) due to the requirement to have the inmates concerned escorted by members of special-purpose forces. Further, lifers apparently remained in handcuffs during all medical consultations⁴¹ as well as while receiving dental care. Further, medical confidentiality was not observed during medical examinations or procedures as non-medical staff were routinely present.

Special security measures might be called for in specific cases; however, the systematic examination of prisoners through bars is clearly unjustified. Similarly, the practice of keeping lifers in handcuffs during medical consultations/when providing dental care infringes upon the dignity of the prisoners concerned, prohibits the development of a proper health-care staff-patient relationship and is possibly detrimental to the establishment of an objective medical finding. **The Committee again calls upon the Ukrainian authorities to put an end to these practices in penitentiary establishments holding men serving life sentences. Reference is also made to the first subparagraph, first indent, of paragraph 30 as regards medical confidentiality.**

51. The delegation also observed that staff continued to place lifers in caged areas during meetings with lawyers or other professionals. Such an approach could be considered as inhuman and degrading for both prisoners and the professionals concerned. **The CPT calls upon the Ukrainian authorities to fundamentally review this approach.**

⁴¹ The inmates alleged that they sometimes undressed in their cells, before being handcuffed and brought to the doctor.

52. The placement of all women and men serving life sentences under constant vide-surveillance in their cells is another matter for concern. At Colony No. 89, the delegation noted that, in one cell, the toilet area was within the scope of the CCTV camera.

The CPT appreciates that vide-surveillance in cells can be a useful safeguard in particular cases, for example when a person is considered to be at risk of self-harm or suicide or if there is a concrete suspicion that a prisoner is carrying out activities in the cell which could jeopardise security. However, any decision to impose vide-surveillance on a particular prisoner should always be based on an individual assessment of real risks and should be reviewed on a regular and frequent basis. Steps should also be taken to ensure that prisoners subject to CCTV surveillance are guaranteed reasonable privacy when using the toilet/sanitary annexe.

Vide-surveillance is a gross intrusion into the privacy of prisoners and renders the whole regime even more oppressive, in particular when applied for prolonged periods. Accordingly, the Committee is opposed to the routine installation of CCTV cameras in cells and considers that the resources devoted to such schemes can more usefully be deployed by having staff interact with prisoners who pose high risks. When CCTV cameras are installed, prisoners must be fully informed of this. In addition, it is important that the recordings are kept for at least 48 hours in all cases and indefinitely when a reportable incident has occurred.

The CPT recommends that the Ukrainian authorities review the use of vide-surveillance in cells in penitentiary establishments and adopt detailed regulations, in the light of these remarks.

53. As concerns contact with the outside world, the law was amended shortly after the 2009 visit so as to increase visiting entitlements to one short visit of four hours every three months.⁴² Further, the delegation did not receive any allegations of lifers being handcuffed during visits. This constitutes an improvement. However, the visiting entitlements remain far too modest. In addition, lifers were still not entitled to long visits and the rare short visits always took place in booths through a glass partition, with close relatives only. **The CPT calls upon the Ukrainian authorities to amend further the legislation with a view to bringing the visit entitlement of life-sentenced prisoners at least on a par with that of inmates held in conditions of minimum security.⁴³ Any restrictions (e.g. organisation of short visits through a partition, limitation of categories of visitor, prohibition of long visits, etc.) should be strictly necessary and applied on the basis of an individual risk assessment.**

The CPT is pleased to note that efforts had been made to improve access to a telephone. A number of inmates indicated that they could receive/make phone calls (of up to 15 minutes) once a week. However, male life-sentenced prisoners had to remain in handcuffs while using the phone. Reference is made to the recommendation made in paragraph 49 as concerns individualised risk and needs assessment.

⁴² Section 151 (5) of the Criminal Executive Code, as amended by law No. 1828-VI of 21 January 2010.

⁴³ I.e. at least one short visit of four hours a month and one long visit of up to 72 hours every three months.

54. In the context of previous visits, the CPT criticised the systematic segregation of life-sentenced prisoners provided for in the Ukrainian legislation. After the 2009 visit, changes were made in the Criminal Executive Code in order to allow life-sentenced prisoners, following an assessment of their individual behaviour, to be transferred from double-occupancy to multi-occupancy cells as well as to participate in a range of organised activities (educational, cultural, sports and leisure activities) after fifteen years of imprisonment, and from multi-occupancy cells to ordinary prisoner accommodation after five years of imprisonment.⁴⁴

