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Committee against Torture

Consideration of reports submitted by States parties under article 19 of the Convention pursuant to the optional reporting procedure

Sixth periodic reports of States parties due in 2011

Ukraine* **

[4 March 2013]

* The fifth periodic report submitted by the Government of Ukraine is contained in document CAT/C/81/Add.1; it was considered by the Committee at its 765th and 768th meetings (CAT/C/SR.765 and 768), held on 8 and 9 May 2007. For its consideration, see the Committee's conclusions and recommendations (CAT/C/UKR/CO/5).

** In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

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Contents

List of abbreviations

ART	Antiretroviral therapy
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
FATF	Financial Action Task Force
Hrv	hryvnias
INTERPOL	International Criminal Police Organization
IOM	International Organization for Migration
OSCE	Organization for Security and Cooperation in Europe
SECI	Southeast European Cooperative Initiative
UNICEF	United Nations Children's Fund

Introduction

1. Article 3 of the Ukrainian Constitution states that the individual and his or her life and health, honour and dignity, inviolability and security are recognized in Ukraine as the highest social value. In line with this principle, article 28 of the Constitution establishes the fundamental right of every person to respect for his or her dignity. This means that no one may be subjected to torture, cruel, inhuman or degrading treatment or punishment.

2. The exercise of this right is governed by various pieces of legislation, including:

- The Criminal Code;
- The Code of Criminal Procedure;
- The Penal Enforcement Code;
- The Procurator's Office Act;
- The Act on the Parliamentary Human Rights Commissioner;
- The Pretrial Detention Act.

3. Criminal liability for actions classified as torture or cruel, inhuman or degrading treatment or punishment, including in places of deprivation of liberty, is set out in:

(a) Chapter II of the Special Part of the Criminal Code (Crimes against life and health of the individual), which establishes criminal liability for incitement to suicide, torture, the infliction of bodily injuries of various degrees of seriousness, the threat of murder, failure of a medical worker to provide assistance to a patient and the improper performance of professional duties by a physician or a pharmacist;

(b) Article 127 of the Criminal Code, where torture is defined as the intentional infliction of severe pain or suffering, whether physical or mental, by means of physical abuse, cruelty or other violent acts in order to force the victim or a third person to perform an act against his or her will, including to obtain from him or her or a third person information or a confession, or to punish him or her or a third person for an act he or she or a third person has committed or is suspected of having committed, or to intimidate or discriminate against him or her or other persons;

(c) Articles 364 and 365 of the Criminal Code, which criminalize the abuse of authority or official position or the improper exercise of authority. Such crimes include the deliberate or opportunistic use or use for other personal benefit or for the benefit of any third persons by an official or of an official position contrary to the interests of the service, or the intentional commission by an official of acts that clearly exceed the rights or authority granted to him or her and cause significant harm to the legally protected rights, freedoms or interests of individual citizens;

(d) Article 373 of the Criminal Code, pursuant to which coercion to testify during an interrogation by means of illegal acts committed by the person conducting the initial inquiry or pretrial investigations is punishable as an offence against justice.

4. Ukraine has also taken on a number of international commitments in this area under:

- The Universal Declaration of Human Rights of 1948;
- The International Covenant on Civil and Political Rights of 1966;
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984 and its Optional Protocol of 18 December 2002;

- The Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, and the Protocols thereto;
- The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of 1987, with its two additional protocols of 4 November 1993.

5. This report was drafted with the participation of the State bodies concerned and the Parliamentary Human Rights Commissioner, as well as on the basis of broad public discussion of the issue and submissions made during the preparation of the national report in the framework of the second cycle of the universal periodic review.

6. A specific page, providing all the necessary information regarding the mechanism, procedures and related documents, was set up on the Ministry of Justice website for the sixth periodic report of Ukraine on implementation of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

7. It should also be noted that, during the preparation of the present report, fundamental changes were made to national legislation regulating implementation of the Convention. In particular, the following were adopted: the new Code of Criminal Procedure, the Bar and Advocacy Act, the Free Legal Assistance Act, the Act on the social adaptation of persons completing fixed-term custodial or semi-custodial sentences, the Legal Status of Foreign Nationals and Stateless Persons Act, the Refugees and Persons Requiring Subsidiary or Temporary Protection Act and the Trafficking in Persons Act; amendments were also made to the Act on the Parliamentary Human Rights Commissioner to give the Ombudsman a preventive function.

Information on the implementation of articles 1 to 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Articles 1 and 4

Information on paragraph 1 of the list of issues

8. On 15 April 2008, the Verkhovna Rada, the parliament of Ukraine, adopted an Act to amend the Criminal Code and the Code of Criminal Procedure with a view to humanizing criminal penalties. Among other things, it introduced changes into article 127 of the Criminal Code and a definition of torture in line with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

9. Thus, article 127, paragraph 1, of the Criminal Code defines torture as the intentional infliction of severe pain or suffering, whether physical or mental, by means of physical abuse, cruelty or other violent acts in order to force the victim or a third person to perform an act against his or her will, including to obtain from him or her or a third person information or a confession, or to punish him or her or a third person for an act that he or she or a third person has committed or is suspected of having committed, or to intimidate or discriminate against him or her or other persons.

10. Under the article, torture is punishable by 2 to 5 years' imprisonment, and the same acts committed repeatedly or by prior conspiracy of a group of persons, or on grounds of racial, ethnic or religious intolerance are punishable by imprisonment for between 5 and 10 years.

11. Furthermore, Act No. 1707-VI of 5 November 2009 amending the Criminal Code in respect of liability for crimes committed on grounds of racial, ethnic or religious intolerance excludes from the aggravating circumstances listed in article 127, paragraph 2, of the Criminal Code the commission of a crime by an official using his or her position. Thus, the offence of "torture committed by an official" is now classified under article 127, paragraph 1 (Torture), but, as a rule, read together with article 365 (Improper exercise of authority), as it is committed during the performance of official duties. Criminal responsibility for these offences has been increased accordingly.

12. Sentencing for multiple such offences is covered by article 70 of the Criminal Code (Sentencing for multiple offences). The total sentence is made more severe than the penalty for the crime of torture either by merging the less severe penalties into a more severe one, or by fully or partially combining the penalties.

13. Currently, the provisions establishing criminal responsibility under article 127 of the Criminal Code and those establishing responsibility under article 365 for improper exercise of authority form the basis for applying criminal penalties to law enforcement officials. In addition, a number of acts covered by the Convention fall within the scope of article 373 of the Criminal Code: "Coercion to testify in the course of interrogation" and "The same actions, involving the use of violence or the humiliation of a person".

Article 2

Information on paragraph 2 of the list of issues

14. Article 29 of the Constitution guarantees that no one may be arrested or remanded in custody other than on the basis of a reasoned court decision, and then only on the grounds and in accordance with the procedure established by law. Paragraph 3 stipulates that all detainees must be told immediately of the reasons for their detention, informed of their rights and given the opportunity to defend themselves personally and to be assisted by a lawyer from the moment they are arrested.

15. From the time that they are arrested, detainees are given the right to defend themselves and to have the assistance of legal counsel. Immediately, and no later than two hours after the arrest, the detainee's relatives, legal counsel if such a request has been made either orally or in writing, and the administration of his or her place of work or study must be informed of the detainee's whereabouts (Militia Act, art. 5).

16. Pursuant to article 20, paragraph 2, of the Code of Criminal Procedure, the investigator, the procurator, the investigating judge and the court must explain the rights of suspects, accused persons or defendants and guarantee their right to qualified legal assistance from counsel of their choice or appointed counsel.

17. Pursuant to article 29, paragraph 6, of the Constitution, confirmed by article 213, paragraph 1, of the new Code of Criminal Procedure, the body conducting the initial inquiry and the investigator must immediately inform a family member of a suspect's arrest.

18. Under article 208 of the new Code of Criminal Procedure, an authorized official has the right, without the need for a decision from an investigating judge, to detain a person suspected of committing an offence subject to a sentence of imprisonment, only in the following cases:

(a) If the person is caught in the act of, or immediately after, committing the offence;

(b) If, immediately after the commission of the offence, a witness, including the victim, or a combination of clear signs on the person's body or clothing or at the scene of the events indicate that the person concerned committed the offence.

19. Under article 211 of the new Code of Criminal Procedure, a detainee may be held without a decision by an investigating judge for a period not exceeding 72 hours from the time of detention. If detained without the decision of an investigating judge, the detainee must, within 60 hours of the time of detention, either be released or be brought before a court for consideration of an application for the selection of a preventive measure.

20. Pursuant to article 178 of the new Code of Criminal Procedure, in deciding on the selection of a preventive measure, the investigating judge or the court must assess all the circumstances on the basis of the information supplied by the parties to the criminal justice process.

21. Article 208 also provides that a report must be drawn up for each case in which a person suspected of a criminal offence is detained, and must include the following information: the place, date and exact time (hour and minute) of detention, in accordance with the provisions of article 209 of the new Code of Criminal Procedure; the grounds for detention; the result of the body search; any application, request or complaint made by the detainee; and a full list of the detainee's procedural rights and responsibilities. The detention report is signed by the author and the detainee. As soon as the report is signed, one copy is given to the detainee and another is sent to the procurator. Pursuant to article 197, the period of detention is calculated from the moment the detainee is taken into custody or, if a suspect or accused person was detained prior to the period of custody, from the moment of detention.

22. Under the 1960 Code of Criminal Procedure, the detention of suspects was recorded from the time that the detention report was drawn up, which in practice was not always the same as the actual time of detention; the fact that the time of detention now has to be specified is an innovation in the new Code. Thus, under article 209 of the new Code, a person is considered to be a detainee from the moment that he or she is forced or ordered to stay close to an official or in a room decided on by the official.

Information on paragraphs 2 (b) and 3 of the list of issues

23. Under article 59 of the Constitution and its development in article 10 of the Organization of the Courts and Status of Judges Act, everyone has the right to legal assistance. Such assistance is provided free of charge in cases specified by law. All persons are free to appoint counsel of their choice to defend their rights. The procedure and conditions for the provision of legal assistance are determined by law. The legal profession acts to safeguard the right to a defence against accusation and to provide legal assistance when cases are considered by the courts.

24. Article 20 of the new Code of Criminal Procedure provides for the right of a suspect, accused person or defendant to defence. Under article 48, counsel may be called upon to participate in the criminal process at any time by suspects, accused persons, their legal representatives, or other individuals at the request or with the consent of the suspect or accused person. The investigator, procurator, investigating judge and the court must provide detainees or persons held in custody with assistance in communicating with their counsel or persons who may be invited to act as counsel, and allow them to make use of means of communication to retain counsel. The investigator, procurator, investigating judge and the court must refrain from giving recommendations on engaging any specific counsel.

25. According to article 54, a refusal to be represented by counsel or a request to have the counsel replaced must be expressed in the presence of the counsel after an opportunity

has been given for confidential communication. Such a refusal or request for replacement is recorded in the report of the proceedings.

Establishment of a free legal assistance system

26. One important element in guaranteeing the right of every citizen to effective legal assistance is the Free Legal Assistance Act, adopted by the Verkhovna Rada on 2 June 2011, which establishes a system for the provision of such assistance, with a view to realizing the right thereto of every person, as provided for in article 59 of the Constitution.

27. The Act defines the content of the right to legal assistance, the procedures for its implementation, the basis and procedures for, and State guarantees of, the provision of free legal assistance, the relevant powers of the authorities, and the procedure for appeals against the decisions, actions or omissions of the central and local authorities and their officials and employees.

28. The Act distinguishes between primary and secondary legal assistance. Under the Act, primary free legal assistance includes the provision of legal information, advice and explanations on legal issues, and the drawing up of statements, complaints and other documents of a legal nature (other than procedural documents). Such legal assistance is provided by the central and local authorities, individuals, legal entities under private law and specialized agencies set up by the local authorities and financed from the local budget or other non-prohibited sources. All persons under the jurisdiction of Ukraine are entitled to such assistance.

29. Under the Act, secondary legal assistance relates to both defence against charges and representation of persons eligible for such assistance before the courts, State and local authorities and other bodies, and the drawing up of procedural documents. The Act clearly specifies the population categories eligible for such assistance. They include:

(a) Various vulnerable groups, such as the poor, orphans, other categories of children lacking social protection, war veterans and persons covered by the Act on the status of war veterans and their social welfare guarantees, persons who have provided special services or special labour services to the nation, and victims of Nazi persecution;

(b) Persons detained and arrested under the Code of Administrative Offences;

(c) Persons suspected of committing an offence and detained by the investigating authorities;

(d) Persons remanded in custody;

(e) Persons for whom the presence of legal counsel is mandatory under the provisions of the new Code of Criminal Procedure;

(f) Persons covered by the Refugees Act, persons in respect of whom the restriction or deprivation of legal capacity is being considered, persons in respect of whom a court is considering compulsory psychiatric care and persons who have been rehabilitated in line with national legislation. The Act clearly lays down the procedure for requesting and the grounds for declining free secondary legal assistance.

30. Under the Act, secondary legal assistance centres, which began to operate in Ukraine on 1 January 2013, are financed from the State budget or other non-prohibited sources. Such centres have been established by the Ministry of Justice within its central departments in the Autonomous Republic of Crimea, the provinces and the cities of Kyiv and Sevastopol. The adoption of the Act is a major step towards safeguarding the rights and freedoms of all persons within the jurisdiction of Ukraine. In fact, the absence of such legislation in the past had virtually neutralized the aforementioned constitutional

provisions, other than in cases explicitly specified by law (criminal procedure law in particular).

