

Response

**of the Ukrainian Government
to the preliminary observations made by
the delegation of the European Committee
for the Prevention of Torture and Inhuman or
Degrading Treatment or Punishment (CPT)
which visited Ukraine**

from 9 to 16 September 2014

The Ukrainian Government has requested the publication of this response. The preliminary observations made by the CPT's delegation were published on 13 January 2015 and are set out in document CPT/Inf (2015) 5.

Strasbourg, 29 April 2015

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



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11.02.2015 № 12.2-41/38

На № _____

Dear Mr Hüseyinov,

I avail myself of this opportunity to convey to You my assurances of the highest consideration and assure You in the readiness for the further constructive cooperation.

First of all let me emphasize the excessive importance of effective cooperation between us in the area of appropriate functioning of legal mechanisms in the sphere of human rights protection and fundamental freedoms.

It was my great honour and pleasure to meet You and CPT's delegation at the Ministry of Justice and to have a great opportunity to discuss all burning issues as well as the plans of the new Government of Ukraine for reformation.

The questions You raised are very important for Ukraine. Your insightful comments and outright exchange of views will establish a solid base for improving human rights protection in Ukraine and will help us to find the best way of moving along the path of strengthening of human rights protection in line with best practices and international standards on detention and imprisonment.

In response to Your letter on December 11, 2014 and following our meeting on January 27, 2015, Ministry of Justice sends detailed information on the results of carried out investigations of undertaking and planned preventive measures and other measures to prevent intimidation and acts of retaliation against prisoners (attached).

Ministry of Justice will keep You informed of progress and measures taken by Ukraine in connection with the comments and recommendations of the CPT.

I wish You every success and look forward to our continued cooperation.

Annex: mentioned on ___ pages.

Sincerely yours

Minister

**To the President of the European
Committee for the Prevention of Torture
and Inhuman or Degrading Treatment
or Punishment**

Latif Hüseyinov

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Pavlo PETRENKO

**Annex 1 to the letter of the Ministry of Justice
on 11 February 2015 № 12.2-41/58**

INFORMATION

**on measures taken by Ukraine in connection with
meeting on January, 27, 2015**

In order to respond to the CPT's comments and on the results of the meeting of the authorities of the Ministry of Justice and the State Penitentiary Service (hereinafter - SPtS) with the President of the CPT Latif Huseynov on January 27, 2015, the Ministry of Justice and the SPtS taken a number of organizational measures.

In order to take remedial action on the issues raised during the meeting to all local authorities of the SPtS of Ukraine sent the Directive, which provides mandatory in case of complaints from prisoners and persons taken into custody for illegal actions of the administration associated with the intimidation of prisoners, cruel attitude to them and humiliation of their dignity and ill-treatment by the staff of penal institutions and detention facilities, to conduct appropriate official investigations, relevant materials submitted to law enforcement agencies.

By the same Directive forwarded Recommendations on the order of investigation by personnel of penitentiary establishments and pre-trial establishments allegations of ill-treatment in the SPtS of Ukraine worked out by European and national experts. (copy of the Directive and an unofficial translation attached).

January 28, 2015 by the order of the SPtS № 7 / OC-15, appointed the new chiefs of Oleksiivska penal colony (№ 25) and Temnivska penal colony (№ 100).

By the subdivision of the SPtS in Kharkiv region organized additional classes in the system of official training to staff of penitentiary establishments of the region on studying the provisions of international instruments and national legislation on the rights of prisoners.

January 30, 2015 Minister of Justice ordered the instruction № 6-48 / 1 to the structural units of the Ministry of Justice and the SPtS to verify the information contained in the letter of the CPT on December, 11 2014 with a visit to the Oleksiivska penal colony (№ 25) and Temnivska penal colony (№ 100) in Kharkiv region.

February 02 and 03, 2014 a joint commission of the Ministry of Justice and the SPtS checked the activities of these correctional facilities and divisions of the SPtS in Kharkiv region. In checking also involved 6 representatives of NGO's and human rights organizations of Kharkiv region.

As of February 1, 2015 in Oleksiivska penal colony (№ 25) 960 convicts kept, in Temnivska penal colony (№ 100) - 928 convicts.