A number of the delegation's interlocutors during the 2012 visit (including staff members) considered that there was no justification for many prisoners serving life sentences to be kept separate from other inmates. Nevertheless, the rule remains the segregation of life-sentenced prisoners,⁴⁵ and the new legal provisions offer too little margin of manoeuvre to the State Penitentiary Service. The CPT must reiterate that the segregation of an inmate sentenced to life imprisonment should always be the result of a comprehensive and ongoing risk and needs assessment, based on an individualised sentence plan. **The Committee recommends that the Ukrainian authorities review again the legislation and practice as regards the segregation of life-sentenced prisoners, in the light of these remarks.**

2. The application of disciplinary and segregative measures

55. The Ukrainian legislation offers a variety of disciplinary/segregative responses to prisoners' conduct likely to constitute or constituting a threat to good order, safety or security. The most severe responses of this type at the disposal of the penitentiary authorities range from confinement in a "disciplinary isolator" (DIZO) for up to 15 days (10 days for women)⁴⁶ to segregation for preventative purposes in "cell-type premises" (PKT)⁴⁷ for up to three months or in an "enhanced control unit" (DPK)⁴⁸ for a renewable period of three months. The penitentiary authorities also have the possibility to transfer an inmate to a correctional colony/unit with a higher security level.

Nevertheless, the margin of manoeuvre of the penitentiary authorities is unduly restricted by law. Several categories of inmate are automatically held in conditions of maximum security and placed on segregation for preventative purposes for a prolonged period following a court sentence, on the sole basis of their crimes. The CPT must recall its position of principle that decisions concerning the security level to be applied to a given prisoner as well as the measure of segregation for preventative purposes should not be pronounced – or imposed at the discretion of the court – as part of the sentence. The decision whether or not to impose a particular security level or whether segregation for preventative purposes is necessary should lie with the penitentiary authorities, on the basis of an individual risk assessment, and should not be part of the catalogue of criminal sanctions. **The Committee reiterates its recommendation that the relevant legal provisions be amended accordingly.**

⁴⁴ Section 151-1 of the Criminal Executive Code, which was introduced by law No. 1828-VI of 21 January 2010.

⁴⁵ Pursuant to Section 150 (2) of the Criminal Executive Code, as amended by law No. 1828-VI of 21 January 2010, life-sentenced prisoners should be kept separate from other inmates.

⁴⁶ Section 132 (1) of the Criminal Executive Code.

⁴⁷ Приміщення камерного типу.

⁴⁸ Дільниця посиленого контролю. See also section II.C.4. of the report on the 2009 visit (CPT/Inf (2011) 29).

56. It emerged from the delegation's findings during the 2012 visit that the relevant penitentiary authorities had generally resorted in a reasonable way to the measures of disciplinary confinement or administrative segregation at Correctional Colonies Nos. 54 and 89.⁴⁹

In contrast, recourse to disciplinary confinement and/or administrative segregation for preventative purposes appeared to be excessive at Correctional Colonies Nos. 25 and 81. The delegation noted that there were 651 placements in DIZO and 91 placements in PKT in the first eleven months of 2012 at Colony No. 25 as well as 369 placements in DIZO and 50 placements in PKT for the same period at Colony No. 81. The examination of registers in both establishments revealed instances of repeated placements in DIZO for consecutive periods of disciplinary confinement of up to 30 days without a break in-between. The measures of disciplinary confinement or segregation (PKT) were often applied to inmates in reaction to petty offences (e.g. 10 days of disciplinary confinement for "not going to sleep on time"). In a number of cases, the imposition of a disciplinary sanction or the application of a measure of segregation clearly appeared to be unjustified (e.g. 15 days of disciplinary confinement or placement in PKT for three months for having "refused to take outdoor exercise"; 15 days of disciplinary confinement for having "expressed dissatisfaction about conditions of detention").

Further, it emerged from the examination of records on placements in DPK that the reasoning for decisions on placement and its prolongation appeared to be stereotyped and repetitive (e.g. "no readiness to exercise self-control and adopt the appropriate behaviour"⁵⁰).

As a result, some prisoners were kept in DIZO, PKT and/or DPK for long periods (e.g. more than a year in total) with the firm belief that the application of these measures was not guided by the requirements of security, safety and discipline but aimed at unduly restricting their rights.

These findings are of all the more concern that it was not uncommon for the prosecuting authorities to initiate criminal proceedings against the inmates concerned on the account of these offences and to obtain from courts an extension of the prisoners' sentences (for a term of up to three years) by virtue of Section 391 of the Criminal Code (persistent disobedience).