31. Furthermore, investigators from the internal affairs agencies have collaborated with the public defender's offices, which work within the framework of the free legal assistance project initiated by the International Renaissance Foundation in the cities of Bila Tserkva, Kharkiv and Khmelnytskyy. For example, the Kharkiv civil protection organization and the Kharkiv Province Municipal Internal Affairs Authority have signed an agreement under which the public defender's office has agreed to provide legal assistance to persons against whom criminal proceedings have been initiated and who do not have the means to hire private counsel.

32. The management model for the legal aid system includes the creation of a geographical network of local offices of the Legal Aid Coordinating Centre which would provide free secondary legal assistance. By the end of 2012, the first 27 such centres will have been set up to provide free secondary legal assistance in the Autonomous Republic of Crimea, the provinces, and the cities of Kyiv and Sevastopol, as well as two pilot interdistrict centres in the towns of Shepetivka and Kamyanets-Podilskyy in Khmelnytskyy region. In 2013, 43 new district centres will be set up to provide free secondary legal aid, followed in 2014 by another 24 in cities with republican and provincial status.

Reform of the Bar

33. The Verkhovna Rada adopted the Bar and Advocacy Act on 5 July 2012. The Act, which entered into force on 15 August 2012, comprehensively reformed the framework for the legal profession in Ukraine in accordance with universally recognized international democratic standards, so that lawyers now provide professional legal assistance to anyone who needs it.

34. The Act was prepared by the working group on the reform of the procurator's office and the legal profession, established by Presidential Decree No. 362/2011-rp of 22 November 2011, and was then submitted by the President for the consideration of the Verkhovna Rada. It was drawn up taking account of modern European standards for the organization and activities of the legal profession, the conclusions and proposals of the Council of Europe experts, the European Commission for Democracy through Law (the Venice Commission of the Council of Europe), proposals from leading scientists, the Ministry of Justice, the Supreme Court, the high specialized courts, the members of the High Judicial Qualification Commission under the Cabinet of Ministers, and other representatives of the judicial and legal professions.

35. In particular, the Act has improved the procedure for admission to the legal profession, identified the types of and guarantees for legal practice and established a clear system of self-regulation, with plans for the introduction of a unified register of lawyers of Ukraine and an efficient disciplinary mechanism; it has also instituted rules governing the participation of lawyers from other countries in legal activities in Ukraine.

36. The Act's main innovation has been to establish a single professional organization for all the lawyers of Ukraine. The guarantees for legal practice have been broadened and the role of the self-regulatory bodies enhanced. In particular, in case of the detention of, or the application of preventive measures against, a lawyer, the authority or official must immediately inform the regional Bar Council.

37. The Act has broadened the range of persons covered by the duty of client-lawyer confidentiality and now includes, in particular, interns working for a lawyer. Client-lawyer confidentiality covers any information about the client that becomes known to the lawyer in the performance of his or her professional duties, including issues in respect of which the client (or person who has been refused an agreement on the provision of legal assistance on

grounds established by the Act) has approached a lawyer, a law office or a law firm, as well as information stored on electronic media.

38. Thus, implementation of the Act will help to ensure the constitutional right to good quality, affordable legal assistance, the realization of the principle of competitiveness in the legal process and the strengthening of professional safeguards for the legal profession, in accordance with European standards.

Information on paragraphs 4, 17 and 21 of the list of issues

39. One of the first steps in the reform of the criminal procedural system was the approval by Presidential Decree No. 311 of 8 April 2008 of the Policy Framework for Criminal Justice Reform in Ukraine, which included:

(a) Reform of criminal, administrative and tort law, and criminal procedure legislation;

(b) Reform of the enforcement of judicial decisions in criminal cases;

(c) Reform of the criminal justice agencies.

40. In implementing the Policy Framework, the issue of legal assistance was addressed by the adoption on 2 June 2011 of the Free Legal Assistance Act (see paragraphs 22–28 of this report) and the establishment of a social services system to help resocialize persons who have served criminal sentences. The Act on the social adaptation of persons who have completed fixed-term custodial or semi-custodial sentences was adopted on 17 March 2011, and the Action Plan to 2015 to implement the related Policy Framework was adopted by order of the Cabinet of Ministers of 1 July 2009.

41. However, the most important and visionary contribution to the reform of the entire justice system was the adoption by the Verkhovna Rada on 13 April 2012 of the new Code of Criminal Procedure. The Code was studied closely by European experts, who expressed a generally positive opinion, after which it was signed by the President on 14 May 2012 and entered into force on 20 November 2012.

The new Code of Criminal Procedure

42. The new Code of Criminal Procedure conceptually redrew the fundamental principles and bases of the criminal process in Ukraine, putting the main emphasis on the protection of human rights and the inadmissibility of discrimination and arbitrariness in this area. In brief, the key new features include the following:

43. *Assurance of procedural equality for the parties and the adversarial nature of criminal proceedings.* It is proposed to achieve this by giving the parties equal rights to submit information directly to the court, that is, each of the parties will have equal opportunities to establish in court the guilt or innocence of the person concerned in respect of commission of the offence.

44. *Greater guarantees of protection of the rights of suspects and accused persons.* This includes, in particular, a prohibition on criminal cases being brought against specific persons, and thus protects the individual's rights and the individual from unjustified prosecution by the law enforcement agencies. The duration of the pretrial inquiry has been reduced as much as possible, so that it now begins not when information is received that a crime has been committed and an inquiry is begun, but from the time that information is entered in the unified pretrial inquiry register. This will significantly reduce the incidence of human rights violations, ensure that cases are considered within a reasonable period of time and help to improve the self-discipline of those conducting the pretrial inquiry. The Code of Criminal Procedure also sets out procedural mechanisms that will optimize

practice in the choice of remand in custody as a preventive measure. More stringent requirements are placed on the prosecution to show evidence of the need to opt for remand in custody as a preventive measure, since it is an exceptional measure. The Code has also introduced special procedures for cases against minors, taking their rights and interests into account. Criminal cases against minors will, as a rule, be considered by the court in closed session.

45. *Rights of the victim*. The Code of Criminal Procedure strengthens the procedural leverage of the victim as the prosecuting party in the case and in its termination. It contains a specific chapter on the issue of compensation for damage caused by the offence, to be covered by the State.

46. *The updated pretrial inquiry procedure*. The Code merges the separate stages of the initial inquiry and the pretrial investigations into one: the pretrial inquiry, beginning as soon as information is received that an offence has been committed, which must be recorded in the unified pretrial inquiry register. An order initiating criminal proceedings — the formal instrument currently used — will no longer be required, which will help to reduce the administrative formalities of criminal proceedings.

47. *Improvements in the judicial control procedure*. The investigating judges are responsible for judicial control in the pretrial phase, addressing issues related to any restrictions of rights and civil freedoms that may have occurred during the pretrial inquiry.

48. *The introduction of a new, non-accusatorial, procedure for judicial proceedings*, specifically abolishing the system of returning cases for further inquiries. This concept has basically replaced the verdict of not guilty in the courts. In addition, in the current Code of Criminal Procedure, the court may no longer issue instructions for investigations on its own initiative. In general, court proceedings have been brought into line with civil and administrative proceedings, in that they allow for specific features depending on the subject and aim of the criminal proceedings.

49. *The introduction of the new type of criminal proceedings* will ensure procedural economy and significantly lighten the load of both the courts and the investigating agencies. This concerns the initial inquiry, that is, a simplified form of investigation of minor criminal offences, to a certain extent analogous to the current protocol for investigating crimes, and the summary procedure, a simplified procedure by which, if the individual's guilt is proved by the findings of the investigation and the individual recognizes his or her guilt and is not opposed to the punishment, the court may issue a decision on the penalty without a court hearing taking place.

50. *Greater guarantees of protection from torture*. The Code of Criminal Procedure establishes the duty of the judge during a trial to verify any statement by an individual concerning the use of force against him or her during arrest or detention by the designated public authorities or State institutions, and to take the necessary measures to ensure the individual's security, in line with current legislation. Moreover, if the external appearance of the person concerned or other conditions known to the investigating judge give grounds for reasonable suspicion that violations of the law may have taken place during arrest or detention by the designated public authorities, the investigating judge must ensure that the individual is immediately given a forensic medical examination, the agency responsible for the pretrial inquiry is instructed to carry out an investigation into the facts, and appropriate measures are taken to ensure the security of the individual, in line with current legislation.

51. *Admissibility of evidence*. Admissibility is key to ensuring the legality of evidence in criminal proceedings. This is because the intention in using ill-treatment is almost always to obtain a confession from the detainee.

52. Here, it should be noted that, under the new Code of Criminal Procedure, the court must examine all the evidence directly. Evidence is admissible only if obtained according to the procedure established by the Code of Criminal Procedure.

53. In general, the new Code of Criminal Procedure addresses the issue of admissibility of evidence in criminal proceedings in some detail. For example, it stipulates that the participation of defence counsel is mandatory in cases involving charges of especially serious offences. A suspect or person charged with an offence has the right to decline counsel. However, this may be done only in the presence of the counsel after the opportunity has been given for a confidential interview between the counsel and the suspect or person charged. Any refusal to retain counsel must be documented in the record of proceedings and may not be accepted in cases where counsel is mandatory. In such a case, if the suspect or person facing charges declines counsel and does not retain another counsel, a lawyer must be assigned to conduct the person's defence, in the prescribed manner.

54. The new Code also provides that evidence that has been obtained by means of a fundamental violation of the human rights and fundamental freedoms guaranteed by the Constitution or laws of Ukraine or international treaties to which it is a party is inadmissible, as is any other evidence obtained via information procured by such means. Fundamental violations of human rights and fundamental freedoms include in particular: the implementation without authorization, or in violation of the substantive conditions, of procedural action for which prior approval of the court must be obtained; the obtaining of any evidence through torture or cruel, inhuman or degrading treatment, or the threat of such treatment; violation of the individual's right to a defence; evidence or explanation obtained from a person who has not been informed of his or her right to refuse to testify or to remain silent, or obtained in violation of that right; violation of the right to cross-examine witnesses; testimony obtained from a witness who is subsequently considered as a suspect or charged with an offence in the criminal proceedings concerned. Such evidence is considered inadmissible by the court and cannot be taken into account in the consideration of the case. Furthermore, the new Code of Criminal Procedure establishes that the court must study all evidence directly.

55. In this context, it should be pointed out that the new Code of Criminal Procedure does not contain any provision concerning the use of confessions in the criminal process, in that, since it came into force, a confession, like any other evidence, is studied directly by the court on an equal footing with other evidence and must be proved in the courts. This innovation is particularly important in view of the fact that the intention in using ill-treatment is to obtain a confession from a detainee. Thus, in imposing strict requirements for the admissibility of evidence, the new Code of Criminal Procedure has made it inadvisable to use ill-treatment to obtain it. Furthermore, since confessions that have not been obtained in the context of the criminal proceedings may not be used to prove criminal responsibility, it is no longer possible to detain persons for administrative offences and then question them about circumstances related to a criminal case.

56. *The problem of unlawful long-term remand in custody*. The new Code of Criminal Procedure deals with the problem of unlawful and excessively long periods of detention in custody, as well as the lack of judicial review of the legality of detention. Specifically, the new Code of Criminal Procedure stipulates that: (a) the aim of applying preventive measures is to ensure that the suspect or accused person complies with the procedural obligations imposed; and (b) the judicial bodies must provide justification when applying or extending remand as a preventive measure and must establish time limits for such detention.

57. Remand in custody is an exceptional measure that may be used only if it is demonstrated by the procurator that none of the less strict preventive measures can prevent attempts to: hide from the pretrial investigation agencies and/or the court; destroy, hide or

distort any of the items or documents essential to establishing the circumstances of the criminal offence; unlawfully influence the victim, a witness, another suspect, accused person, expert or specialist in the same criminal proceedings; otherwise hinder the criminal proceedings; commit another criminal offence or continue to commit the criminal offence of which the person is suspected or has been accused.

58. Remand in custody may be applied as a preventive measure only for a period of up to two months, with the possibility of an extension for a further two-month period. During the pretrial inquiry, the period of custody may not exceed 6 months in the case of criminal proceedings for minor or ordinary offences and 12 months for serious or especially serious offences. These provisions should also remedy the problem of a person being detained for an indefinite period of time without any court decision after the end of the pretrial investigations and prior to the preliminary consideration of the case by the court.

59. The new Code of Criminal Procedure also provides that an application for the use of preventive measures must be considered with the participation of the procurator, the accused person and the defence counsel. The court is obliged to take the necessary measures to secure representation for the accused if he or she so requests, if the participation of defence counsel is mandatory or if the judge decides that the circumstances of the criminal proceedings require it.

60. The new Code also establishes a procedure for reviewing the legality of detention at reasonable intervals. If a person held in custody files a request for the preventive measure to be changed, the court is obliged to consider the request within three days. The court is obliged to verify the application of the preventive measure every two months, and to provide new justification for continued custody.

61. The new Code has also introduced new types of measures, in particular house arrest, that should significantly reduce the number of people detained in remand centres.

62. All these ideologically updated procedures will thus significantly enhance the protection of human rights and improve the effectiveness of criminal investigation.

Reform of the procuratorial system

63. On joining the Council of Europe, Ukraine undertook to change the role and functions of the Office of the Procurator (primarily in respect of general oversight functions) and to ensure that it meets the Council of Europe's standards. The bill on the reform was drawn up taking account of the relevant conclusions of the Venice Commission and the recommendations of the Council of Europe.