The commission members and representatives of civil society have been visited the main objects of penal colonies: dormitories for convicts, medical units, disciplinary wards, intensive control areas, dining room, bath and laundry facilities, manufacturing departments. An anonymous survey of convicts conducted.

During the work of the commission of the Ministry of Justice and the SPtS - complaints and appeals of convicted on torture, beatings of them by administration of the

institution, intimidation, moral or physical pressure from the staff of penal colonies (except for the three convicts from Temnivska penal colony (№ 100)), improper communal welfare and health care, poor wages haven't been received.

In private conversations with members of the commission, some convicts of the Temnivska penal colony (№ 100) reported that for the last four months attitude of staff to prisoners has changed for the better.

At the time of checking, the moral and psychological atmosphere among prisoners in both penal colonies was satisfactory, that confirmed by the results of the anonymous survey. In Oleksiivska penal colony (№ 25) was polling 150 convicts, in the Temnivska penal colony (№ 100) - 270 convicts.

Conditions of detention of convicted considered satisfactory by the commission, such that in general meet the requirements of the penal legislation.

Activities of the Oleksiivska penal colony (№ 25) and the Temnivska penal colony (№ 100) left on the control of the Ministry of Justice and the SPtS.

In accordance with the order of the Minister of Justice the monitoring the state of the treatment of prisoners in these institutions will be carried out on a monthly basis with the involvement of civil society organizations.

In February 2015 planned to hold a conference call in the regime of videoconference, chaired by the Minister of Justice with the heads of agencies and institutions that belong to the management of the SPtS, regarding the inadmissibility of violation of the rights of convicts, their intimidation, ill-treatment of them and repression due to communication with representatives of inspection bodies of international organizations.

Respect for the rights of prisoners and persons taken into custody, remains one of the main priorities of the Ministry of Justice of Ukraine activity.

Annex 2 to letter of the Ministry of Justice
on 11 February 2015 № 12.2-41/38

INFORMATION

on results of consideration of Preliminary observations of the delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment following the visit to Ukraine in September 2014

Following the visit of members of the CPT in September 2014 to Oleksiivska penal colony (№ 25) and Temnivska penal colony (№ 100) in Kharkiv region was stated "the general atmosphere of fear" among prisoners in mentioned penal colonies, the availability of information on cases of torture to prisoners, physical violence, including the complaints to the administration of institutions.

CPT delegation reported that mentioned institutions managed through a system of intimidation and violence, and physical violence used as a tool to support internal order. In the framework of the work of the Commission on Human Rights in the execution and serving criminal sentences and detention established by order of the Ministry of Justice of Ukraine on 05.06.2014 № 116/7 (hereinafter - Commission), in the period from 2 to 5 December 2014 conducted an audit of Oleksiivska penal colony (№ 25) with the participation of the head of Public council at the SPtS of Ukraine.

During the inspection of objects is carried out communication with the prisoners and held their reception on personal matters with representatives of the Commission and members of the supervisory committee. At the reception on personal questions addressed 22 convicts. For all the concerns raised to prisoners were given the necessary clarifications.

At the same time complaints and appeals of convicted persons on their beating by administration of the institution, intimidation, moral or physical pressure from the penal colony staff, violation of the order and sending appeals, inadequate communal and welfare support, as well as the diet quality were not received.

It was also conducted an anonymous survey of convicts, which indicates, in general, trust of sentenced persons to the administration of institution and confirms prevention of unlawful acts by staff colony (in the survey participated 204 convicts).