57. In the light of the above, **the CPT calls upon the Ukrainian authorities to review the approach followed by the management of Correctional Colonies Nos. 25 and 81 as concerns recourse to placements in DIZO, PKT and DPK in order to ensure that any measures of this type are guided by the principles of proportionality, lawfulness, accountability, necessity and non-discrimination. In this context, the relevant authorities should be firmly reminded that:**

- **the measures consisting of placing an inmate in DIZO, PKT or DPK should always be applied for the shortest possible period of time, after *inter alia* having taken into account the views of the inmate concerned, provided him with a copy of the decision which contains the reasons for placement and straightforward information on his rights, including the means available to him to challenge the decision before an independent authority;**
- **the sanction of disciplinary confinement should always correspond to the gravity and the nature of the offence(s) committed;**

⁴⁹ For instance, 94 placements in DIZO were recorded in the first eleven months of 2012 at Colony No. 89. The length of placement varied from one day to the maximum of 15 days, depending on the offences committed.

⁵⁰ See Section 94 (4) of the Criminal Executive Code.

- **the prisoner's choice to exercise or not to exercise his rights should not be subjected to a disciplinary sanction. In particular, there should be no question of considering a refusal to take outdoor exercise on a given day or a complaint about conditions of detention as a disciplinary offence;**
- **in the case of a prisoner who is subjected to successive sanctions of disciplinary confinement totalling in excess of 15 days (10 days for women), there should be an appropriate interruption in the disciplinary confinement regime at the 15/10-day point;**
- **a plan should be established for every prisoner placed in PKT or DPK with a view to addressing the issues which require the inmate concerned to be kept in such conditions.**

Steps must also be taken to ensure that, after an initial decision on placement in PKT or DPK, there is a further review at least after the first month.

3. Health care provided to prisoners suffering from tuberculosis at the hospital of Correctional Colony No. 89 in Dnipropetrovsk

58. The 2012 visit provided an opportunity to review the provision of care at the hospital of Correctional Colony No. 89 in Dnipropetrovsk. The delegation noted that the number of patients had decreased, with 364 patients at the time of the 2012 visit (compared with 571 patients more than three years ago). This made it possible for the national standard of 5 m² of living space per patient to be on the whole observed.

59. As was the case in 2009, anti-TB medication appeared to be distributed in accordance with the DOTS method. The laboratory facilities and medical equipment were generally appropriate. However, health-care staff were frustrated at the lack of availability of both second-line anti-TB medicines and antiretroviral drugs for HIV infection.⁵¹ **The CPT recommends that the necessary measures be taken to address these shortcomings.**

60. The hospital's health-care team remained reasonably staffed. It comprised a total of 41 doctors (including the chief doctor, his deputy, 30 full-time doctors and various part-time medical specialists), five feldshers and three nurses. Two doctors and one feldsher were always on duty. Despite this relatively favourable situation in terms of staff resources, the health-care team relied heavily on prisoners employed as orderlies to perform various health-care tasks.

In this connection, the CPT is deeply concerned by the inadmissible situation found by the delegation in the intensive care unit, which accommodated patients approaching the end of their lives on account of TB and often co-infection with HIV. Indeed, the patients of the unit were being cared for not by qualified staff but by other prisoner orderlies who were given tasks that should only be performed by a health-care professional (such as giving pills and injections to other inmates, and inserting intravenous drips). It is even more unacceptable that these prisoner orderlies were also suffering from TB and needed themselves to be properly cared for.

⁵¹ At the time of the 2012 visit, between 80 and 90 TB patients were HIV-positive and most of them were suffering from AIDS, of whom only between 20 and 30 were receiving treatment with antiretroviral agents.

The CPT recommends that the Ukrainian authorities take immediate steps to increase qualified health-care staff cover for patients in the intensive care unit, so as to provide them with the necessary physical and psychological end-of-life care and create the conditions to ensure that such persons are cared for in an environment respectful of human dignity. More generally, the Committee recommends that the practice of using prisoner orderlies for the carrying out of health-care tasks be discontinued in the hospital of Correctional Colony No. 89.

61. It is also of concern that patients approaching the end of their lives were not allowed to receive any visits whatsoever. **The CPT recommends that the Ukrainian authorities take steps to ensure that relatives can visit patients close to death.**

In this context, **the CPT reiterates that in respect of prisoners who are the subject of a short-term fatal prognosis, special medical commissions preparing applications for their early release on medical grounds should intervene promptly, and such applications should be speedily considered by the courts with a presumption in favour of release.**

4. The situation of Yulia Tymoshenko at Central Clinical Hospital No. 5 in Kharkiv

62. In the course of the 2011 visit, the CPT examined the situation of certain prisoners at Kyiv pre-trial establishment (SIZO), in particular Valeriy Ivashenko, Yuriy Lutsenko and Yulia Tymoshenko. In its visit report, the Committee urged the Ukrainian authorities to take all the necessary measures to ensure that, in future, all prisoners who are in need of specialist treatment/examinations are transferred to an outside hospital without undue delay.