64. The bill to amend the Procurator's Office Act (new version) was to be drawn up by the Ministry of Justice, with the participation of the Office of the Procurator-General, within a year of the adoption of the new Code of Criminal Procedure.

65. Some of the most important aspects of the reform of the procurator's office are the reform of the Code of Criminal Procedure and the changes to the procurator's office to ensure that it meets the standards of the Council of Europe; these must be carried out simultaneously because the primary role of the Office of the Procurator should be criminal prosecution as set out in the new Code of Criminal Procedure.

66. A working group on the reform of the procurator's office and the legal profession was set up pursuant to Presidential Order No. 362 of 22 November 2011 with a view to preparing agreed proposals for the reform of the procuratorial system, in particular, taking into consideration the generally recognized international standards, and ensuring that Ukraine meets its obligations to the Council of Europe.

67. The working group is also considering the bill on the procurator's office (new version), taking into consideration the new Code of Criminal Procedure. The aim is to ensure that the reform results in the country's procurator's offices being relieved of functions that are beyond their remit and that they safeguard the interests of the State, primarily by conducting criminal legal proceedings that respect the principle of the primacy of law and other generally recognized international democratic standards.

68. The new Code of Criminal Procedure also introduces a number of innovations to the work of the procurator's office. Specifically, it serves to address the issue of the ineffective investigation of complaints concerning ill-treatment and the taking of life. Data from the European Court of Human Rights show that the main reason for investigations not being conducted properly has been conflict of interest, in that the procurator's office has been the body responsible for investigation, monitoring and prosecution. Under the new Code of Criminal Procedure, the procurator's office acts as the investigating agency only in cases relating to judges, high-ranking officials and law enforcement officials. In addition, the law enforcement agencies are required to register cases and initiate an investigation whenever a complaint is received.

Innovations concerning conditions of detention

69. These issues are addressed in detail in paragraphs 207 to 247 of the report.

Information on paragraph 5 of the list of issues

70. To ensure that citizens' constitutional rights are respected during detention and confinement in holding cells, and in implementation of Constitutional Court Decision No. 10-rp/2011 of 11 October 2011 on compliance with the Constitution of individual norms of article 263 of the Code of Administrative Procedure and article 11, paragraph 1 (5), of the Militia Act, Ministry of Internal Affairs Instruction No. 14701/Mg of 16 October 2011 was drawn up, stipulating that a person who has committed an administrative offence may be detained for no more than three hours, except in the case of persons trafficking in narcotic drugs and psychotropic substances, who may be detained for a period of up to three hours for a report to be drawn up and, where necessary, for up to three days for their identity to be established, a medical examination to be carried out, the circumstances determined in which they acquired the narcotic drugs or psychotropic substances seized and the said drugs or substances to be studied, if the procurator is informed in writing within 24 hours of the time of detention.

71. Pursuant to article 267 of the Code of Administrative Procedure, an individual may appeal against administrative detention to the superior authority or official of the agency or official implementing the measures, or to the procurator or the court.

72. Approximately 9 million citizens are charged under administrative law every year in Ukraine, 90 per cent of them by the internal affairs agencies.

73. During the first six months of 2012, the Office of the Procurator-General verified compliance by the internal affairs agencies with legislation on administrative offences, firstly in respect of administrative detention.

74. Violations were found to have occurred of citizens' constitutional rights to liberty and security of person, including, in particular, unjustified detention of individuals on the premises of the internal affairs agencies, unlawful detentions, violations of the permissible length of administrative detention and the falsification of documents of administrative proceedings.

75. In 2010, the procurator's office received 12,500 applications concerning the legality of actions committed by Ministry of Internal Affairs officials, of which 1,800 were upheld;

115 of them (of which 8 were upheld) concerned unlawful detention. In 2011, the Office of the Procurator received 8,900 applications concerning the legality of actions committed by Ministry of Internal Affairs officials, of which 1,000 were upheld; 276 of them (of which 12 were upheld) concerned unlawful detention. This shows a decline in the use of administrative detention by the internal affairs agencies.

76. However, the statistics resulting from the inspection of the internal affairs agencies are not optimistic. Over the first quarter of 2012, the Ministry's internal security units received 975 applications from citizens concerning violations of their constitutional rights and freedoms, including 211 in respect of torture and actual bodily harm. During the inspection, the allegations in respect of 86 applications were confirmed, disciplinary action was taken against 99 militia officers, and 32 criminal cases were brought for violations of constitutional rights and civil freedoms by militia officers.

77. As an example, a criminal case was brought by the Donetsk province procurator's office under article 365, paragraph 2, of the Criminal Code against employees of the Yenakiyeve municipal department who used physical force, causing bodily injury of moderate severity, against a citizen who refused to come to the police department.

78. For information on the use of confessions in the criminal process, please see paragraph 55 of the report.

79. The new Code of Criminal Procedure also addresses the admissibility of evidence quite clearly (see paragraphs 42–62 of this report).

Information on paragraph 6 of the list of issues

80. Article 11, paragraph 1, subparagraph 5 (8), of the Militia Act gives militia officers the right, with the authorization of the procurator, to detain persons suspected of vagrancy in specially designated premises for up to 30 days.

81. However, under Act No. 1188-VI of 19 March 2009 amending article 11 of the Militia Act, such detention is permitted only on the basis of a reasoned court decision. Thus, under the above-mentioned provisions of the Militia Act, militia officers have the right to apprehend and detain persons suspected of vagrancy in specially designated premises for up to 30 days on the basis of a reasoned court decision.

82. Furthermore, Constitutional Court Decision No. 17-rp/2010 of 29 June 2010 found that article 11, paragraph 1, subparagraphs 5 (8) and 11 of the Militia Act did not comply with the Constitution (were unconstitutional).

83. The Constitutional Court based its decision on the fact that the purpose of such detention was to determine whether the person was engaged in vagrancy, that is to say, in committing a crime or other offence. The fact that the militia had that right was a result of such acts incurring criminal responsibility under article 214 of the Criminal Code, 1960 version. However, the constituent parts of the crime as defined therein were depenalized by Act No. 2547-XII of 7 July 1992 amending the Criminal Code of Ukraine, the Code of Criminal Procedure of the Ukrainian Soviet Socialist Republic and the Code of Administrative Offences of the Ukrainian Soviet Socialist Republic.

84. Under article 92, paragraph 1, subparagraph 22, of the Constitution, the framework for civil legal liability, defining actions that are crimes or administrative or disciplinary offences, and liability for them, is formed solely by national legislation.

85. Thus, a systematic analysis of the norms of the Code of Criminal Procedure, in particular articles 106, 115, 149 and 165^2, and articles 260, 261 and 262, inter alia, of the Code of Administrative Procedure, shows that vagrancy is not considered as a crime or an administrative offence in the country's legislation. The Constitutional Court concluded that

the rules of procedure and the procedure for consideration of issues by the court made no mention of issues related to the detention of persons on suspicion of engaging in vagrancy.

86. The Constitutional Court thus concluded that the provisions of article 11, paragraph 1, subparagraph 5 (8), of the Act were not consistent with article 8, paragraph 1, article 29, paragraphs 1, 2 and 3, article 55, paragraph 2, and article 58, paragraph 2, of the Constitution and, accordingly, lost their force on the day that the Constitutional Court adopted the above-mentioned decision.

87. Constitutional Court Decision No. 10-rp/2011 of 11 October 2011 on the case of a constitutional application by 50 people's deputies concerning compliance with the Constitution (constitutionality) of the provisions of article 263 of the Code of Administrative Procedure and article 11, paragraph 1 (5) of the Militia Act (concerning the duration of administrative detention) also shows that administrative detention is illegal.

88. Basing its decision on the norms of the Code of Administrative Procedure and the Criminal Code, the Constitutional Court came to the conclusion that, in accordance with the principle of the rule of law, without a motivated court decision, detention in administrative proceedings may last no longer than detention in criminal proceedings. A systematic analysis of article 29 of the Constitution, read in conjunction with article 8, led the Constitutional Court to conclude that the constitutional requirement set out in article 29, paragraph 3, of the Constitution concerning the maximum period during which a person's freedom may be restricted in criminal proceedings without a motivated decision of the court must be taken into account when determining the maximum possible duration of such a restriction in administrative proceedings. That is, without a motivated decision of a court, a person may be held in administrative detention for no more than 72 hours.

Information on paragraph 7 of the list of issues

89. Ukraine has taken action to strengthen safeguards for the rights of refugees and persons in need of protection, in accordance with international best practices. This has resulted in the Refugees and Persons Requiring Subsidiary or Temporary Protection Act, adopted by the Verkhovna Rada on 8 June 2011. The adoption of the Act will make it possible to fully develop the institution of asylum in Ukraine and help bring Ukrainian legislation on migration into line with European standards and rules.

90. The Act was drafted to take particular account of the European Union Council Directives of 20 July 2001 on Minimum Standards for Giving Temporary Protection in the Event of a Mass Influx of Displaced Persons and on Measures Promoting a Balance of Efforts Between Member States in Receiving such Persons and Bearing the Consequences ("Temporary Protection Directive"), and of 30 April 2004 on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status; the recommendations of the Office of the United Nations High Commissioner for Refugees; and the decisions of the European Court of Human Rights.

91. The Act introduces subsidiary and temporary protection and establishes State guarantees to protect the rights of refugees and persons with the right to subsidiary or temporary protection. It establishes a single procedure for the recognition, the loss or the withdrawal of refugee status or subsidiary protection. The Act also introduces, for the first time, such key concepts as "a person in need of subsidiary protection" and "a person in need of temporary protection". Under the Act, persons in need of subsidiary protection are not refugees within the meaning of the 1951 Convention Relating to the Status of Refugees, the 1967 Protocol Relating to the Status of Refugees or the Act itself, but need protection, having been compelled to enter or stay in Ukraine as a result of threats to their life, security or freedom in their country of origin or of fear of being sentenced to the death penalty or suffering torture, inhuman or degrading treatment or punishment. Persons classified as

requiring temporary protection are foreign nationals or stateless persons who reside permanently in a neighbouring country and are compelled to seek protection in Ukraine as a result of external aggression, foreign occupation, civil war, ethnically instigated clashes, natural or man-made disasters or other occurrences that seriously disrupt law and order in all or part of their country of origin.

92. Subsidiary protection is to be granted on a case-by-case basis, while temporary protection is defined as an emergency provisional measure for foreign nationals or stateless persons arriving en masse in Ukraine. This approach is in line with the concept of temporary protection formulated in Council of Europe Recommendation R (2000) 9 on Temporary Protection. The Act regulates fundamental issues related to the protection of refugees and other persons and, inter alia, prohibits the deportation or forcible return of refugees or persons requiring subsidiary or temporary protection to countries where their lives would be in danger; prohibits discrimination against such persons; and helps to preserve the unity of their families, etc. Article 3 of the Act clearly enshrines the norm that refugees or persons in need of subsidiary protection or granted temporary protection may not be expelled or forced to return to a country where:

(a) Their life or freedom is at risk for reasons of race, religion, ethnicity, citizenship (nationality), membership of a particular social group or political opinion, or other reasons recognized in the international treaties or by the international organizations to which Ukraine is a party as reasons for which they may not be returned to their country of origin;

(b) They may be subjected to torture or other cruel, inhuman or degrading treatment or punishment;

(c) They may be expelled or from where they may be forced to return to countries where their life or freedom is at risk for reasons of race, religion, ethnicity, citizenship (nationality), membership of a particular social group or political opinion, or other reasons recognized in the international treaties or by the international organizations to which Ukraine is a party as reasons for which they may not be returned to their country of origin.

93. The Act addresses the possibility of making a translator and a lawyer available at all stages of consideration of requests for the status of refugee or of a person in need of subsidiary or temporary protection in Ukraine. It also lays down a clearly defined procedure for granting and withdrawing temporary protection. The Act has updated the admission procedure for refugees, persons in need of subsidiary protection and children.

94. With a view to developing a strategy and an appropriate plan of action for the further development of a migration policy management system, Presidential Decree No. 622/2011 of 30 May 2011 endorsed the State Migration Policy Framework. Cabinet of Ministers Order No. 1058-r of 12 October 2011 approved a plan of action for implementation of the Framework.

95. The Cabinet of Ministers adopted Order No. 653-r of 15 June 2011 approving a plan of activities for the integration of migrants into Ukrainian society, 2011–2015, to give effect to paragraph 14 (the adoption of legislation to improve migration policy) of the national plan of action to implement the European Union Action Plan on Visa Liberalization for Ukraine, approved by Presidential Decree No. 494/2011 of 22 April 2011. Cabinet of Ministers Order No. 605-r of 22 August 2012 approved a plan of measures for the integration of refugees and persons in need of subsidiary protection into Ukrainian society for the period to 2020.