At the same time, by representatives of the Commission on the activities of Oleksiivska penal colony (№ 25) identified a number of problematic issues regarding the socio-educational and psychological work with prisoners and health care delivery, namely:

- while checking the medical case histories of convicted were detected failure to meet the time limit for laboratory tests in patients receiving hospital treatment in the medical unit of the institution;
- while checking materials for individuals who have been kept in the area of intensive control for a long-term period found that punishment to this category of prisoners do not apply, and in characteristics indicates penalties that have been applied even before putting convicts to the area of intensive control. On the basis of mentioned

penalties improperly determined the degree of correction and the reasons for the timing and appropriateness of further stay of these persons in the area of intensive control;

- while checking materials for convicted persons that were considered by the last Commission of the institution established that the characteristics of convicted are made in defiance of the Guidelines on the preparation of the characteristics for convicts taking into account amendments to the criminal-executive legislation clarifying the procedure for compiling and processing of characteristics for convicts;

- on the results of the analysis of the status of legal order and impose penalties to convicted in the Oleksiivska penal colony (№ 25) found that in the institution remains a high level of violations compared to the average for Ukraine;

- contrary to the requirements of the SPtS of Ukraine on boards of visual propaganda do not place information about the requirements of Articles 537, 539 of the Criminal Procedure Code of Ukraine;

- reception of convicted person on personal matters testified insufficient organization of explanatory work with convicted by authorities of the Oleksiivska penal colony (№ 25). Most of the raised by convicted persons matter on the competence of qualified lawyers, the rest is a matter of the administration of the institution. However, due to the fact that the administration of the institution fails to solve the issues raised timely, the convicts are forced to deal with them to higher authorities.

In Oleksiivska (№ 25) and Temnivska (№ 100) penal colonies and other penal institutions in the system of in-service training organized and conducted the study with the staff on the main provisions of the European Convention against Torture, the Standard Minimum Rules for the Treatment of Prisoners and also the European Prison Rules. Staff of institutions provided with memos on international treaties and Standard Rules for the Treatment with prisoners.

Held classes on clarifying the requirements of Article 16 of the Law of Ukraine "On State criminal executive service of Ukraine" and Article 8 of the Criminal Procedure Code of Ukraine on inadmissibility of ill-treatment of staff of the criminal executive service to prisoners and persons taken into custody, or actions, humiliating their human dignity, which is the basis for prosecution under the law.

All employees were introduced under the signature of the provisions of Article 127 of the Criminal Code of Ukraine "Torture" as well as the Code of honor and professional ethics of staff of the State Penitentiary Service of Ukraine. Written notifications added to personnel files of the staff.

During June - July 2014 in the institutions of the region organized "Days of Discipline", which held classes to prevent violations of professional ethics and legal rights and interests of convicts.

In May and August 2014 activity of the Oleksiivska penal colony (№ 25) on compliance with the legitimate rights and interests of prisoners in light of the implementation of the observations and recommendations contained in the report of the CPT on the results of the visit in 2012, was checked by the working group of staff division of the SPtS of Ukraine in Kharkiv region with the participation of the Head of Public Council under direction of project coordinator of Ukrainian section of the International Society for Human Rights M. G.A., Deputy Head of Kharkiv Regional Supervisory

Commission, Doctor of Laws Y I.S. and member of the Kharkiv regional supervisory commission A K.A.

Members of the working group conducted private interviews and written survey (without the presence of staff of the institution) of convicts who in December 2012 spoke with representatives of the CPT, prisoners who were released from the institution on conditions of detention facility, application to them of physical, moral and psychological impact, possible persecution and repression. The survey contained in the report of the CPT concerns about the possible improper attitude to these convicts did not confirmed.

Chairman of the Public Council under the authority of the SPtS of Ukraine in Kharkiv region and the Secretary of the Supervisory Committee in Dzerzhinsky district of city Kharkov was held an anonymous survey (without the presence of staff of the institution) of convicted persons including those, who in December 2012 spoke with representatives of the CPT, for monitoring the state of relations between staff of the institution and convicts, relations between prisoners, providing legal, medical care, the relationship between prisoners and public and state organizations, supervisory commissions etc.

In general, most respondents rated the moral and psycho-emotional climate among prisoners as satisfactory. The state of relations between prisoners with the administration of the institution also evaluated as satisfactory, complaints against the administration on the part of the respondents did not revealed.

At present, the material and social welfare of convicts in Oleksiivska penal colony (№ 25) and Temnivska penal colony (№ 100) in general meets the requirements of Article 115 of the Criminal Executive Code of Ukraine. All prisoners provided with a standard type of clothing, footwear by season and linens.