During the 2012 visit, the delegation re-examined the situation of Yulia Tymoshenko, who was being held in a special secure area at Clinical Hospital No. 5 in Kharkiv. Her treatment was to a great extent under the supervision of doctors from the Berlin Charité Clinical Centre (Germany).

63. At the end-of-visit talks, the CPT's delegation indicated that the provision of health-care to Yulia Tymoshenko at Clinical Hospital No. 5 did not call for particular comments. However, it shared its concerns as to the lack of medical confidentiality due to the presence of a non-medical member of staff during medical consultations and reminded the Ukrainian authorities that medical examinations and procedures should always be 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 with no health-care duties. In this connection, the CPT notes that, before the visit, the confidentiality of medical procedures had been further breached by the posting of video clips on the Internet, which showed Ms Tymoshenko receiving medical treatment at the hospital.

64. The delegation also underlined that the security arrangements made in respect of Ms Tymoshenko could be considered disproportionate. These arrangements included the use of constant vide-surveillance for months on end⁵² and the permanent presence of a member of the penitentiary staff within her room (in addition to penitentiary staff supervising the whole secure area). In this connection, the delegation expressed the views of the Committee on placement of inmates under constant vide-surveillance.⁵³

In their letter of 18 January 2013, the Ukrainian authorities informed the CPT that, in order to monitor Ms Tymoshenko's behaviour, technical means of supervision and vide-surveillance had been installed pursuant to Section 103 of the Criminal Executive Code,⁵⁴ except for the premises used for meetings with her lawyers, the room intended for medical procedures and the sanitary annexe. The Ukrainian authorities stressed that the vide-surveillance of Ms Tymoshenko was conducted exclusively by female staff and that no videorecording was performed. Further, they refer to the decision of 30 October 2012 by the Kyiv District Administrative Court, which considered that recourse to vide-surveillance was lawful.

65. Regrettably, the Ukrainian authorities failed to provide information on any individual assessment of real risks which may have justified the use of vide-surveillance at Colony No. 54 or in hospital, and the permanent presence of staff assigned to the surveillance of Ms Tymoshenko within the hospital room. The judicial review of the decision taken by the penitentiary authorities to use vide-surveillance does not address this matter either.

The CPT notes that, in addition to the permanent presence of a staff member, no fewer than three cameras were installed in the room, in addition to six other cameras outside the room (e.g. in the corridor). There was also a lack of clarity as to other cameras in operation at the time of the visit (e.g. in the room intended for medical procedures) and which agency(ies) had responsibility for oversight of these cameras (e.g. in the room where staff monitored screens⁵⁵).

Further, the delegation heard allegations that four other, unofficial, video- and/or audiosurveillance devices were installed in Ms Tymoshenko's room (including in the sanitary annexe⁵⁶). It also received credible accounts, from various sources, according to which screens could not always be monitored by female staff members.

Regardless of the veracity of these allegations, the security arrangements made in respect of Ms Tymoshenko at the time of the visit, which have been applied for an extensive period of time, are considered to be intrusive and have not been shown to be justified.⁵⁷

⁵² Ms Tymoshenko was placed under constant vide-surveillance since her admission to the Central Clinical Hospital in Spring 2012. It is also noteworthy that she was subjected to such a measure during previous months at Colony No. 54; in this connection, the delegation observed that her room was still fitted with vide-surveillance cameras in that establishment.

⁵³ See, in this connection, paragraph 52.

⁵⁴ Pursuant to Section 103 of the Criminal Executive Code, the administration of a colony is entitled to use audiovisual, electronic and other technical means to prevent escapes and other offences, to prevent breaches to good order as provided by law and to obtain the necessary information on the behaviour of the inmates.

⁵⁵ The delegation could not ascertain whether the monitoring screens were within the scope of that particular camera and did not receive an answer as to which authority was responsible for it.

⁵⁶ In this connection, Ms Tymoshenko was allegedly asked by staff to stop writing when she wrote notes in the sanitary annexe.

⁵⁷ It should also be mentioned that the room accommodating Ms Tymoshenko was apparently searched four times a day. Further, fellow inmates were allegedly obliged to report to staff the content of any conversations they had with Ms Tymoshenko.

66. The delegation also learned that Ms Tymoshenko had had no access to outdoor exercise for about a year, whether in Colony No. 54 or in Clinical Hospital No. 5 in Kharkiv, as she had not been provided with appropriate assistance when she wished to take outdoor exercise.

In addition, Ms Tymoshenko experienced serious difficulties in enjoying her rights to receive visits and to make phone calls at Colony No. 54. She continued to face – to a certain extent – similar obstacles at Clinical Hospital No. 5 in Kharkiv.

67. On a more positive note, the material conditions observed in the facilities accommodating her at Colony No. 54 and at Clinical Hospital No. 5 were of a high standard.