96. The following have been adopted in implementation of the Refugees and Persons Requiring Subsidiary or Temporary Protection Act:

- Several Cabinet of Ministers Decisions: No. 203 of 14 March 2012 approving regulations for refugee travel documents, No. 202 approving regulations for refugee identity papers, No. 199 approving regulations for identity cards for persons granted temporary protection, No. 197 approving regulations on travel documents for persons granted subsidiary protection and No. 196 approving regulations for identity cards for persons in need of subsidiary protection;
- Cabinet of Ministers Order No. 195-r of 11 April 2012 on issues concerning the State Migration Service;
- Ministry of Internal Affairs Order No. 649 of 7 October 2011 (registered by the Ministry of Justice under No. 1146/19884) approving regulations for the consideration of applications and completion of the documents required to apply for recognition of, or of reversal of a decision on the recognition of, refugee status or the status of persons in need of subsidiary protection, the loss or withdrawal of refugee status or subsidiary protection and refugee status;
- Order No. 604/417/793/499/518, of 7 July 2012, of the Ministries of Internal Affairs, Social Policy, Education and Science, Youth and Sports, and Health, and the Administration of the State Border Service, registered with the Ministry of Justice under No. 1292/21604 on 31 July 2012, approving the Instructions on cooperation between the authorities working with children separated from their families who are not citizens of Ukraine and have applied for recognition of refugee status or the status of a person in need of subsidiary protection;
- Order No. 336/268/254 of the Ministry of Internal Affairs, the Ministry of Health and the Administration of the State Border Service of 17 April 2012, registered with the Ministry of Justice under No. 748/21061 on 11 May 2012, on material, domestic and medical care for foreign nationals and stateless persons held in dedicated temporary facilities for persons who are in Ukraine illegally, and temporary holding facilities and specially equipped premises.

97. Order No. 353/271/150 of 23 April 2012 of the Ministry of Internal Affairs, the Administration of the State Border Service and the Security Service, registered with the Ministry of Justice under No. 806/21119 on 21 May 2012, approving instructions on the forced return and forced expulsion from Ukraine of foreign nationals and stateless persons. Ukraine currently has limited possibilities for receiving asylum seekers and refugees, while the number of foreign nationals and stateless persons wishing to obtain protection in Ukraine has risen significantly compared to previous years. For example, as of 1 May 2012, the territorial authorities of the State Migration Service had received 710 applications for the recognition of refugee status or the status of a person in need of subsidiary protection. In 2011, just 844 persons had submitted applications to the competent authorities; refugee status was granted to 187 of them, that is, 22 per cent of the total number of applicants (this level meets pan-European indicators).

98. Article 5 of the Refugees and Persons Requiring Subsidiary or Temporary Protection Act states that the State Border Service receives applications for asylum and transmits them to the agency authorized to decide on asylum applications in Ukraine. The State Border Service received 1,407 applications for refugee status over the period in question (979 in 2008, 181 in 2009, 128 in 2010, 68 in 2011 and 51 in the first nine months of 2012). In future, all applications will be handed to the agencies empowered to take decisions on applications for asylum (currently the State Migration Service).

Applications for refugee and asylum seeker status

	Applications filed	*Refugee status and subsidiary protection granted*	*Refused*	*Status lost*	*Status withdrawn*
2008	2 155	126	581	103	1
2009	1 255	125	385	63	7
2010	1 328	124	491	108	-
2011	773	133	290	-	-
2012	1 580 (As of 9 January 2012)	46/38	363	16	2

Number of children in temporary facilities for illegal foreign nationals and stateless persons in Ukraine between 2008 and 2012: 2008 – 0; 2009 – 15; 2010 – 10; 2011 – 14; 2012 – 15.

99. The network of temporary accommodation for refugees needs to be expanded. At present there are two such facilities in Ukraine: one in Odesa with capacity for 200 persons, and one in Mukacheve and Perechyn, Zakarpattia province, with capacity for 130 persons. There are not enough places to meet the temporary housing needs of all prospective asylum seekers and refugees. The most vulnerable asylum seekers and refugees — families with small children, single women, unaccompanied minors — are given accommodation in the facilities, where lodging and food is provided at the expense of the State. The State Migration Service is taking steps to complete the reconstruction of similar facilities in Yahotyn, Kyiv province, with capacity for 250, and bring them into operation.

100. Refugees and persons in need of subsidiary or temporary protection are provided with legal assistance under the Free Legal Assistance Act (paragraphs 22–28 of this report).

101. Ukraine currently has limited possibilities for receiving asylum seekers and refugees. Each year, between 1,500 and 2,000 applications from foreign nationals for recognition of refugee status or the status of persons in need of subsidiary protection are received and considered, and 2,435 persons are officially recognized as refugees (as of 1 August 2011). There are only two temporary accommodation centres for refugees, in Odesa and Zakarpattia provinces. Between them, they can offer temporary shelter to approximately 330 of the most vulnerable asylum seekers and refugees, and specifically: families with young children, single women and unaccompanied children. To help address the problem of accommodation for persons applying for protection, and to provide temporary housing for the most vulnerable categories of asylum seekers and refugees, it is planned to complete reconstruction and bring into operation temporary accommodation for up to 250 refugees in Yahotyn, Kyiv province.

Information on paragraph 8 of the list of issues

102. Ratification by Ukraine of the agreement with the European Community on the readmission of persons does mean that Ukraine has taken on obligations to its European partners in respect of the control of illegal migration. If it does not fulfil those obligations, Ukraine will have to cover all the costs for the removal of illegal migrants who cross the border between Ukraine and the European Community. This gives rise to a need for effective measures to counter illegal migration, one of which is Operation Migrant.

103. Operation Migrant has been conducted throughout Ukraine for a number of years. The aim is to detect and prevent violations committed by foreign nationals, and to expose violations committed by individuals and legal persons who receive services from or provide services to foreign nationals. The objective is to prevent such offences and bring the perpetrators to justice in accordance with current legislation.

The results of Operation Migrant

104. Operation Migrant was conducted as a preventive operation throughout Ukraine between 14 and 21 November 2008. More than 5,000 internal affairs officers took part in the planned activities each day. About 3,100 (62 per cent) were from the public security militia and about 1,300 (26 per cent) from the criminal militia; there were also around 600 internal troops, officers of the State Defence Service, members of social formations and other security forces.

105. The operation led to:

(a) The detention of 13 groups of illegal migrants (66 persons), who had crossed the State border illegally, while average figures over the year were up to 9 groups per month;

(b) The referral of 14 files to the State Border Service and the Security Service in respect of these and previous cases, for the initiation of criminal proceedings in connection with the illegal trafficking of persons across the State border. A total of 29 criminal cases were brought (under article 332 of the Criminal Code – trafficking in persons across the State border) during the operation, 9 of them for organized forms of offences;

(c) The identification of approximately 1,200 illegal migrants, representing a daily average of 177, that is more than three times the numbers detained daily between January and October 2008;

(d) The deportation of, in all, 1,070 foreign offenders, including 171 persons who were forcibly expelled;

(e) Curtailment of the stay in the country of 863 foreign nationals;

(f) Charges being brought against approximately 1,400 persons for illegally bringing in foreign nationals, and the identification of 119 cases of violations by legal entities receiving services from and providing services to foreign citizens and of more than 4,100 foreign offenders found to have violated residency regulations in Ukraine, who had proceedings instituted against them;

(g) The solving of 60 crimes committed by foreign nationals.

106. During Operation Migrant 2009, over 176,300 checks were made of premises where foreign nationals might have been staying. In the course of these:

(a) Nearly 1,500 illegal migrants were found, four times the numbers detained each day between January and March 2009; deportation was ordered for 1,353 foreign offenders, including 158 persons who were forcibly expelled, and 1,104 foreign nationals whose stay in the country was curtailed;

(b) Approximately 1,600 persons were charged with illegally bringing in foreign nationals, 133 cases of violations by legal entities receiving services from and providing services to foreign citizens were identified, and more than 4,600 foreign offenders found to have violated residency regulations in Ukraine had proceedings instituted against them;

(c) 18 files were referred to the State Border Service and the Security Service for criminal cases to be brought in connection with the illegal trafficking of persons across the State border, leading to 13 criminal cases brought during the operation (under article 332 of the Criminal Code – trafficking in persons across the State border);

(d) 48 crimes committed by foreign nationals were solved.

107. During Operation Migrant 2011, 132 persons were charged with violations of legislation in the area of employment of foreign nationals. Operation Migrant was not conducted in 2012.

Article 3 of the Convention

Information on paragraph 9 of the list of issues

108. On 21 May 2010, the Verkhovna Rada adopted Act No. 2286-VI amending the Code of Criminal Procedure in respect of the extradition of individuals. The Act addressed issues related to the "potentially indefinite" detention of persons subject to an extradition request, including those who had applied to the appropriate agencies for asylum.

109. The new Code of Criminal Procedure fully addresses issues related to the extradition of offenders, establishes legal safeguards for the respect of human rights in this area, and also brings in positive changes to improve protection of the rights of persons subject to extradition requests from a foreign State.

110. For example, it reduces from 18 to 12 months the maximum period during which a person subject to an extradition request may be detained (art. 584). During that period, the investigating judge of the place of detention, shall, at least once every two months, on the recommendation of the procurator, check the continued validity of the grounds for further custody or order the person's release. A similar check by the investigating judge may be requested at the most once each month, on the basis of a complaint from the person detained, or his or her counsel or legal representative.

111. Furthermore, under article 589, persons granted refugee status, the status of persons in need of subsidiary protection, or temporary protection in Ukraine may not be transferred to the State from which they are recognized refugees, or to any other foreign State where their health, life or freedom is endangered on the basis of race, religion, ethnicity, citizenship (nationality), membership of a certain social group or political opinion, other than in cases provided for by international treaties to which Ukraine is a party.

Information on paragraph 10 of the list of issues

112. As noted above, on 21 May 2010, the Verkhovna Rada adopted Act No. 2286-VI amending the Code of Criminal Procedure in respect of the extradition of individuals, which addresses a series of issues related to the extradition of individuals, and establishes legal safeguards for the respect of human rights in such matters. The new Code of Criminal Procedure contains similar standards.

113. In particular, it enshrines the rights of a person subject to extradition proceedings to appropriate legal protection and to legal counsel, inter alia. Article 581 provides that all persons in respect of whom extradition to a foreign State is being considered have the right to know what offence forms the basis of the extradition request; to retain counsel and to meet with counsel in conditions that ensure confidentiality, as well as to have counsel present during questioning; in the case of detention, to have family members, relatives or other persons notified of their detention and whereabouts; to take part in the court hearing concerning remand in custody and the extradition request; to familiarize themselves with or to obtain a copy of the extradition request; to appeal against the decision on detention and the agreement to the extradition request; to express their views on the extradition request at the court hearing; and to request the application of the simplified extradition procedure. In addition, persons in respect of whom extradition is being considered and who do not speak the State language have the right to make applications, to submit petitions and to speak in court in a language that they understand, to use the services of an interpreter, and to receive a translation of the judgement and the authority's decision in the language they used during the hearing. If persons in respect of whom extradition is being considered are foreign nationals and are being held in custody, they have the right to meet with a representative of the diplomatic or consular institutions of their State.

114. There is clear procedure for placing a person in detention prior to extradition (the application of preventive measures in the form of remand in custody to ensure extradition of an individual (new Code of Criminal Procedure, art. 584)), which provides that, on receipt of a request from the competent authority of a foreign State for the extradition of an individual, the procurator, on the instructions of (or a communication from) the central authority, submits to the court of the place where the person is being held an application for detention prior to extradition. The investigating judge establishes the identity of the person, invites him or her to make a statement, checks the extradition request and the documents provided for the extradition check, listens to the views of the procurator and the other parties, and rules on the application or otherwise of detention prior to extradition. In considering the issue, the investigating judge does not consider the question of guilt and does not check the legitimacy of procedural decisions taken by the competent authority of the foreign State in respect of the person concerned. However, the decision of the investigating judge may be appealed against to the court of appeal by the person in respect of whom detention prior to extradition has been ordered, his or her counsel or legal representative, or the procurator.

115. If the maximum duration of detention prior to extradition (12 months) expires without any decision on extradition being taken, the person shall be released immediately. Release by a judge of a person held in detention prior to extradition does not preclude its re-application with a view to his or her actual transfer to the foreign State, pursuant to a decision on extradition, unless otherwise provided by an international treaty to which Ukraine is a party.

116. The new Code of Criminal Procedure also provides for the use of non-custodial preventive measures to ensure a person's extradition on the request of a foreign State. Article 585 thus provides that, where circumstances are such as to ensure that the individual will not escape and that extradition will subsequently be possible, the investigating judge may opt for non-custodial preventive measures. In considering the use of non-custodial preventive measures, the investigating judge must take into account: information in respect of the individual absconding from justice in the requesting party, and his or her compliance with conditions imposed for release from custody during the current or other criminal proceedings; the seriousness of the penalty faced in the case of a conviction, based on the circumstances during the alleged offence, the provisions of Ukrainian legislation on criminal liability and established judicial practice; the age and medical condition of the person whose extradition is sought; and the strength of his or her social relations, including whether he or she has a family and dependants. If a person in respect of whom extradition is being considered violates the conditions of the chosen preventive measures, the investigating judge may, at the request of the procurator, rule on the application of detention prior to extradition to ensure that the extradition goes ahead.

117. Under the new Code of Criminal Procedure (art. 587), an extradition check must be conducted and any circumstances that may prevent the person's extradition identified. This check is carried out by the central authority or, on its instructions (or communication), by the provincial procurator's office within a period of 60 days, which may be extended by the central authority.

118. A new (simplified) procedure has been introduced for the extradition of individuals from Ukraine. Article 588 of the new Code of Criminal Procedure provides for the possibility of using the simplified procedure where the person concerned has consented to the extradition in a written statement drawn up in the presence of the defence counsel and approved by an investigating judge. With such a statement, the extradition may go ahead without the full check for possible obstacles to extradition being carried out. If a person in respect of whom an extradition request has been received does not agree to the extradition, the normal procedure for the consideration of extradition requests applies.