In order to implement the rights of convicts to appeal to the state authorities, including for violation of their rights and freedoms, the administration of institutions in a residential area of departments of social and psychological services are information booths with "Help line" of public authorities, including that carried out the fight against corruption. Convicted persons have the opportunity to freely call to the specified bodies on available for them issues.

The SPtS of Ukraine in 2014 received 156 complaints regarding the activities of penitentiary establishments and pre-trial establishment of the division of the SPtS of Ukraine in Kharkiv region from prisoners, their relatives and other persons, including the activities of the Oleksiivska penal colony (№ 25) - 27 or 17% of the all requests (12 of them gratitude letters), and on the activities of the Temnivska penal colony (№ 100) - 29 appeals or 18.5% of all references (including 5 gratitude letters).

The use of special means and physical coercion to convicted in the Oleksiivska penal colony (№ 25) and the Temnivska penal colony (№ 100) is carried out in accordance with the requirements of Article 106 of the Criminal Executive Code of Ukraine and section XX of the Internal Regulations of penitentiary establishments, approved by the Ministry of Justice of Ukraine on December 29, 2014 № 2186/5, registered at the Ministry of Justice of Ukraine December 30, 2014 for № 1656/26433. During 2014 in

the mentioned institutions have been two cases the use of special facilities to convicted (one case in each institution).

In 2014, Prosecutors made 18 visits to the Oleksiivska penal colony (№ 25), including once by the representatives of the General Prosecutor's Office of Ukraine, and 173 visits to Temnivska penal colony (№ 100), including 6 times by the representatives of the General Prosecutor's Office of Ukraine. During visits were held meetings with convicts on personal matters, examined conditions of detention of prisoners, order of serving sentences by them, etc.

In July 2014, by the Prosecutor's Office of Kharkiv region was initiated criminal proceedings under part 1 of Article 122, part 2 of Article 365 of the Criminal Code of Ukraine on statements of convicts T O.I., G R.P., S V.P., P V.P., S P.D., S V.U., L U.O., H O.P., M O.S. and I D.V. on the application to them of physical and psychological violence by officials of Temnivska penal colony (№ 100). However, by the decree of December, 24 2014 mentioned criminal proceeding were closed pursuant to paragraph 2 of Part 1 of Article 284 of the Criminal Procedure Code of Ukraine due to the absence of elements of a criminal offense in the actions of the staff of Temnivska penal colony.

In Oleksiivska penal colony (№25) the criminal proceedings against staff of an institution on the application to prisoners of physical or mental violence have not been opened.

Besides, we inform you that by the decree of the SPtS of Ukraine from 31.12.2014 № 203/OC the chief of Oleksiivska penal colony (№ 25) colonel of internal service H V.G. dismissed from the State criminal executive Service of Ukraine. By the decree of the SPtS of Ukraine from 28.01.2015 № 7 / OC-15 intended a new head of the institution.

The issue of compliance with legislative requirements, preventing cases of torture, inhuman or degrading treatment of prisoners and persons taken into custody, is under constant control of authority of the SPtS of Ukraine.

We note, at the same time, that by employees of General Prosecutor's Office of Ukraine conducted verification of compliance with the constitutional rights of prisoners in Oleksiivska № 25 and Temnivska №100 penal colonies of Kharkiv region.

To inspections were involved representatives of the Commissioner of Verkhovna Rada of Ukraine on Human Rights, the International Society for Human Rights, the Kharkiv Regional Supervisory Commission, NGOs, experts in the field of sanitary-epidemiological situation, protection and labor remuneration, providing civil defense of population, health care, and also professional psychologists.

During the inspections of the activities of mentioned penal colonies, special attention is given to comments expressed on 16.09.2014 during the meeting with the authority of General Prosecutor's Office of Ukraine, in particularly concerning torture, intimidation, inhuman or negative attitudes towards convicts by the employees of the penitentiary system.

At the same time, by representatives of the international NGO "International Society for Human Rights - Ukrainian Section" and Kharkiv Regional Supervisory Commission

conducted an anonymous questioning of 900 people serving sentences that preclude any influence on them both from the administration and other convicts.