* *
*

68. The provision of material conditions of such a level should never, however, be construed as allowing undue interferences with, *inter alia*, medical confidentiality, the privacy to which an inmate is entitled, the right of access to outdoor exercise and the provision of appropriate contact with the outside world. Every such interference is of concern and the cumulative effect of the interferences involved in this case is clearly not acceptable. **The CPT urges the Ukrainian authorities to take action without delay to ensure that medical confidentiality is respected with regard to Yulia Tymoshenko, that the security arrangements concerning her are no more than what is strictly required by the circumstances, that she enjoys an effective right of access to the open air on a daily basis, and that she is able to benefit in practice from contact with the outside world to the full extent provided for by law.**

APPENDIX I

LIST OF THE CPT'S RECOMMENDATIONS, COMMENTS AND REQUESTS FOR INFORMATION

Co-operation

recommendations

- the Ukrainian authorities to take decisive steps to ensure that no actions of the type described in paragraph 7 are encountered during future visits to Ukraine (paragraph 7).

requests for information

- on the use of audiosurveillance in penitentiary establishments, including a copy of the relevant regulations (paragraph 7).

Treatment of prisoners serving sentences in correctional colonies

recommendations

- the Ukrainian authorities to take further action to combat torture and other forms ill-treatment in correctional colonies and, in particular, to:
 - continue to develop, circulate and monitor the implementation of standards and instructions on the penitentiary staff's obligations in relation to the treatment of inmates in their custody. All members of staff should be firmly reminded, including during initial and in-service training, that they should never inflict, instigate or tolerate any act of torture or other forms of ill-treatment, under any circumstances, including when ordered by a superior, and that they should on the contrary respect and protect the physical, sexual and psychological integrity of all prisoners, including against assault by fellow prisoners. Proper conduct by members of penitentiary staff vis-à-vis prisoners should be fostered by doing more to require penitentiary officials to prevent colleagues from ill-treating prisoners and to report, through appropriate channels, all cases of ill-treatment involving colleagues. This implies the existence of a clear reporting line as well as the adoption of "whistle-blower" protective measures;
 - exercise the greatest vigilance as regards the treatment of prisoners serving sentences in Correctional Colony No. 25 in Kharkiv and Correctional Colony No. 81 in Stryzhavka and make clear to all those concerned, in particular management, operational and internal security staff working in these establishments, that any penitentiary official committing or aiding and abetting ill-treatment will be held accountable;

- support the new management of Correctional Colony No. 89 in Dnipropetrovsk in its commitment to eradicate the ill-treatment of prisoners by staff or at their instigation, in particular in the establishment's hospital;
 - ensure that the management of Correctional Colony No. 54 deliver a regular message to staff working in the establishment's accommodation areas for women serving fixed-term sentences that any forms of ill-treatment of inmates (including verbal abuse) will not be tolerated;
 - improve the training for members of special-purpose units intervening in penitentiary establishments with a view to ensuring that physical force and "special means" are only applied when – and to the extent – strictly necessary to maintain security and order, and never as a form of punishment (paragraph 21);
- the Ukrainian authorities to take the necessary measures to ensure that members of penitentiary special-purpose forces do not wear balaclavas during interventions within penitentiary establishments and that the subsequent identification of the officers concerned by the relevant authorities and by prisoners is always made possible, through not only a clearly distinctive badge but also a prominent identification number on each uniform/helmet. In addition, interventions of this type should be videorecorded (e.g. with tactical cameras as part of the equipment of the penitentiary officers concerned) (paragraph 21);
 - the Ukrainian authorities to take action to improve the recruitment procedures and professional training of all penitentiary staff with a view to preparing them to adopt a new relationship with prisoners and move towards creating a dynamic rather than a purely static approach to security and order. Particular measures should be taken to develop specialised training for staff working with certain categories of prisoner (e.g. women, life-sentenced prisoners, prisoners held in conditions of high security or enhanced control, inmates with specific health needs) (paragraph 22);
 - the Ukrainian authorities to conduct an in-depth analysis of the number and/or deployment of penitentiary staff in prisoner accommodation and working areas in correctional colonies and, if necessary, to revise the relevant regulations accordingly (paragraph 25);
 - the Ukrainian authorities to take immediate steps to ensure that no staff member is required to work two or more shifts in a row (paragraph 25);
 - the Ukrainian authorities to take action to ensure that no prisoner is put in a position to exercise authority over other inmates (paragraph 25);
 - staff-inmate relations in correctional colonies to be geared towards facilitating social reintegration of prisoners, safe progress towards release and reducing the risk of re-offending after release through a programme of purposeful activities tailored to their individual needs. As regards in particular work, the interests of the prisoners should not be subordinated to the pursuit of financial profit from industries in the establishments concerned (paragraph 26);