119. There are clear regulations and grounds for extradition to be refused (new Code of Criminal Procedure, art. 589), covering the following cases: if the person in respect of whom an extradition request has been received is, under Ukrainian legislation, a citizen of Ukraine at the time that the decision on extradition is taken; if the offence for which extradition is requested does not incur a custodial penalty under Ukrainian law; if, under Ukrainian law, the statute of limitations applies for prosecution or enforcement of a sentence for the offence for which extradition is sought; if the competent authority of the foreign State does not respond to a request from the Ukrainian central authority to provide additional material or data without which it is impossible to take a decision on the extradition request; if the extradition would be contrary to the commitments of Ukraine under the international treaties to which it is party; or if there are other grounds for refusal provided for in the international treaties to which Ukraine is a party. Furthermore, persons who have been granted refugee status, the status of persons in need of subsidiary protection, or temporary protection in Ukraine may not be transferred to the State from which they are recognized refugees, or to any other foreign State where their health, life or freedom is endangered on the basis of race, religion, ethnicity, citizenship (nationality), membership of a certain social group or political opinion, other than in cases provided for under international treaties to which Ukraine is a party.

120. If extradition is refused on grounds of nationality and refugee status or on other grounds that do not preclude the criminal proceedings taking place, the Office of the Procurator-General, on the application of a competent authority of the foreign State, orders a pretrial inquiry in respect of the person concerned, according to the procedure established in the Code.

121. The procedure for appealing against a decision on extradition is governed by article 591 of the new Code of Criminal Procedure; it provides that a decision on the extradition of a person may be appealed against by the person concerned, or his or her defence lawyer or legal representative, to the investigating judge of the territorial jurisdiction in which the person is being held. If non-custodial preventive measures are applied, a complaint concerning the extradition decision may be filed with the investigating judge under whose territorial jurisdiction the relevant central authority is located. The investigating judge considers the complaint within five days of its receipt by the court. The judicial proceedings are conducted with the participation of the procurator, the person concerned by the extradition decision, and his or her counsel or legal representative, if involved in the case. The investigating judge's decision may be appealed against to the court of appeal, by the procurator who participated in the investigation of the case by the court of first instance, by the person in respect of whom the decision was taken, or by his or her counsel or legal representative. The decision of the court of appeal may be appealed against on cassation only by the procurator on grounds of the incorrect application by the court of the provisions of international treaties to which Ukraine is a party, if reversal of the decision on extradition prevents further proceedings in the case against the person whose extradition is sought by the foreign State.

122. The current Code of Criminal Procedure has, in its article 590, extended the period during which a person may appeal against decisions of the central authority on extradition from 7 days (under the Code of Criminal Procedure of 28 December 1960) to 10 days from the date on which the decision on extradition is delivered to the person concerned. However, under article 591, the period during which an investigating judge must consider an individual's complaint in respect of an extradition decision has been reduced from 10 to 5 days from the date of receipt of the complaint by the court.

123. Information from the Office of the Procurator-General indicates that no cases have been recorded in which extradition has been refused because of any threat of the use of

torture, cruel, inhuman or degrading treatment, types of action and punishment, the death penalty or inadequate detention conditions.

Information on paragraphs 11 and 12 of the list of issues

Agreement between Ukraine and the European Community on the readmission of persons

124. Ukraine and the European Community signed the Agreement on the readmission of persons on 18 June 2007; it was ratified by the Verkhovna Rada on 15 January 2008. The Agreement establishes, on the basis of reciprocity, rapid and effective procedures for the identification and safe and orderly return of persons who do not fulfil the conditions for entry to and stay on the territories of Ukraine or one of the other member States of the European Union, and to facilitate the transit of such persons to their countries of origin. It establishes the obligation of the Contracting Parties to accept without any further formalities any of their own citizens who have violated the conditions in force for stay in the territory of another party, as well as third-country nationals, provided that evidence is furnished in accordance with the Agreement. The Agreement is without prejudice to the rights and obligations of Ukraine arising from the Universal Declaration of Human Rights of 10 December 1948 and from international law, in particular, from the European Convention of 4 November 1950 for the Protection of Human Rights and Fundamental Freedoms, the Convention of 28 July 1951 and the Protocol of 31 January 1967 on the Status of Refugees, the International Covenant on Civil and Political Rights of 19 December 1966, and bilateral instruments on extradition.

125. Ukraine's obligations under the Agreement and the need to implement the provisions of the international human rights treaties entail a high level of responsibility and require the adoption of sufficiently effective and decisive migration control measures. If this is not done, illegal migrants returned from the European Union will become a serious problem, and significant financial resources will be required for their deportation. To avoid such events occurring in Ukraine, measures are being taken to detect illegal migrants and identify related offences. They include Operation Migrant, as described in paragraphs 104 to 107 of this report.

Agreement on readmission between the Cabinet of Ministers of Ukraine and the Government of the Russian Federation

126. On 22 December 2006, the Government of Ukraine and the Government of the Russian Federation signed an agreement on readmission, which was ratified by the Verkhovna Rada on 19 September 2008 and entered into force on 21 November 2008. The agreement established a legal framework for the readmission of persons between Ukraine and the Russian Federation, by, inter alia, creating the conditions for coordination and cooperation in preventing and combating illegal migration and trafficking in human beings. The agreement lays out the procedures for readmission and for conducting joint activities to prevent, stop and detect offences related to illegal migration.

127. Cabinet of Ministers Order No. 402-r on the signing of the Agreement between the Cabinet of Ministers of Ukraine and the Government of the Russian Federation on readmission and the Executive Protocol on the procedure for its implementation was adopted on 25 June 2012. The Agreement establishes the procedures for the identification, return, transfer and reception of third-country nationals and stateless persons who do not comply with the regulations for entry into, exit from or stay in the territories of Ukraine and the Russian Federation.

Monitoring respect for the rights of persons subject to extradition

128. Ukraine actively monitors respect by the requesting party of the rights and freedoms of persons extradited from Ukraine. This concerns primarily those States that are not parties to the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms. The situation is monitored by means of an application to the Ministry of Foreign Affairs of Ukraine with the relevant instructions concerning the organization of visits to extradited persons in detention facilities, where the meetings are not monitored by the administration of the facilities.

129. The results of such meetings in 2010 and 2011 and the interviews conducted with persons extradited indicate that no violations of their human rights or the safeguards provided had occurred.

130. Neither the Office of the Procurator-General nor the Ministry of Justice have, in recent years, received any communications from persons extradited from Ukraine or their representatives concerning violations of their human rights and fundamental freedoms after extradition.

Number of requests for extradition

131. The following statistics indicate the number of requests for extradition received by the Ministry of Justice over the past year.

Extradition from Ukraine

Year	*Number of extradition requests received*	*Requests granted*	*Requests refused*
2007	97	72	14
2008	129	88	26
2009	148	110	13
2010	133	87	20
2011	122	86	26
2012 (first 6 months)	67	33	10

Extradition to Ukraine

	Number of extradition requests received		*Requests granted*	
Year	*Russian Federation*	*Other countries*	*Russian Federation*	*Other countries*
2007	148	26	82	6
2008	171	10	98	5
2009	217	17	114	2
2010	158	14	85	6
2011	189	42	104	12
2012 (first 6 months)	74	14	14	1

Articles 5 and 7 of the Convention

Information on paragraph 12 of the list of issues

132. The Office of the Procurator-General constantly monitors compliance by the requesting party with respect for the rights and freedoms of persons extradited by Ukraine, by submitting an application to the Ministry of Foreign Affairs of Ukraine with the relevant instructions concerning the organization of visits to extradited persons in detention facilities, where the meetings are not monitored by the administration of the facilities. Neither the Office of the Procurator-General nor the Ministry of Justice have, in recent years, received any communications from persons extradited from Ukraine or their representatives concerning violations of their human rights and fundamental freedoms after extradition.

Article 10 of the Convention

Information on paragraph 13 of the list of issues

Steps taken by the Office of the Procurator

133. The National Procuratorial Academy constantly seeks to improve the work of the procuratorial services in respect of proper verification of complaints concerning ill-treatment of persons during detention by law enforcement agencies and penal establishments. Issues of concern are discussed in seminars held at the National Procuratorial Academy, which have included the following:

- 4–5 June 2009 – an international seminar on effective investigation of allegations of ill-treatment, for procurators and teachers of courses on the European Convention on Human Rights;
- 14–15 December 2009 – a seminar in the Kharkiv province procurator's office on the role of the procuratorial agencies in preventing violence in penal institutions;
- 29 April 2010 – a regional training seminar on effective investigations into allegations of ill-treatment for procuratorial staff of the city of Kyiv, Kyiv province and the Central region military procurator's office;
- 26 October 2010 – a regional training seminar on effective investigations into allegations of ill-treatment for staff of the procuratorial agencies of the city of Kyiv and Kyiv province;
- 18 March 2011 – a regional training seminar on effective investigations into allegations of ill-treatment for procuratorial staff of Zhytomyr, Kyiv and Chernihiv provinces, the city of Kyiv and the Central region military procurator's office.

134. The curricula of the Officers' Training Institute and the Further Training Institute of the Academy include lectures, master classes and seminars on the following topics: Aspects of considering applications, information and the investigation of criminal cases concerning the use of torture or other ill-treatment of persons being taken into or held in detention by the internal affairs agencies; The prohibition of torture and the consideration of cases of ill-treatment; Review of the work of the European Court of Human Rights concerning Ukraine in the context of the prohibition of ill-treatment.

135. Particular attention is paid to technical guidance. For example, the Office of the Procurator-General and the National Procuratorial Academy have together designed and drawn up technical recommendations on aspects of considering applications, information and the investigation of criminal cases concerning the use of torture or other ill-treatment of

persons being taken into or held in detention by the internal affairs agencies. The recommendations cover the organization and verification of the accuracy of crime reports, and the compilation of statistics on the detection of crimes, the results of investigative work, and the proper and timely formation and submission of primary registration documents. The recommendations are currently under consideration by the Scientific Council of the Office of the Procurator-General.

136. The Office of the Procurator-General and the National Procuratorial Academy have thus designed a checklist for procuratorial investigative staff on the procedure for considering and processing communications and complaints from citizens in respect of police investigations, initial inquiries and pretrial inquiries.

Activities of the internal affairs agencies

137. The review of the system of indicators of militia activities and issues related to recruitment and proper training for militia officers is under the constant oversight of the Ministry of Internal Affairs. On 5 October 2011, parliamentary hearings took place on the reform of the Ministry of Internal Affairs system and the introduction of European standards, with the main (strategic) aim of the reform being the gradual transformation of the Ministry of Internal Affairs agencies into a civilian law enforcement agency along European lines.

138. The curricula for bachelor's level courses in the Ministry of Internal Affairs higher educational establishments include the topic of safeguarding human rights in law enforcement activities, and master's level students study human rights in law enforcement practice. The following special courses have been introduced: Safeguarding constitutional rights and civil freedoms in criminal investigations; European standards and morals in the criminal process; and The basis of democracy – human rights and safeguarding them during times of social change. In developing these curricula, considerable attention has been paid to international human rights standards.

139. Furthermore, in the 2011/12 academic year, a special course on respecting human rights and freedoms in the work of the internal affairs agencies was introduced into in-service training programmes for staff of different categories, taking into consideration the specific aspects of their work. The course includes study of national legislation and international instruments on human rights and fundamental freedoms; legal and constitutional aspects of gender policy; the rights and responsibilities of foreign nationals and stateless persons; the rights of ethnic minorities and safeguards for them; and the role of the human rights monitoring system in the activities of internal affairs agencies.

140. A project has been introduced, with the support of the Swiss Agency for Development and Cooperation, to develop militia strategies to prevent crime among children and young people. It includes a programme for full-time bachelor's- and master's-level students on preventing juvenile crime, and technical recommendations on preventing juvenile crime in the criminology course for correspondence students.

141. Work has also been conducted under the Council of Europe Action Plan for Ukraine 2008–2011, and the European Union and Council of Europe programme on combating ill-treatment and impunity. The result of this work has been a brochure entitled *Rights of detainees and obligations of law enforcement officials*, which provides information to improve detainees' knowledge of their rights and to familiarize internal affairs officers with human rights standards. A total of 10,000 copies of the brochure have been distributed to staff and detainees.

Measures within the prison system

142. The Prison Service pays great attention to professional training for its personnel, expanding the network of educational institutions and the different training levels for staff, and improving both their content and the learning technologies used with regard to human rights and freedoms, and the prevention and prohibition of cruel or degrading treatment of convicted prisoners or detainees. Training is carried out in the departments themselves and in higher education institutions of other ministries and departments.

143. In 2009 and 2011, the curricula for initial training, retraining and in-service training for staff of the prison service were updated and approved according to the relevant procedure, to improve the quality of the education provided. All the educational establishments that provide training for staff of the prison service include the study of international treaties and instruments relating to civil rights and freedoms in their curricula. The curricula were revised to increase the time allocated to the legal and educational psychology training modules, with mandatory teaching on compliance with international standards and instruments related to the prevention and comprehensive prohibition of ill-treatment, and respect for the fundamental rights of persons deprived of their liberty.