Despite the fact that interviewed prisoners did not confirm the facts of violence and other ill-treatment in these penal colonies, during private reception by employees of General Prosecutor's Office of Ukraine two convicts from Temnivska penal colony № 100

stated on facts of misuse, beatings and torture committed against them by employees of the institution. Convicted S D.I. refused to provide any written statements and explanations and could not clearly express the essence of the comments on the procedure and conditions of serving the sentence.

Information on these facts included in the Unified Register of pre-trial investigations and currently set of it arguments checked by the prosecution bodies of Kharkiv region in criminal proceedings for the crime under part 2 Article 365 of the Criminal Code of Ukraine. Currently pre-trial investigation in indicated criminal proceeding in progress.

Moreover, the prosecution authorities of Ukraine in September last year completed checks on use the labor of prisoners in penitentiary establishments, during which detected serious violations of the laws on payment and labor protection.

In particular, established the facts of unjustified overstatement standards of production tasks, incomplete accounting of working hours, unpaid wages for convicts or payment to such persons wages in the amount less than legislatively established minimum, bringing them to work more than 48 hours a week, not providing of employed convicts with special clothing in the works with harmful and dangerous working conditions, lack of certification of workplaces with harmful working conditions, resulting that convicts do not receive extra charge to the wage rate etc.

According to these facts to the Unified Register of pre-trial investigations included information about committing off 33 criminal offenses for which pre-trial investigation continues.

To eliminate the detected violations on labor protection issues by prosecutors also made 329 documents of response, on the consideration of which to the disciplinary charges were brought 260 officials of penitentiary establishments.

However, by the authorities of administration of the SPtS of Ukraine in the region was taken into account remarks of the CPT delegation on violations of convicts rights at the Oleksiivska № 25 and Temnivska № 100 penal colonies and decision was made to dismiss chiefs of mentioned institutions from their posts. By the decree of the SPtS of Ukraine from 28.01.2015 № 7/OC-15 intended a new head of the institution.

As long as the solution of problematic issues related to violation of the constitutional rights of convicts also requires the state intervention, by the Prosecutor General of Ukraine on 12.09.2014 sent a letter to the Prime Minister of Ukraine on bringing the norms of living area per convicted person to European standards.

Therewith, 29.10.2014 by the Prosecutor General of Ukraine was sent a letter to the Prime Minister of Ukraine concerning keeping of requirements of the legislation at bringing of convicts to work.

On purpose of taking remedial action on issues, contained in CPT comments, 28.01.2015 to all local authorities of the SPtS of Ukraine directed instruction, which provides mandatory to carry out the appropriate official investigations in case of receiving complaints from convicts and persons taken into custody on illegal actions of

the administration associated with intimidation of prisoners, ill treatment and humiliation of their dignity and mistreatment by staff of penitentiary establishments and pre-trial establishments, materials have to be sent to the law enforcement authorities.

Besides, to these agencies were sent the Recommendations on procedure of investigation by staff of authorities, penitentiary establishments and pre-trial establishment's allegations of ill-treatment in the SPtS of Ukraine developed by European and national experts.

Also inform that on 26 - 27 January, 2015 representatives of the NGO "Kharkiv Human Rights Protection Group" visited Temnivska penal colony №100. During a visit the representatives of the public received messages from prisoners P. S.L., M. M.M. and other, about illegal actions of the administration of the correctional facility, exceeding of their official powers, psychological pressure and threats of the use of physical violence.

By Prosecutor's Office of Kharkiv region specified information on 27.01.2015 submitted to the Unified Register of pre-trial investigations on the basis of a criminal offense set by Part 2 Article 365 of the Criminal Code of Ukraine.

Since 2012, Ukraine has a new Criminal Procedure Code of Ukraine. Violation of criminal proceedings on all statements of convicts about illegal actions of representatives of the authorities of penitentiary establishments and pre-trial establishment's on the opinion of convicts and detainees is carried out automatically by introducing information into the Unified Register of pre-trial investigations on the grounds of criminal offenses. Therefore, criminal procedural legislation makes it impossible to hide facts of violations of convicts' rights on improper treatment against them by the authorities of penitentiary establishments.

Providing the protection of rights of prisoners and convicts during their staying in the institutions of pre-trial detention and execution of punishments is a priority in the work of General Prosecutor's Office of Ukraine.