- the Ukrainian authorities to ensure that prisoners are effectively entitled to prompt examinations by health-care professionals while in prison, in particular after a violent episode, and that all relevant staff are provided with further instructions and appropriate training on medical examinations of prisoners. In particular:
 - all medical examinations of prisoners should be conducted out of the hearing and – unless the health-care professional concerned requests otherwise in a particular case – out of the sight of non-medical staff;
 - the record drawn up following the medical examination of a prisoner should contain: (i) a full account of statements made by the person concerned 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 (including appropriate screening for injuries), and (iii) the health-care professional's observation, in the light of (i) and (ii), indicating the consistency between any allegations made and the objective medical findings;
 - any statements made by the prisoners concerned in the context of such examinations, the objective medical findings and medical conclusions should not be accessible to non-medical penitentiary staff or other inmates (health-care staff examining the prisoners may inform relevant staff members on a need-to-know basis about the state of health of an inmate, including medication being taken and particular health risks);
 - whenever injuries are recorded which are consistent with allegations of ill-treatment made by an inmate (or which, even in the absence of allegations, are indicative of ill-treatment), the record should be systematically brought to the attention of the prosecuting authorities, regardless of the wishes of the prisoner concerned. Inmates and their lawyers, if any, should be entitled to receive a copy of that record at the same time. Health-care professionals (and the inmates concerned) should not be exposed to any form of undue pressure or reprisals from management staff when they fulfil that duty (paragraph 30);
- whenever a prisoner presents injuries indicative of ill-treatment or makes allegations of ill-treatment to health-care staff, he or she must be promptly seen by a doctor with recognised forensic training (paragraph 30);
- steps to be taken to review the health-care staff's administrative subordination to the penitentiary establishment's management (paragraph 30);
- the Ukrainian authorities to review the legal framework on the use of physical force, "special means" and straight-jackets, in the light of the delegation's findings and the remarks made in paragraph 31, and provide penitentiary staff with improved training. In particular, it should be made clear that:
 - where it is deemed essential to handcuff a given inmate, the handcuffs should under no circumstances be excessively tight and should be applied only for as long as is strictly necessary. Further, a prisoner should never be handcuffed to fixed objects; in the event of an inmate acting in a highly agitated or violent manner, the person concerned should rather be kept under close supervision in an appropriate setting. In case of agitation brought about by the state of health of a prisoner, penitentiary officials should request medical assistance and follow the instructions of the health-care professional;

- batons should only be used when there is a risk to life or limb and only to address that threat directly;
- tear gas canisters should not be part of the custodial staff's standard equipment and should not be used in a confined area (paragraph 31);
- extra vigilance to be paid to ensure that any use of force, "special means" and/or straight-jackets against prisoners is systematically and duly recorded in the relevant reports and registers (paragraph 32);
- the investigation into the treatment of prisoners in Correctional Colonies Nos. 25 and 81 to be re-opened, in the light of the remarks made in paragraph 36 and the criteria of an effective investigation referred to in paragraph 33 (paragraph 36);
- steps to be taken to set up without delay a national specialised team, whose role is to carry out investigations throughout the country into cases involving alleged ill-treatment inflicted by members of penitentiary staff (or at the instigation of such staff) or any other public officials (such as police officers), and to provide it with its own support staff for the operational conduct of the investigations (paragraph 39);
- the Ukrainian authorities to examine the feasibility, in the medium term, of completely separating the above-mentioned team from the Prosecution Service so as to establish a genuine independent specialised agency for investigations into cases involving alleged ill-treatment inflicted by public officials (paragraph 39);
- the Ukrainian authorities to take action to ensure the effective implementation of the prisoners' right to receive legal assistance from lawyers or other appropriate legal professionals. In particular, access to the prisoners' lawyers should be prompt and should include the right for the inmates concerned to talk to them in private (e.g. without audiosurveillance or penitentiary officials being present) (paragraph 40);
- steps to be taken to ensure the effective protection of alleged victims and witnesses of ill-treatment by penitentiary staff or at the instigation of staff whenever it is required by the circumstances, taking due account of the recommendations made by the Committee of Ministers of the Council of Europe in Rec (2005) 9 on the protection of witnesses and collaborators of justice and Rec (2006) 8 on assistance to crime victims (paragraph 41).

comments

- if it is considered necessary for penitentiary staff to carry "special means" within the prisoner accommodation or working areas, these should be hidden from view (paragraph 23);
- consideration should be given to putting an end to the 24-hour shift pattern for penitentiary staff (paragraph 25);
- consideration should be given to a greater involvement of the Ministry of Health in the provision of health-care services in prison (paragraph 30);

- particular care should be taken to ensure, including through Council of Europe assistance, that the national preventive mechanism meets the key requirements as laid down in the Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) and subsequently elaborated upon by the Subcommittee on the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) in its Guidelines on national preventive mechanisms (independence, expertise and experience, resourcing issues, etc.) (paragraph 43).

requests for information

- a copy of the legal and regulatory provisions applicable to special-purpose forces operating in penitentiary establishments (paragraph 21);
- up-to-date information on action taken to combat staff corruption within the State Penitentiary Service and other agencies dealing with the penitentiary system (including on the application of sanctions in this area) (paragraph 27).