144. The matter of setting up a higher educational institution accredited for levels III and IV was resolved. Meeting on 17 March 2011, the Cabinet of Ministers adopted Order No. 201-r on the establishment of the Prison Services Institute within the National Academy of Internal Affairs. The Chairman of the Prison Service and the Rector of the National Academy of Internal Affairs have, on the basis of Presidential Instruction No. 087/56792-01 of 8 September 2010 and Prime Ministerial Order No. 54429/1/1-10 of 10 September 2010, organized the activities of the joint working group that is designing and organizing the Institute. The Institute's curricula and syllabuses are currently being developed to include specialized courses such as: Human rights in penal facilities and institutions; The rights; freedoms and obligations of the individual and the citizen; European Union law; Human rights in the administration of justice; and International penology.

145. The Government Commissioner for the European Court of Human Rights also works constantly, sending the courts and the law enforcement agencies information and analyses on European Court practice in cases against Ukraine, and specifically in respect of complaints concerning the application of preventive measures in the form of remand in custody in violation of the provisions of article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms. Work is being done to raise awareness of the need to prefer alternative preventive measures and to use pretrial detention only in exceptional cases.

Article 11 of the Convention

Information on paragraph 14 of the list of issues

Interrogation

146. Compliance with and clear implementation of the commitments made by Ukraine in the framework of the international human rights treaties, particularly to prevent torture and other cruel or degrading treatment, is an absolute rule. All instructions and methods of conducting investigations, including interrogations, are developed in strict accordance with current legislation and international standards. Under article 224 of the Code of Criminal Procedure, interrogations are conducted at the place of the pretrial investigation or in a different location, if the person to be interrogated has given his or her consent. Each witness is interrogated separately, without other witnesses being present. This article also gives the

time frame for the interrogation, specifying that it may not continue for more than two hours without a break, nor for a total of more than eight hours each day.

147. The article stipulates that the identity of person being questioned must be ascertained before the interrogation begins, and his or her rights and the procedure for interrogation must be explained. During questioning of a witness, a warning must be given that refusal to give evidence and the giving of false evidence are both criminal offences, as is the latter in the case of a victim. Where necessary, an interpreter takes part in the interrogation.

148. If the suspect refuses to answer a question or to give evidence, the person conducting the interrogation must stop questioning him or her immediately. The person being questioned has the right to use his or her own documents or notes during the interrogation if the evidence is related to any calculations or other information that is difficult to remember.

149. The person being questioned has the right to present the evidence himself or herself. Additional questions may be asked if the evidence is given in written form. The individual has the right not to answer a question where the circumstances legally prevent him or her from doing so (the seal of the confessional, medical confidentiality, professional confidentiality of lawyers, confidentiality of judicial deliberations, etc.) or may give grounds for suspecting the individual concerned or his or her close relatives or family members of a criminal offence, or that concern officials involved in secret investigations or individuals who are secretly collaborating with the pretrial investigation agencies.

Innovations in regulations governing remand in custody

150. Efforts are made constantly to improve the situation in respect of national standards and the country's international human rights obligations. Considerable attention has been paid to checking the state of detention facilities and bringing them into compliance with departmental building standards and the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

151. The Ministry of Internal Affairs is running a series of organizational and practical activities to prevent unlawful practices in respect of suspects, such as illegal detention and denial of access to qualified legal assistance or denial of the right to inform relatives of the detention. To prevent violations of detainees' rights, and specifically the right to legal counsel, all detainees are given the Detainees' Checklist, approved by the Ministry of Internal Affairs in Order No. 382 of 13 August 2010. Any violations of the Order found during inspections are documented and reported to senior Ministry staff.

152. Amendments made to the Code of Criminal Procedure in 2010 give convicted persons more rights. Since 1 January 2012, they have, inter alia, had the right to make unlimited numbers of telephone calls and the living area per person in penal colonies has been increased from 3 to 4 square meters.

153. Furthermore, any correspondence between a convicted prisoner or person on remand and the Ombudsman, the European Court of Human Rights or similar bodies of international organizations of which Ukraine is a member or participant, the authorized agent of such an organization or the Office of the Procurator may not be subject to censorship. The same applies to correspondence between defence counsel and a convicted prisoner or person on remand.

154. To improve reception conditions in the internal affairs agencies, the vast majority of the specific rooms allocated have the necessary furniture, communications technology, medical supplies, publications and legal literature. The hours during which senior staff receive citizens are regularly updated and published in the media.

155. In addition, work is under way to equip all internal affairs units with video recording and archiving equipment, as required by Ministry Order No. 404-2009 of 16 September 2009. A total of approximately 52 million hryvnias (Hrv) (compared to 242,000 Hrv in 2011) is currently needed to introduce video surveillance systems and re-equip detention cells, as well as to improve reception conditions. At the moment, this work is mainly funded from charitable and corporate donations, as well as with the assistance of the local authorities, including in the framework of the 2010–2014 Integrated Law Enforcement Programme. To prevent ill-treatment of citizens in internal affairs offices, 107 investigation rooms equipped with video recording equipment have been set up and are now in operation. There are 398 access points to the video surveillance system in the internal affairs agencies administrative buildings.

156. As at 30 August 2012, there were 5,105 video cameras in internal affairs agencies temporary holding facilities: 2,900 in cells, 699 in cell blocks, 410 in procurators' offices, 405 in exercise yards, 242 in special vehicle entrance yards and 449 in other areas.

157. Awareness-raising work has been done to encourage the use of non-custodial measures, including bail and personal guarantees. Under the Special Militia Facilities Construction and Reconstruction Programme, approved by Ministry of Internal Affairs Order No. 1001 of 15 November 2005, 74 million Hrv were budgeted for the period, 10 new temporary holding facilities were constructed, construction is continuing on 17 other such facilities, and 67 facilities have been rebuilt.

158. In 2011, 12 million Hrv from the State budget special fund were used for the construction and renovation of special militia facilities and another 2 million Hrv were provided by local authorities or received from other sources. One temporary holding facility has been built and work is under way on 17 others, with an additional 7 being rebuilt. Repairs are scheduled for 350 facilities (74 per cent).

159. The temporary holding facilities are now equipped with individual bunks, washbasins and toilets. Detainees are able to take a shower and exercise in the fresh air, and are given three meals a day.

160. The Prison Service is working to develop and amend penal enforcement regulations so as to make them less harsh, to improve the work of the Service, to ensure respect for the rights and freedoms of persons deprived of their liberty and to address the grounds on which applications have been submitted to the European Court of Human Rights.

161. For example, when, on 21 January 2010, the Verkhovna Rada adopted Acts amending the Penal Enforcement Code to safeguard the rights of convicted offenders in correctional facilities, and amend legislation on the right of detainees and convicted offenders to send and receive correspondence, further work was done to bring the Prison Service regulations into line with the requirements of those Acts, as well as with the State Penal Enforcement Service Act and the Pretrial Detention Act.

162. In particular, the Prison Service has developed and is currently finalizing, as well as agreeing with other authorities on, the following projects:

- Rules of procedure for prisons (new version);
- Rules of procedure for remand centres (new version);
- Instructions on inspecting the correspondence of persons held in prisons and remand centres (new version);
- Instructions on the penal enforcement procedure for non-custodial punishment and monitoring of persons sentenced to such penalties (new version);
- Procedure for health-care provision for convicted persons;

- Model regulations for childcare units in correctional colonies.

Articles 12 and 13 of the Convention

Information on paragraph 15 of the list of issues

Collection of statistical data related to combating ethnic and racial violence and discrimination

163. To establish an effective system for collecting statistical data on implementation of the Convention at national level, including in respect of complaints, investigations, prosecutions and convictions in cases related to ethnically motivated violence and discrimination, Cabinet of Ministers Instruction No. 11273/110/1-08 of 24 February 2010 brought into effect the plan of activities to combat xenophobia and racial and ethnic discrimination in Ukrainian society for the period 2010–2012. It introduced a separate record of communications from the public concerning xenophobia as described in category 220 (inter-ethnic relations) of the citizens' communications classification system.

164. A plan of action to combat racism and xenophobia for the period to 2012 was also approved under Ministry of Internal Affairs Order No. 94 of 18 February 2010. It includes:

(a) The production of precise, high-quality, dedicated statistical reports on offences based on racial, ethnic or religious intolerance (in line with the general instructions from the Office of the Procurator-General and the Ministry of Internal Affairs of 6 February 2009);

(b) On a departmental level, separate records of individual communications and complaints concerning xenophobia and racism, including in respect of staff of the internal affairs agencies.

Compilation of statistical data on domestic violence prevention

165. In light of the Committee's recommendations on legislative support for law enforcement activities, the feasibility has been considered of developing and introducing standard quarterly reporting forms on respect for human rights in the work of the internal affairs agencies. To monitor respect for the human rights, freedoms and legitimate interests of citizens in the work of the internal affairs agencies, bearing in mind the recommendations resulting from the Committee's hearings on the Ministry's reporting structure, a reporting form entitled *Report on the status of human rights in the work of the internal affairs agencies* (form 1-OPC) has been developed. Ministry of Internal Affairs Order No. 405 of 29 April 2011 introduced the reporting of human rights violations into the work of the internal affairs office. Reports using form 1-OPC are generally drawn up each month on a cumulative basis for the Autonomous Republic of Crimea, the provinces and the cities of Kyiv and Sevastopol, and are submitted to the Ministry by the fifth of the month following the reporting period. For information purposes, units within the Ministry may provide a monthly summary of the information.

166. A total of 162,768 cases of domestic violence were reported in 2011. A further 43,416 were reported during the first quarter of 2012.

167. In 2010, as part of its domestic violence prevention work, the Government approved the plan of action for a national "Stop violence!" campaign covering the period up to 2015. There are also 67 confidential helplines that offer assistance to people affected by violence in the different regions of the country.

168. The helplines and the national "Stop violence!" campaign have received the following domestic violence reports:

- 110,252 reports in 2010, 100,390 of them from women, 924 from children, and 8,938 from men;
- 126,514 reports in 2011, of which 113,872 were from women, 11,861 from men, and 762 from children;
- A further 33,531 reports during the first quarter of 2012, of which 28,787 were from women, 2,918 from men, and 215 from children.

Collection of statistical data on cases of torture

169. Current reporting methods used by the procuratorial agencies do not record cases or allegations of torture and cruel treatment separately. However, section 5 ("Monitoring of compliance with the law in enforcing judicial decisions in criminal matters, and in using other measures of a coercive nature, related to restrictions on the personal freedom of citizens") of form P on the work of the procurator's office includes indicators concerning the number of criminal cases and persons (staff of agencies) against whom proceedings have been brought.

170. Section 6 of the form records complaints concerning oversight of compliance with the Penal Enforcement Code, including in respect of unlawful methods used by the administration of the institutions in applying coercive measures. These data are processed in the Office of the Procurator-General each quarter (four times a year). Statistical information on the results of these inspections is shown in table 1 of this report.

Information on paragraphs 16, 17 and 18 of the list of issues

Zero-tolerance policy

171. In respect of a policy of zero-tolerance, the Constitution provides for a broad range of human rights and individual and civil freedoms which mean that any evidence that has resulted from the use of torture may not be admitted in a criminal case. Furthermore, as noted above (paragraphs 8–13 of this report), the use of torture is a crime in Ukraine and is punishable under the Criminal Code.

172. Thus, national legislation and the country's international commitments in the area (paragraphs 2–4 of this report) demonstrate that the State fully supports the policy of zero-tolerance of torture. They also reaffirm that our State is open to any international organization or inspection. Specifically, recognizing the importance and complexity of preventing torture and cruel, inhuman or degrading treatment or punishment, Ukraine collaborates actively with the relevant international instruments, including those of the United Nations system and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

173. It collaborates consistently and productively with CPT, which made its most recent (sixth) visit to the country between 9 and 21 September 2009. The CPT delegation visited agencies and institutions under the authority of the Ministry of Internal Affairs, the Administration of the State Border Service, the State Prison Service and the Ministry of Health. The report on the results of the Committee's work in Ukraine was approved on 1 April 2010 and the Government's general response was submitted to the CPT Secretariat in December 2010. On 9 November 2011, the Government gave permission for the publication of the report and its response. CPT also carried out unscheduled visits to Ukraine from 28 November to 6 December 2011 and from 30 November to 10 December 2012 to check compliance with human rights, looking particularly at high-profile cases.

174. In this context too, the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment made its first visit to Ukraine from 16 to

25 May 2011, during which time the members of the Subcommittee visited places of detention. In October 2011, the Subcommittee issued its report with recommendations on the results of the visit.

Innovations towards the prohibition of torture

175. It should, however, be noted that, since the problem of respect for human rights in the criminal justice process is still an acute issue in Ukraine, especially at the inquiry and pretrial stages, the new Code of Criminal Procedure contains a number of innovations (paragraphs 44–62 of this report) that will help to protect human rights and, in particular, ensure that torture is inadmissible.

176. They include the automatic initiation of investigations, as the law enforcement agencies are now required to register a case and initiate an investigation as soon as a complaint is received. Thus, under article 214 of the new Code, the investigating procurator must immediately, and no more than 24 hours after submission of a report or receipt of information concerning the commission of a criminal offence, or after independently ascertaining from any source circumstances that might indicate that a criminal offence has been committed, enter the relevant information in the unified pretrial inquiry register and begin an inquiry. The investigator responsible for the pretrial inquiry is assigned by the head of the agency responsible for the inquiry.

177. The admissibility of evidence, discussed in detail in paragraphs 51 to 55 of this report, is an equally important element.

