

**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 these preliminary observations.

Strasbourg, 13 January 2015

Preliminary observations made by the delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) after its ad hoc visit to Ukraine (9 to 16 September 2014)

1. One of the objectives of the visit was to review the treatment of prisoners in two correctional colonies in the Kharkiv area, namely Colonies Nos. 25 and 100. During previous visits, in particular to Colony No. 25, the CPT had heard many allegations of severe physical ill-treatment and/or torture of prisoners by prison officers. In 2013, the CPT had also received clear indications that, shortly after the previous visit to Colony No. 25, prisoners had been subjected to corporal punishment and other forms of reprisals for purportedly having complained to the CPT's delegation.

Another objective of the visit was to examine the situation of persons who had been detained in the context of ongoing "anti-terrorism" operations. For this purpose, the delegation interviewed a considerable number of such persons at the pre-trial establishments (SIZOs) in Kyiv and Kharkiv as well as at the detention facility of the State Security Service (SBU) in Kyiv.

The visit also provided an opportunity to review as follow-up to the February ad hoc 2014 visit the action taken by prosecutors to investigate allegations of ill-treatment of detained persons by law enforcement officials during the "Maidan" events in Kyiv between November 2013 and February 2014. In this connection, particular attention was paid to specific cases which had been identified by the Committee during the February 2014 visit and which are described in the report on the latter visit. The delegation held extensive consultations with the Prosecutor General, two Deputy Prosecutors General and several investigative prosecutors and consulted a number of criminal investigation files.

2. As regards the ongoing "anti-terrorism" operations, the majority of persons interviewed by the delegation stated that they had been treated correctly whilst in the hands of law enforcement officials.

That said, some allegations were received of excessive use of force by SBU officers at the time of apprehension and/or of ill-treatment during subsequent questioning by SBU officers. In addition, a few allegations were heard of excessive use of force by soldiers at the time of apprehension.

By contrast, the delegation received no allegations of ill-treatment by custodial staff at the detention facility of the SBU in Kyiv and the SIZOs in Kyiv and Kharkiv.

3. In the visit report, the CPT will make more detailed remarks regarding the criminal investigations which are being carried out into allegations of ill-treatment by law enforcement officials during the "Maidan" events. The sample of investigation files which have been examined by the delegation during the visit are related to the individual cases referred to in the report on the February 2014 visit as cases A, C, D, E and F. These individual cases form part of different collective investigation files which have been established according to the date on which the alleged ill-treatment took place, each of which comprises between 100 and 400 complaints of ill-treatment.

4. At this stage, the delegation wishes to stress that investigators and prosecutors have carried out many essential investigative steps regarding potential cases of ill-treatment by law enforcement officials during the "Maidan" events.

That said, from the examination of relevant parts of the collective investigation files, it transpires that the criminal investigations into the above-mentioned individual cases are hampered by various factors, which, according to investigative prosecutors met by the delegation, are also symptomatic of many other similar cases.

Firstly, although forensic examinations had been promptly ordered by the relevant prosecutor, no such examination has been carried out by the time of the CPT's visit (i.e. several months later) in any of the five cases examined by the delegation. According to investigative prosecutors met by the delegation, the forensic experts have refused to conduct examinations without having received all the medical documents concerning the victims or because the medical treatment of the alleged victims is still ongoing.

5. Another problem lies in the fact that investigations have been slowed down because of considerable delays until judges approve certain investigative actions (such as searches or the recovery of information concerning the use of mobile phones). Despite the fact that judges are under a legal obligation to take a decision on such requests "immediately", it is apparently not uncommon for decisions to be rendered only after several weeks or even months.

6. More generally, it became apparent that, in all the cases examined by the delegation, investigations have reached a deadlock, since investigators are unable to identify any law enforcement official as a potential perpetrator. According to the delegation's interlocutors, the same problem exists in hundreds of similar cases.

As already highlighted in the report on the February 2014 visit, it is a matter of particular concern that most of the "Berkut" and Interior Troops officers were wearing balaclavas or helmets during their interventions and that none of them had individual identification numbers on their uniform or helmet.

7. The situation is further complicated by the fact that prosecutors could apparently obtain hardly any official deployment plan in order to help them establish which law enforcement official was present at a particular location at a given time during the events.

In this regard, the delegation was provided access to extracts from an inquiry report which had been finalised by the Internal Security Department of the Ministry of Internal Affairs on 24 April 2014 concerning the handling by law enforcement agencies of the whole of the "Maidan" events, which formed part of the above-mentioned investigation files. According to the latter report, no comprehensive operational plans had been prepared by the relevant services, the actual deployment of officers often differed from the initial plans, no officers had been assigned to co-ordinate and oversee law enforcement operations on the spot and it was not possible to identify officers involved in these operations (as they were wearing masks).