Other issues of a follow-up nature

recommendations

- the Ukrainian authorities to take action to ensure that the minimum standard of at least 4 m² of living space per prisoner is fully applicable and respected in dormitories and cells accommodating inmates serving life sentences. In this connection, the Ukrainian authorities should:
 - review as a matter of priority the intended occupancy levels in each of the dormitories/cells accommodating life-sentenced prisoners in correctional colonies (i.e. number of beds per dormitory/cell) in the light of the minimum standard of 4 m², and revise the overall official capacities of the respective units accordingly. The area taken up by sanitary annexes/in-cell toilets should not be included in this calculation;
 - examine, at regular intervals, in all correctional colonies, the actual living space per inmate serving a life sentence in dormitories/multi-occupancy cells (paragraph 45);
- single-occupancy cells to measure at least 6 m² (not counting the area taken up by in-cell toilets) and to have a width of at least 2 metres between the walls (paragraph 45);
- steps to be taken:
 - to improve access to natural light and ventilation in the dormitories/cells for life-sentenced prisoners at Correctional Colonies Nos. 54 and 89;
 - to review the design of the windows in both establishments so as to allow inmates to see outside their dormitories/cells;
 - to ensure that the in-cell toilets are fitted with a full partition (i.e. up to the ceiling) in the cells for life-sentenced prisoners at Colony No. 89 (paragraph 46);

- exercise yards for life-sentenced prisoners at Correctional Colony No. 89 to be enlarged so as to allow real physical exertion. Further, steps should be taken at Colony No. 81 to ensure that any life-sentenced prisoners being cared for in the hospital whose health so permits have access to one hour of outdoor exercise per day (paragraph 47);
- the Ukrainian authorities to develop a programme of purposeful activities for prisoners sentenced to life imprisonment (including work, education, association, sports and cultural activities, as well as targeted rehabilitation programmes) (paragraph 48);
- the Ukrainian authorities to ensure that the routine handcuffing of male life-sentenced prisoners when taken out of their cells is discontinued at Correctional Colony No. 89 in Dnipropetrovsk, as well as in any other establishments holding men sentenced to life imprisonment. The application of handcuffs should be exceptional, on the basis of an individual and comprehensive risk and needs assessment carried out by appropriately trained staff (paragraph 49);
- an end to be put to the systematic practice of using guard dogs in the circumstances described in paragraph 49. If necessary, the relevant regulations should be amended (paragraph 49);
- the Ukrainian authorities to put an end to the practices described in paragraph 50 and to ensure the confidentiality of medical examinations and procedures as regards male life-sentenced prisoners requiring health care (paragraph 50);
- the Ukrainian authorities to review arrangements for meetings between lifers and lawyers or other professionals, in the light of the remarks in paragraph 51 (paragraph 51);
- the Ukrainian authorities to review the use of videosurveillance in cells in penitentiary establishments and to adopt detailed regulations, in the light of the remarks in paragraph 52 (paragraph 52);
- the Ukrainian authorities to amend further the legislation with a view to bringing the visit entitlement of life-sentenced prisoners at least on a par with that of inmates held in conditions of minimum security.⁵⁸ Any restrictions (e.g. organisation of short visits through a partition, limitation of categories of visitor, prohibition of long visits, etc.) should be strictly necessary and applied on the basis of an individual risk assessment (paragraph 53);
- the Ukrainian authorities to review again the legislation and practice as regards the segregation of life-sentenced prisoners, in the light of the remarks in paragraph 54 (paragraph 54);
- the relevant legal provisions on security levels and the measure of segregation for preventative purposes to be amended in accordance with the precepts referred to in paragraph 55 (paragraph 55);

⁵⁸

I.e. at least one short visit of four hours a month and one long visit of up to 72 hours every three months.