178. Changes in the new Code relating to the work of the procurator's office address the possibility of conflict of interest and thereby the problem of ineffective investigation of complaints concerning ill-treatment (see paragraph 68 of this report).

National preventive mechanism

179. Pursuant to article 85, paragraph 17, of the Constitution, the Verkhovna Rada elected a new Parliamentary Human Rights Commissioner (Ombudsman) in April 2012. In addition to continuing the activities and initiatives already under way, the Ombudsman is devoting particular attention to the development of a national preventive mechanism. To this end, the Ombudsman worked with experts from the Council of Europe and representatives of non-governmental organizations to draft an Act amending the Act on the Parliamentary Human Rights Commissioner, which was adopted by the Verkhovna Rada on 2 October 2012 and under which the Office of the Ombudsman is given the functions of a national preventive mechanism.

180. The purpose of the Act is to ensure that Ukraine meets its international obligations under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment by assigning the functions of national preventive mechanism to the Parliamentary Human Rights Commissioner.

181. In line with the Act, a department has been established within the structure of the Ombudsman's secretariat, and a representative appointed, to set up the national preventive mechanism.

182. As at 1 November 2012, staff of the department had made monitoring visits to 136 institutions: 62 subordinate to the Ministry of Internal Affairs, 1 under the Security Service, 23 under the State Prison Service, 3 under the State Border Service, 2 under the Ministry of Defence, 16 under the Ministry of Health, 25 under the Ministry of Social Policy and 4 under the Ministry of Education, Science, Youth and Sports.

183. Reports are prepared after each monitoring visit and sent together with recommendations on addressing the weaknesses identified to the ministry or department

concerned, which must inform the Ombudsman within one month of the measures taken in response to the recommendations.

Response to the use of torture or other ill-treatment of persons

184. In 2011, the Office of the Procurator-General produced a summary of the results of procuratorial oversight of compliance with the law by the procuratorial and internal affairs agencies in reporting, registering and reviewing statements and reports of torture and other ill-treatment of persons, as well as of the state of pretrial investigations, procuratorial oversight and the results of the courts' consideration of criminal cases for this category of offences in 2010. The summary showed that, in 2010, the procuratorial agencies registered 6,817 statements and communications received from citizens, the courts, law enforcement agencies, etc., in respect of offences related to the use of violence by militia officers in the performance of their official duties. Of those, 1,394 (20 per cent) came from the internal affairs agencies, and 297 of those (4.3 per cent) from internal investigation case files from units of the Internal Security Service of the Ministry of Internal Affairs Central Department for Combating Organized Crime.

185. The preliminary inquiries into the statements and communications resulted in 100 criminal cases being brought.

186. The total number of complaints received by the Office of the Procurator in 2010 included 40 complaints and communications concerning the use by militia officers of violence resulting in the death of victims. Criminal proceedings were not brought in 24 cases, but were instituted in the cases of 16 of the deaths.

187. In total, 167 criminal cases were investigated by staff of the procuratorial agencies last year, leading to proceedings being brought in 109 criminal cases, of which 88 (or 87.5 per cent) were taken to court with indictments against 175 persons. One in five (21 or 12.5 per cent) of the cases were closed after the pretrial investigation on the grounds of absence of the elements of a crime.

188. In 2010, the courts convicted 133 persons (3 persons under article 127 of the Criminal Code, 88 under article 365, 39 under articles 127 and 365, and 3 under other articles). Seventy-six of the persons convicted were sentenced to imprisonment, 52 were exempted from serving a sentence of imprisonment on the basis of article 75 of the Criminal Code, 4 were sentenced to semi-custodial penalties and 1 was fined. The courts imposed additional penalties in the form of disqualification from office or certain positions on 126 persons, and 45 persons lost their special ranks on the basis of article 54 of the Criminal Code.

189. On the basis of the procuratorial action documents, higher courts reviewed cases against 60 individuals for offences related to use of violence, torture, and inhuman or degrading treatment by law enforcement officers; they overturned as too lenient the sentences of 21 persons.

190. The courts awarded material damages to a total of 6,700 Hrv in those cases brought before them. Property to a value of 119,900 Hrv was seized from defendants. Victims of the offences made claims for material and moral compensation to a value of over 8,336,000 Hrv.

191. Over the first quarter of 2012, the Ministry's internal security units received 975 reports from citizens concerning violations of their constitutional rights and freedoms, including 211 in respect of torture and actual bodily harm. Investigations confirmed the allegations contained in 86 of the reports. In all, 99 militia officers were disciplined. In total, the Office of the Procurator has, on the basis of documents from the Internal Security

Directorate and the Internal Security Office, brought 32 criminal cases this year for violations by militia officers of the constitutional rights and freedoms of citizens.

192. Given this situation, pursuant to its Order No. 154 of 21 April 2011, the Ministry of Internal Affairs has set up a special human rights monitoring commission, which has a set list of priorities for harmonizing and coordinating the proper functioning of the legal assistance mechanism, safeguarding the rights of detainees in prisons, and drawing up other proposals to that end.

193. A summary of the available information and facts shows that frequently, when citizens report offences to the Office of the Procurator, the actions of senior officials of the internal affairs agencies mean that the data is not collected or recorded as it should be; this, of course, has a negative impact on the timeliness with which the scene of the event can be inspected, the instruments of the crime seized and evidence collected. In addition, there are cases where procuratorial staff allow red tape and a lack of objectivity to interfere when checking statements and information, or during pretrial investigations.

194. A meeting of the Board of the Procurator-General's Office in March 2011, attended by the provincial procurators, the Minister of Internal Affairs, the Parliamentary Human Rights Commissioner, human rights defenders and other interested persons adopted a decision to address the existing shortcomings in this work. The activities identified in the Board's decision are carried out under the oversight of the Office of the Procurator-General.

195. There has been a marked increase in the work done to combat this category of offences. For example, during the first six months of 2011, 31 criminal cases were brought to court against 50 persons for torture or other ill-treatment of persons (19 cases were brought against 45 persons over the same period in 2010).

196. One interesting case that resulted from the work of the Sumy province procurator's office was a charge of criminal negligence brought against officer D. of the Konotop internal affairs central office control room in Sumy province, who, for a period of 24 hours in February this year, did nothing to have remand prisoner L. hospitalized and given medical treatment. D. has been charged with an offence under article 367, paragraph 1, of the Criminal Code and the case has been sent to court for consideration on the merits. Another case was brought and investigated by the Volynka province procurator's office against nine officers of Manevichi correctional colony No. 42, including the head of the facility, M., who, in April of this year, issued a criminal order to a subordinate to use physical force against convicted prisoner D., who subsequently died from his injuries.

Information on paragraphs 19 and 23 of the list of issues

197. Pursuant to Presidential Decree No. 394/2011 of 6 April 2011, regulations have been approved for the State Prison Service as the central executive agency, under which its activities are coordinated by the Cabinet of Ministers through the Ministry of Justice, it falls within the executive system and is responsible for implementing government policy on penal enforcement.

198. During the reporting period, the State programme to improve conditions for the detention of convicted prisoners and persons on remand, for the period 2006–2010, was approved by Cabinet of Ministers Order No. 1090 of 3 August 2006. Work has been done to prepare a new Policy Framework for the State Prison Service development programme, to introduce the procedure and conditions for the enforcement and serving of sentences, in line with the requirements of national legislation and international standards for the period up to the year 2015.

199. With the adoption by the Verkhovna Rada on 21 January 2010 of Acts amending the Penal Enforcement Code to safeguard the rights of convicted offenders in correctional facilities, and amending legislation that addresses the right of detainees and convicted offenders to send and receive correspondence, modifications designed to strengthen human rights guarantees were made to numerous subsidiary legal and regulatory instruments. In particular, Act No. 1828-VI amending the Penal Enforcement Code to safeguard the rights of convicted offenders in correctional facilities substantially improved the social and legal status of those persons.

Reducing the number of prisoners and using alternative forms of punishment

200. As noted above (see para. 55), article 183 of the Code of Criminal Procedure stipulates that remand in custody is an exceptional measure, used only when and if the procurator proves that none of the less harsh preventive measures will make it possible to avoid the risks laid out in article 177 of the Code. In addition, article 176 of the Code provides for the following preventive measures in addition to custody: a personal commitment, a guarantee given by another person, bail and house arrest.

201. Furthermore, the experience accumulated by the Prison Service is reflected in the Acts amending the Penal Enforcement Code to safeguard the rights of convicted offenders in correctional facilities, and amending legislation that addresses the right of detainees and convicted offenders to send and receive correspondence. A number of other legislative acts have also been developed.

202. A bill amending to some Acts to make legislation on pretrial detention less harsh and to safeguard the constitutional rights and freedoms of persons held on remand was registered with the Verkhovna Rada on 23 September 2011.

203. Bills No. 3412 on probation and No. 3413 amending legislation to make criminal law and the organizational and legal preconditions for granting probation less harsh were registered with the Verkhovna Rada on 26 November 2008. They define, respectively, the legal basis for the organization and activities of the probation service and amendments to the Penal Enforcement Code and section 7 of the State Penal Enforcement Service Act.

204. It is an indisputable confirmation of the effectiveness of these measures that, since 2001, the number of convicted offenders and prisoners in correctional facilities and detention centres has fallen to 70,000. This decline is a result of: implementation of the Amnesty Act; amendments to legislation that decriminalized certain offences; and more extensive use of statutory incentives, with unserved portions of sentences commuted to lighter forms of punishment and parole.

205. In implementing the Council of Europe Action Plan for Ukraine 2011–2014, the Prison Service and the Council of Europe secretariat have begun a two-year project to support prison reform in Ukraine, intended to introduce a probation service as an element of the system and to improve the management of correctional facilities, as well as staff training.

206. Over the first eight months of 2012, 12,502 convicted offenders, or 41.2 per cent of all prisoners released, were released on parole. A further 46 convicted offenders were released under an amnesty in the first eight months of 2012. Over the first six months of 2012, more than 2,600 convicted offenders, or 13.6 per cent of those released, had the unserved portions of their sentences commuted to lighter forms of punishment.

207. Under article 81, paragraphs 1 to 4, of the Criminal Code, parole may be granted to persons serving a custodial sentence. A person may be released on either full or partial parole from further punishment. Parole may be granted if the convicted person shows that

correction has been effective through good behaviour and attitudes toward work. Parole may be applied after the offender has served:

(a) No less than half of the sentence handed down by the court for a minor or ordinary offence, or for a serious offence committed by negligence;

(b) No less than two-thirds of the sentence handed down by the court for an intentional serious offence or an especially serious offence committed by negligence, or if a person who was previously serving a sentence of imprisonment for an intentional offence and prior to the conviction expiring or being expunged committed another intentional offence, for which he or she was sentenced to imprisonment;

(c) No less than three quarters of the sentence handed down by the court for the intentional commission of an especially serious offence, or a sentence handed down to a person who was previously released on parole and committed another intentional offence during the unserved portion of the sentence.

208. Under article 82, paragraphs 1 to 5, of the Criminal Code, persons serving a custodial or semi-custodial sentence may have the unserved portions of their sentences commuted to lighter forms of punishment. In these cases, a lighter form of punishment shall be appointed following the time limits set out in the general part of the Code for such penalties, and in any case not exceeding the unserved portion of the sentence.

209. Parole or commutation of the unserved portion of a sentence is not used in the case of persons sentenced to life imprisonment. Under article 87 of the Criminal Code, an act of pardon may replace a sentence of life imprisonment for a term of not less than 25 years. Pursuant to paragraph 4, subparagraph 2, of the regulations governing implementation of a pardon, as approved by Presidential Decree No. 902/2010 of 16 September 2010, for persons sentenced to life imprisonment, an application for pardon may be filed only after at least 20 years of the sentence have been served.

210. The adoption of the above-mentioned legislation has created the legal preconditions for the development of the Policy Framework for the reform of the State Prison Service up to 2017.

Improvement of prisoners' accommodation

211. On 1 January 2012, a norm contained in the Penal Enforcement Code entered into force, increasing the floor area per prisoner from 3 square metres to 4 square metres.

212. To address the issue of accommodation for persons on remand and convicted offenders, and to provide them with specialized medical care, Departmental Order No. 191 (amended) of 14 June 2010 was issued, amending the list of correctional colonies with remand centres; pursuant to the Order, remand centre units with capacity for 2,466 persons were set up in correctional colonies (1,094 persons were being held as of 1 April 2012), of which 404 in specialized tuberculosis hospitals; and short-stay prisons with 1,077 places in 39 correctional colonies, to which persons sentenced to short-term rigorous imprisonment whose sentences have entered into force are transferred from remand centres. Two remand centre units with 43 places were built in 2011 in tuberculosis treatment facilities in Poltava and Kharkiv provinces. The number of places was increased to 45 during the first quarter of 2012. Because of limited funding, remand centre units in other specialized tuberculosis hospitals will be completed between 2012 and 2015.

213. An interdepartmental working group was set up pursuant to Cabinet of Ministers Order No. 12 of 6 January 2010 to discuss the transfer of the facilities and remand centres away from city centres.

214. During 2011, construction was completed on a new block with 180 places for female detainees at the Kyiv remand centre, maximum security sectors with 152 places were set up in No. 82 and No. 97 correctional colonies in Donetsk region, and extensive and running repairs were made to priority agencies and facilities of the State Prison Service.