UNOFFICIAL TRANSLATION

State Penitentiary Service

**Local authority of the
State Penitentiary Service of Ukraine**

28/01/2015 № 12 – 372- ПП/2-15

Governmental Order

In 2011, The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) opened negative proceeding concerning Ukraine, provided in Paragraph 2 of Article 10 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter - “The European Convention against Torture”) – promulgation of statement in the unilateral procedure about the lack of cooperation with the CPT in the light of implementation of its recommendations.

The reason for the opening of the above mentioned proceeding was CPT detection the negative practices intimidation of convicted by the administration of some penal institutions and pre-trial establishments, after their communicating with CPT’s members during their inspection visits to Ukraine 29.11-06.12.2011, 01-10.12.2012, 09-21.10.2013, 18-24.02.2014 and 09-16.09.2014, presence of ill-treatment of prisoners and the humiliation of their dignity on the part of prison staff and prisoners themselves, in the CPT report stated his concern about the presence of an atmosphere of fear among prisoners in some penal institutions.

Considering the above-mentioned, require:

1. In case of complaints from prisoners and detained persons concerning illegal actions of the administration associated with intimidation of prisoners, ill-treatment and humiliation of their dignity and mistreatment by the staff of penal institutions and detention facilities, to conduct appropriate official investigations, materials submitted to the police.
2. During official investigations concerning complaints of prisoners and detained persons for illegal actions by the administration of penal institutions and detention facilities, take into account as much as possible recommendations concerning investigation of allegations in ill-treatment at the State Penitentiary

Service of Ukraine, developed by the European and national experts (attached), based on the current national legislation.

Attachment

On improvement of investigating accusations in ill-treatment at the State Penitentiary Service of Ukraine

The State Penitentiary Service of Ukraine is adherent of improvement of existing and development of new effective tools on protection of the rights of citizens, who by the decision of the state deprived of their liberty and situated in execution of sentences institutions and pretrial detention facilities.

The State Penitentiary Service of Ukraine is taking measures to concentrate initiatives of public and private sectors in strengthening safeguards to protect the rights of citizens in uniform continuous processes, that would effectively influence the improvement of the organs and institutions that belong to the scope of its management - SPtS of Ukraine.

The work on the organization of prevention of torture and ill-treatment in penal institutions is considered by authorities of the State Penitentiary Service of Ukraine as a cross-cutting theme in providing all the needs of prisoners and detainees, provided by the Criminal Executive Code of Ukraine, the Law of Ukraine "On pre-trial detention" and other regulatory legal acts.

Recent years, much attention has been paid to the improvement of the complaints mechanisms submission by potential victims of ill-treatment and responds accordingly. SPtS of Ukraine came to the conclusion that this organizational and legal instrument must comply with the absolute principles: **independence and impartiality, efficiency and a sufficient degree of involvement of the affected person and openness to public control.**

In this regard, SPtS of Ukraine was active until December 2013 in the implementation of international projects on preventive mechanisms issues under the auspices of the Council of Europe.

In particular in the framework of the joint program of EU and CE " Strengthening the fight against ill-treatment and impunity " (*CoE Action Plan for Ukraine for 2011-2014*) December 13, 2013 held a discussion of recommendations for evaluating the effectiveness of the mechanism of complaints submission on ill-treatment in the penal system of Ukraine provided by the Council of Europe consultant, involved in this work.

The mentioned recommendations have been passed through the public discussion during May 16 - June 16, 2014.

Further work on the elaboration of organizational and legal instruments for their implementation is planned to continue as part of an update in 2015 of cooperation with the Council of Europe. For this purpose, September 30, 2014 held a working meeting with representatives of the Department for Cooperation in the field of criminal law of the Directorate General of Human Rights and the Rule of Law CE "Criminal Law Cooperation Unit Action against Crime Department Directorate General of Human Rights and Rule of Law Council of Europe".

Practical development of the relevant organizational and legal instrument is proposed to carry out on the basis of the Oleksiivska Penal colony (№ 25) in Kharkiv region.