8. Further, the delegation was informed that several of the highest-ranking law enforcement officials responsible for the operations had in the meantime left the country and that around two-thirds of all (former) "Berkut" and Interior Troops officers are currently involved in the ongoing "anti-terrorism" operations in south-eastern Ukraine and can thus not be questioned. The delegation was also told that prosecutors had not been able to obtain access to various internal documents of the Ministry of Internal Affairs concerning the above-mentioned operations because they had been classified as "secret". According to some interlocutors, there were indications that relevant internal documents had been destroyed.

9. More generally, the delegation has observed that it is not uncommon for several investigations into the same event to be carried in parallel within different investigative units. For instance, cases concerning the use of firearms are investigated exclusively by the Office of the Prosecutor General itself, while cases concerning beatings and other forms of physical ill-treatment which allegedly occurred at the same time are being investigated by the Investigation Department of the Kyiv City Prosecutor's Office. Moreover, in cases in which the ill-treatment has allegedly been inflicted by private individuals (so-called "Titushky") at the instigation of law enforcement officials, investigations are being carried out by the police.

In the light of the information gathered during the visit, there seems to be little co-operation and exchange of information between these investigative units, which may lead to necessary information not being presented to the relevant unit and not being taken into account in relevant investigations. It is also a matter of concern that there is no central system in place which would enable investigative prosecutors to find out which investigative unit is investigating a certain individual. As a result, whenever investigators need specific information about a particular person, formal requests have to be sent to various institutions. According to the delegation's interlocutors, it can take weeks or even months to receive responses to such requests.

10. To sum up, the delegation's main concern lies in the fact that in the individual cases examined during the visit, investigative prosecutors have only been able to interview a limited number of law enforcement officials and have not been able to identify any officers as potential perpetrators. It would appear that investigative prosecutors have so far been prevented from carrying out effective investigations into allegations of physical ill-treatment of detained demonstrators which meet the requirements of promptness, expeditiousness, thoroughness and comprehensiveness.

11. As regards Colonies Nos. 25 and 100, the findings of the delegation are very worrying. Especially at Colony No. 25, the delegation once again received a considerable number of allegations of severe physical ill-treatment and/or torture of prisoners by prison officers (for instance, very extensive beatings; sodomisation with truncheons; use of straitjackets and strangulation of the abdomen with a rope to the point that prisoners were defecating; continuous exposure to high-pressure jets of water from a fire hose). In some cases, the physical ill-treatment was allegedly inflicted by senior members of staff.

Although instances of torture did not appear to be widespread, the delegation gained the distinct impression that the two establishments were managed through a system of intimidation and violence and that physical ill-treatment was used as a tool to maintain internal order. There was a widespread perception among prisoners that any disobedient behaviour would be immediately sanctioned with severe corporal punishment.

The delegation was struck by the overall atmosphere of fear in both establishments. Many prisoners refused to talk to the delegation and those prisoners who dared to speak with members of the delegation agreed to do so only with great reluctance. What is even worse, many allegations were received that prisoners had been warned by staff not to say anything negative to the delegation. Apparently, a number of prisoners were also approached by staff after having talked to members of the delegation. Not surprisingly, several of them refused to talk to delegation members again on the second day of the visit to the establishment.

Further, at Colony No. 25, a member of the delegation incidentally observed on the CCTV monitoring screen of security staff how a prison officer was leaning his head onto the door of a cell in which a prisoner was being interviewed by another delegation member, and that in the presence of the Deputy Governor. Such a practice not only constitutes an unacceptable failure of co-operation on the part of the management of the prison but also gives further credence to the many allegations of intimidation of prisoners by staff.

Moreover, at Colony No. 100, one prisoner interviewed by the delegation claimed that he had been beaten up by prison officers after having complained to a prosecutor.

12. There is one more point which gives rise for concern, namely the frequency of allegations of corruption and exploitation of prisoners for economic reasons.

13. The CPT's experience in Ukraine has shown that decisive action taken by the relevant authorities and changes in the management of the establishments concerned can bring about significant improvements. For instance, during previous visits to certain other colonies (such as Colonies Nos. 81 and 89), numerous allegations of physical ill-treatment and/or torture had been received, while only a limited number of allegations of ill-treatment were received during follow-up visits to the same establishments a few years later.

Given that the situation has not improved at all in Colonies Nos. 25 and 100 since the previous visits to the establishments (in 2012 to Colony No. 25 and in 2005 to Colony No. 100), the delegation cannot but conclude that there is a major management problem in both establishments.

14. The delegation calls upon the Ukrainian authorities to carry out a prompt, independent, thorough and comprehensive inquiry from the central level into how Colonies Nos. 25 and 100 function. In this connection, particular attention should be paid to the allegations of ill-treatment of prisoners received by the delegation.

Further, the delegation urges the Ukrainian authorities to take appropriate measures to ensure that prisoners in the two aforementioned Colonies are not subjected to any retaliation for having spoken with the delegation.

The delegation requests the Ukrainian authorities to provide **within two months**¹ a detailed account of the concrete measures taken in this connection.

¹ As from 11 December 2014, i.e. the date of transmission to the Ukrainian authorities of the preliminary observations.