- the Ukrainian authorities to review the approach followed by the management of Correctional Colonies Nos. 25 and 81 as concerns recourse to placements in a “disciplinary isolator” (DIZO), “cell-type premises” (PKT) and an enhanced control unit (DPK) in order to ensure that any measures of this type are guided by the principles of proportionality, lawfulness, accountability, necessity and non-discrimination. In this context, the relevant authorities should be firmly reminded that:
 - the measures consisting of placing an inmate in DIZO, PKT or DPK should always be applied for the shortest possible period of time, after *inter alia* having taken into account the views of the inmate concerned, provided him with a copy of the decision which contains the reasons for placement and straightforward information on his rights, including the means available to him to challenge the decision before an independent authority;
 - the sanction of disciplinary confinement should always correspond to the gravity and the nature of the offence(s) committed;
 - the prisoner’s choice to exercise or not to exercise his rights should not be subjected to a disciplinary sanction. In particular, there should be no question of considering a refusal to take outdoor exercise on a given day or a complaint about conditions of detention as a disciplinary offence;
 - in the case of a prisoner who is subjected to successive sanctions of disciplinary confinement totalling in excess of 15 days (10 days for women), there should be an appropriate interruption in the disciplinary confinement regime at the 15/10-day point;
 - a plan should be established for every prisoner placed in PKT or DPK with a view to addressing the issues which require the inmate concerned to be kept in such conditions (paragraph 57);
- steps to be taken to ensure that, after an initial decision on placement in PKT or DPK, there is a further review at least after the first month (paragraph 57);
- the necessary measures to be taken to address the lack of availability of second-line anti-TB medicines and antiretroviral drugs for HIV infection in the hospital of Correctional Colony No. 89 (paragraph 59);
- the Ukrainian authorities to take immediate steps at the hospital of Colony No. 89 to increase qualified health-care staff cover for patients in the intensive care unit, so as to provide them with the necessary physical and psychological end-of-life care and create the conditions to ensure that such persons are cared for in an environment respectful of human dignity (paragraph 60);
- the practice of using prisoner orderlies for the carrying out of health-care tasks to be discontinued in the hospital of Correctional Colony No. 89 (paragraph 60);

- the Ukrainian authorities to take steps to ensure that relatives can visit patients close to death. Further, special medical commissions preparing applications for their early release on medical grounds should intervene promptly, and such applications should be speedily considered by the courts with a presumption in favour of release (paragraph 61);
- the Ukrainian authorities to take action without delay to ensure that medical confidentiality is respected with regard to Yulia Tymoshenko, that the security arrangements concerning her are no more than what is strictly required by the circumstances, that she enjoys an effective right of access to the open air on a daily basis, and that she is able to benefit in practice from contact with the outside world to the full extent provided for by law (paragraph 68).

comments

- the Ukrainian authorities are invited to pursue their efforts to improve the state of repair of cells for life-sentenced prisoners at Colony No. 89 (paragraph 46).

APPENDIX II

**LIST OF THE NATIONAL AUTHORITIES AND ORGANISATIONS
MET BY THE CPT'S DELEGATION**

A. Government authorities

Ministry of Justice

Inna YEMELIANOVA	First Deputy Minister and Acting Minister
Nazar KULCHYTSKYI	Government Agent before the European Court of Human Rights and CPT's Liaison Officer
Svitlana KOLYSHKO	Head of the International Law and Co-operation Department
Vitaliy TYKHNOVYCH	Head of the International Co-operation and Protocol Section, International Law and Co-operation Department
Roman IEMETS	Leading Specialist, International Co-operation and Protocol Section, International Law and Co-operation Department

State Penitentiary Service

Oleksandr LISITSKOV	Head
Sergiy SYDORENKO	Deputy Head
Vladyslav KLYSHA	Acting Deputy Head of Department

Ministry of the Interior

Serhiy BURLAKOV	Deputy Head of Public Relations Department
-----------------	--

B. Prosecuting authorities

Viktor PSHONKA	Prosecutor General
Hryhorii SEREDA	Deputy Prosecutor General
Oleh KARPENKO	Acting Head of the Directorate General for the Supervision of the Observance of the Legislation in the Execution of Judicial Decisions in Criminal Matters and other Coercive Measures
Oleksandr PRYKHODKO	Head of the Directorate General for International Legal Co-operation
Oleksandr MRYKHYN	Prosecutor of Vinnytsia Region
Hennadii TIURIN	Prosecutor of Kharkiv Region
Marharyta VELKOVA	Head of the Press Department

C. Office of the Parliamentary Commissioner for Human Rights

Valeriya LUTKOVSKA	Parliamentary Commissioner for Human Rights
Yuriy BELOUSOV	Head of the Department for the Development of the National Preventive Mechanism

D. Non-Governmental Organisations

Kharkiv Human Rights Group

APPENDIX III

PHOTOGRAPHS OF OBJECTS FOUND BY THE CPT'S DELEGATION NEAR TO THE OFFICES OF OPERATIONAL OFFICERS AT CORRECTIONAL COLONY NO. 81 IN STRYZHAVKA (VINNYTSIA REGION)

(paragraph 17 of the visit report)