This is due to the fact, that the issue of improving the mechanism for investigating complaints of ill-treatment is under the control of the Government Plenipotentiary for the European Court of Human Rights (the order of the Cabinet of Ministers of Ukraine from 14.07.2014 №25007/1/1-14).

What was the reason for the need to improve this work?

Firstly, by the State Penitentiary Service of Ukraine analyzed the decisions of the European Court of Human Rights (43 decisions on penal issues), which show that over the past 10 years, the most systematic violations of the subject of appeal to the European Court of Human Rights were:

- inadequate conditions of detention (29 complainants);
- inadequate medical care (17 complainants);
- **ineffective investigation of complaints** on ill-treatment (7 complainants).

Secondly, from 1998 to 2014 provided 12 visits of ECPT (08-24.02.1998; 14-23.07.1999; 10-26.09.2000; 24.11-06.12.2002; 09-21.10.2005; 5-10.12.2007, 09-21.09.2009, 29.11-06.12.2011, 01-10.12.2012, 09-21.10.2013, 18-24.02.2014, 09-16.09.2014) to institutions, that belong to the management of SPtS of Ukraine. According to the ECPT members conclusions, often convicted and imprisoned persons complained on ill-treatment towards them by the administration of penal institutions and pretrial detention facilities.

23 RECOMENDATIONS

on investigation of accusations in ill-treatment in the State Penitentiary Service of Ukraine developed by european and national experts

Complaints from prisoners

1. It is necessary to take urgent steps to ensure that prisoners could quickly report on cases of ill-treatment, not being afraid of official or unofficial punishment through sanctions or misuse of powers. Persons who complain about ill-treatment or other signs of improper treatment should not be subjected to intimidation or abuse for what they did, except in cases when the complaint is frankly absurd character, or submitted no virtue.

2. The principle that prisoners should be able to file complaints of ill-treatment without fear of retribution, could mean that if necessary, in special cases, such prisoner shall have the right to request a transfer to another institution.

3. Intimidation or the imposition of penalties for communication with the monitoring agencies should be classified as a separate disciplinary violation.

4. Tools for correspondence should be available to prisoners and not provided on a separate service request. Envelopes for complaints that allow communication with the relevant authorities without censorship (in particular, with the Prosecution

service and the Ombudsman) should be available in several places in the prison, and their presence should not depend on a specific request.

5. Meetings between prisoners and members of the monitoring services must take place in conditions that ensure the confidentiality of discussions. Prison staff should not make any attempt to learn from the prisoner about the content of the discussion.

6. Prisoners should also be able to communicate in writing with other bodies and institutions, in particular, people's deputies, NGOs, lawyers, and relevant international institutions. Receiving letters should be recorded and should also mention any reasons requiring the opening of the letter. These records shall be available for inspection by the monitoring bodies.

7. In the long term perspective, a group of experts working in the criminal justice system should be encouraged to visit prisons in the programs of higher education and training to increase their awareness of the available criminal practices.

8. The general system for collecting data on complaints and other reports of ill-treatment is very important. This will help in the early stages to identify potential signs of the presence of such cases in certain institutions. It will also help the relevant authorities to supervise further investigation and results of complaints consideration.

The system of investigating complaints and other reports of ill-treatment

9. It should seriously consider possibility establishing of independent investigating institution which would deal with the investigation of all complaints and other materials of ill-treatment; or, like an alternative, at least creating an independent institution which would oversee the consideration by the prosecutor's office of such cases. This institution is necessary in Ukraine in view with past and current systemic problems in the work. If can be proved that completely independent institution is not required, should be, at least, separate investigative agency that will have deal precisely with cases of ill-treatment by state employees.

10. An independent institution (or alternative department) should have operative independence, get clear instructions as to the manner in which it need to oversee such investigations, get completely all the necessary resources, and its employees should be encouraged appropriately and consider job in this subdivision professionally prestigious.

11. Clear guidelines or recommendations should be given not ambiguous concerning conditions of procedures and timelines for investigating complaints or messages of ill-treatment by the monitoring and inspection service of the penitentiary system of Ukraine. These recommendations should be published to ensure transparency and to signal to prison staff clear intention to eradicate ill-treatment through the effective investigation and punishment for such actions.

12. The injured person must be fully involved in the investigation of cases of ill-treatment to give him or her the opportunity to comment and provide an assessment of evidence, which was provided for refute such charges. This right

should not depend on whether it was recognized status of that person like a "injured person" in accordance with the definition of CPC.

13. The injured person shall be entitled to request an internal revision or judicial revision of the decision about stopping proceedings, if necessary using their right to legal assistance.

14. Investigators and prosecutors should have the right to use the evidence of "similar facts" (namely, evidence received from a number of unrelated persons concerning of the same potential offender, and which in each of the cases are similar by its nature, can be used for modeling the behavior of a certain person, herewith, these cases confirm each other) in the cases of ill-treatment.

Prison staff

15. Prison staff should be obliged to report about cases of ill-treatment even if the prisoners was not filed a complaint on this occasion. Need to create atmosphere, in which will be considered correct to report on such actions, committed by colleagues; it's necessary to understand clearly that the blame for the ill-treatment applied not only to offenders but also to all who knew or should have been known about ill-treatment, and who does not informed about this.

It provides the presence of clear accountability and implementation of protective measures for informants. Prison staff should have access to the system of confidential messages, and receive guarantees of the fact that to them will not apply sanctions for messages. In short, protection system of informants, who working in the penitentiary service, should be established with the obligation to report about potentially credible cases of ill-treatment: persons who will honestly report of such cases should be protected, and need to create clear accountability.

16. It is necessary immediately pay attention to the questions of selection, nomination and further training of prison staff. Such studies should also concentrate on the question of professional standards and changing ideology, for example by emphasizing the role of the Code of Ethics of the penitentiary system.

17. Existing rules of prisons schedule should be changed to reflect the provisions of the new code of ethics. The rights of prisoners should be set out clearly and unambiguously. The use of any security measures or disciplinary action should clearly respond to the circumstances of the case and place in an objective way to prevent any hint of corruption or overuse.

Prison medical staff

18. There is a clear and deep conviction that the medical staff does not protect prisoners in cases of ill-treatment. Restoring of trust of prisoners is extremely important. Also it is necessary to take steps to improve their professional independence. In particular, the prison medical staff must be protected from punishment for attracting attention to the general signs of possible ill-treatment of prisoners. It is necessary to introduce a system for fast transmitting information about problems, identified by medical staff, which would ensure the confidentiality of the patient and the medical employee to protect against sanctions for messages.

19. It is necessary to consider the question of transfer of prison medical service under the leadership of the Ministry of Health of Ukraine. In addition,

necessary steps to enhance the professional level of employees. Medical employees must have special knowledge about how to act in cases of particular forms of prison pathology. It should also consider the question of introduction of a recognized professional specialty of doctors and medical staff on the basis of retraining and learning by doing.

20. Prisoners should be able to apply to medical employee in private, without the possibility of prison staff to screen out requests for access, and does not fear punishment for such actions. Any attempt of prison staff to interfere in this right of access, or violate confidentiality of consultations, shall result in disciplinary punishment. The question of transferring prisoners to hospital for therapy (within the prison system or beyond) should be decided by qualified medical staff, not by security service or hospital administration.

21. The system of collection, confidentiality and long-term storage of prison medical records on each prisoner requires urgent attention. It is necessary to improve the mechanism for fixing the damage: any marked signs of violence must be fully recorded, together with relevant testimony of prisoner and the doctor's conclusions, and this information should be provided to prisoner upon his request. In prison medical secrecy must be protected the same way as in society, and keeping documentation of the patient should be the responsibility of the doctor. It is necessary to introduce a system of safe and confidential preserve medical cases for a specified period after the release of the prisoner.

22. Prison medical staff shall periodically prepare statistical information on the detected damage and send it to the prison authorities, relevant ministries and internal and external monitoring bodies (including an inspection service of the penitentiary system and the service of Commissioner for Human Rights (Ombudsman)).

Forensic Medical Service

23. Employees of forensic medical services should have a specific duty to ensure full compliance of its reporting with provisions of the Istanbul Protocol in cases involving potential ill-treatment of prisoners.