215. Pursuant to Cabinet of Ministers Decision No. 177 (amended) of 21 March 2012, plans for 2012 include the following:

(a) Conversion to gas of the boiler plant in Nikita correctional colony (No. 87) and major repairs to the boiler plant at Yenakiyeve correctional colony (52), as well as priority reconstruction of the water treatment equipment at Petrove correctional colony (No. 49);

(b) Development of design construction documents for the priority conversion of Irpin correctional colony (No. 132) to Kyiv province remand centre;

(c) Correction of the design construction documents for the priority conversion of Kerch remand centre, construction of a detention block in Kharkiv remand centre, reconstruction of the childcare unit in Chernihiv correctional colony (No. 44) and priority construction of the water system for Kolomyya correctional colony (No. 41).

216. Extensive repairs have also been made to the kitchen block of Sokal correctional colony (No. 47) and the chimney of Snihurivka correctional colony (No. 5); and design construction documents have been drawn up for water treatment facilities at Selydove correctional colony (No. 82), the reconstruction of the hot water system in Sokal correctional colony (No. 47), major repairs to the sewers of Zhdanov correctional colony (No. 3), the construction of two residential buildings in Yenakiyeve correctional colony (No. 52) and Drohobych correctional colony (No. 40) to form maximum security sectors, and for lighting for security installations in Bucha correctional colony (No. 85). These projects were funded to a total of 700,000 Hrv from the special State budget.

217. A further sum of 4.5 million Hrv was allocated in 2012 from the general State budget for ongoing repairs and services at penal institutions and remand centres, which made it possible to complete work at 56 sites.

218. The State Prison Service departments in the Autonomous Republic of Crimea, Sevastopol and Kherson province set aside plots for the construction of a new remand centre in Sevastopol and the transfer of the clinic of Kherson correctional colony (No. 61) and remand centre.

Deaths

219. The issue of deaths in custody is constantly monitored by the Prison Service. The figures for deaths and mortality rates among detainees are analysed on a monthly basis, specifying the shortcomings, the causes and the conditions of these occurrences, and decisive steps are taken to address them. However, the situation regarding deaths in correctional institutions and hospital mortality rates remains complex.

220. One of the main factors in the number of deaths is HIV/AIDS – in the first six months of 2012, 163 deaths, that is 30.1 per cent of the total number of deaths in the Prison Service system, were attributed to the disease. But the statistics show an overall decrease in the number of deaths in prison facilities. For example, over the first seven months of 2012, 626 people died in Prison Service facilities, which was 62 fewer than over the same period in 2011. Of those: 211 died in multidisciplinary hospitals, 42 fewer than over the same period in 2011; and 122 died in specialized tuberculosis hospitals, 23 fewer than over the same period in 2011.

221. In this context, it must also, unfortunately, be noted that the courts take rather a long time to consider applications for the release of seriously ill prisoners, with the result that, in 2012, 26 persons died before the court gave its ruling. Of those who died this year, the courts had opposed the release on account of ill health of 40, 14 of whom had their applications refused twice, and 2 persons were refused five times.

Improvement of medical conditions

222. The situation described above concerning deaths in correctional facilities demands the adoption of measures to improve the health care system. Measures are being taken as part of the State Prison Service programmes to combat tuberculosis in correctional facilities and remand centres, 2012–2017, and the programme on HIV prevention, treatment, care and support for HIV-positive individuals and AIDS patients for the period 2009–2013.

223. On 10 January 2012, the Ministry of Justice and the Ministry of Health issued Joint Order No. 239/5/104 approving the procedure for interaction between the health-care facilities of the State Prison Service and health-care institutions on the provision of medical care for persons on remand.

224. The Order specifies the free choice of doctor for persons on remand and under examination or treatment in health institutions, both in emergency cases and on a planned basis.

225. With a view to providing the necessary medical care, persons held temporarily in police custody must be examined for injuries or diseases by doctors from the territorial health institutions. All of the records are analyzed and the person is, if necessary, hospitalized on the recommendation of a doctor. Over a period of just seven months in 2012, 939 detainees and remand prisoners were given hospital treatment in the medical institutions of the Ministry of Health. Also, since 2009, the internal affairs agencies have maintained logbooks of medical assistance provided to persons held in holding cells.

226. There are 32 remand centre medical units that provide health care for prisoners. Furthermore, health care is provided to convicted offenders and detainees in Ministry of Health treatment facilities. There are 147 medical units in correctional facilities, remand centres and young offenders' institutions. There is a dental surgery in each of the medical units and hospitals. There are also 59 drug treatment units and 21 infectious disease units. District (municipal) hospitals provide skilled medical care and inpatient treatment in 612 special rooms, with a capacity of 1,347, where more than 1,500 patients were treated in 2012.

227. The procedure for cooperation between the health-care facilities of the State Prison Service and health-care institutions was codified in 2012, providing, in particular, a legal framework for the recruitment of foreign specialists.

228. In 2011, for the first time, budget funding was used to replace 30 per cent of all equipment at institutions and organizations of the State Prison Service: some 830 items of medical equipment (X-ray machines, resuscitation equipment, apparatus for laboratory and clinical examinations, diagnostic, surgical and dental equipment, and so forth) were acquired at a cost of 79.2 million Hrv.

229. Steps are being taken continuously to prevent tuberculosis, notably through the application of a set of disease-control measures involving mandatory regular and terminal prophylactic disinfection at sources of infection, constant monitoring of medication compliance throughout the treatment cycle for tuberculosis patients and follow-up with anti-relapse and chemoprophylactic therapy. In 2011 and the first five months of 2012, 100 per cent of persons taken into custody underwent prophylactic fluorographic examination.

230. Access to voluntary, free testing is provided in penal institutions and remand centres with a view to identifying and preventing cases of HIV infection. Every institution has a doctor who is responsible for treating inmates living with HIV, and the possibility of establishing additional posts for infectious disease specialists is being studied. In 2013, an additional ward was opened at correctional colony No. 124 in Donetsk in order to improve treatment for inmates with HIV.

231. Financial assistance is being sought actively from international organizations in order to modernize the diagnosis and treatment of HIV. As part of the World Bank Tuberculosis and HIV/AIDS Control Project for Ukraine, equipment has been purchased for 85 level I bacteriological laboratories (at remand centres and penal institutions) and 10 level III laboratories (for tuberculosis hospitals), along with laboratory apparatus and expendables, for a total amount of 2.4 million dollars.

232. As at 1 August 2012, State Prison Service facilities held 5,110 tuberculosis patients and 6,404 HIV-infected persons, of whom 1,266 were receiving antiretroviral therapy (ART).

233. The Foundation for the Development of Ukraine and the State Prison Service signed a cooperation agreement on 23 April 2012. The goal is to implement a programme to reduce the tuberculosis burden in Ukraine by expanding and enhancing access to high quality services for the prevention and treatment of tuberculosis (round 9 of funding, Global Fund to Fight AIDS, Tuberculosis and Malaria).

234. A cooperation agreement was signed on 21 March 2012 with the All-Ukrainian Network of People Living with HIV/AIDS (from the tranche of round 10, Global Fund). The main objective is to implement a project to establish a sustainable system of comprehensive services for HIV prevention, treatment, care and support for most at-risk populations and people living with HIV/AIDS.

235. Given the importance of the issue, the Ministry of Justice and the Ministry of Health have prepared a draft joint order on the provision of prosthetic devices to convicted persons with disabilities.

236. When selecting detention as a preventive measure, courts and law enforcement agencies unfortunately do not always take into account the requirements of article 150 of the Code of Criminal Procedure, which specifies that the circumstances to be considered when deciding on preventive measures include the health of a suspect or accused person; this means that remand centres continue to receive many individuals suffering from serious diseases with irreversible changes and chronic developments that cannot be cured.

Improving remand conditions for adolescents

237. Article 8 of the Pretrial Detention Act addresses the separate detention of minors from adults. Classes have been set up to provide socio-psychological and educational activities for minors in detention centres, training and advisory units have organized study support centres and 31 psychological and emotional decompression rooms have been provided.

238. Food for these categories of persons is bought using central budget funding. All the necessary food is provided. Juveniles in detention are given three meals a day, prepared in accordance with the menu plan. The interval between meals is never more than seven hours.

Resocialization measures

239. The vocational and technical education system for prisoners covers all correctional institutions and is intended to help convicted offenders to acquire a trade or occupation and

to improve their skills through various forms of training: directly on the job, as well as in vocational and technical training establishments within the correctional institutions. There is now a network of vocational and technical training establishments covering eight young offenders' institutions with vocational and technical colleges and units, and 80 adult correctional institutions with training centres and units.

240. The vocational and technical training establishments offer vocational training in 59 trades and occupations to over 11,000 convicted offenders. The logistical and technical base needed for vocational and technical training for prisoners has been established, and training programmes developed. The training establishments have a total of 945 teaching, engineering and technical teaching staff who organize and run the teaching process. Nearly 500 training rooms have been equipped to accommodate the training centres.

241. As of the end of 2011, 17,800 persons had completed their training, learned an occupation and improved their qualifications: 11,700 of them in vocational and technical training and 6,100 in production related to correctional institutions. A total of 10,600 persons received certificates attesting to their occupational qualifications.

242. Currently, 8,700 persons are continuing with their training and skills improvement, 7,500 of them in vocational and technical institutions in establishments of the Prison Service. In all, 47 per cent of those who did not have any qualifications have attended courses in the vocational and technical training institutions of correctional institutions.

Article 14 of the Convention

Information on paragraph 20 of the list of issues

Psychological rehabilitation

243. The following rehabilitation programmes exist to provide psychological care for persons held in prisons who may have suffered torture or abuse from staff of the correctional institution:

- *Psychodiagnostics* – to study and compile personal and group characteristics of convicted offenders and persons on remand, with the aim of identifying individual psychological characteristics of their behaviour, establishing whether they have any specific psychological qualities, and identifying those individuals who require higher levels of monitoring and attention from the staff;
- *Preventive health care* – to identify, resolve and prevent negative personal and group psychological phenomena arising as a result of being held in isolation from society, and to provide psychological assistance to convicted offenders and persons on remand, as well as to staff of the Prison Service, where necessary;
- *Correctional* – to achieve positive changes in the mental condition, behavioural characteristics and personality of convicted offenders and persons on remand;
- *Consultative* – to provide recommendations to staff on working with groups and individuals, to prevent negative phenomena and to develop a positive social and psychological environment among convicted offenders and persons on remand;
- *Educational* – to promote psychological knowledge among the staff, convicted offenders and persons on remand and to raise the level of their psychological awareness;
- *Research* – collaboration to promote scientific research in the field of psychology and education and to implement the results in practical activities.

244. Departmental regulations stipulate that the Prison Service psychologist is an integral part of the establishment's socio-psychological service whose work is to study convicted offenders and persons on remand, and to reduce the negative impact on the individual of being held in isolation from society. As at 1 August 2012, there were 347 psychologists' posts in the different agencies and institutions of the Prison Service. A total of 85.7 per cent of prison psychologists have specialized higher education in psychology or education, 10.6 per cent are qualified in jurisprudence and 3.7 per cent have completed their higher education in another area.

245. The main unit providing organizational and methodological support to the activities of Prison Service psychologists is the section that organizes socio-educational and psychological work with convicted offenders, which is part of the department of prison inspection and socio-psychological work with convicted offenders.

246. As part of their basic functions, Prison Service psychologists tested more than 94,000 convicted offenders over the first seven months of 2012. The results have allowed staff to give over 150,000 recommendations for the organization of individual educational work with convicted offenders and persons on remand. More than 1,800 classes aimed at disseminating psychological knowledge and improving the level of psychological culture in the Prison Service have been given.

247. One of the priority tasks in the work of Prison Service psychologists is the organization of suicide prevention work among convicted offenders and persons on remand.

Rehabilitation of victims of domestic violence and trafficking in human beings

248. In 2009, domestic violence occurred in 79,859 families and 65,684 persons were put on the preventive register as being prone to violence; 2,258 children were placed under social monitoring and received assistance as victims of domestic violence.

249. The figures for 2010 were 18,995 families, with 19,236 persons put on the preventive register as being prone to violence. In 2010, 556,367 Hrv from local budgets was invested in activities to prevent domestic violence. In 2011, there were 50,164 such families, with a total of 87,540 persons put on the preventive register and, in the first quarter of 2012, 21,545 families and 24,984 such persons, respectively.

250. During 2010, 3,673 persons who had committed violence were put on the internal affairs agencies programme; the figure for 2011 was 3,742; and 1,040 for the first quarter of 2012.

251. In 2010, 1,085 victims of trafficking in persons received help with reintegration; the figure for the first quarter of 2011 was 197. Of those: 6 persons were taken into shelters, 1,085 received counselling, 419 achieved higher specialized qualifications, 646 were treated by the medical services, 465 received psychological assistance, 214 were helped with legal services, 331 were given assistance in finding housing, and 233 persons were given accommodation in the medical and rehabilitation centre. Two programmes on the social and psychological rehabilitation of children who have suffered from human trafficking have been developed for educational staff and implemented.

252. During 2011, the social services centres for families, children and young people took measures to prevent domestic violence. Social services were provided to 8,136 persons affected by actual or threatened domestic violence or ill-treatment.

253. As a result of the centres' work: 3,739 persons (725 children and 3,014 adults) have managed to renew their social contacts; 391 persons (70 children and 321 adults) have received identity documents; 30 persons (8 children and 22 adults) have been registered; 13 persons (1 child and 12 adults) have had their accommodation renovated; 398 persons (79

children and 319 adults) have had their living and accommodation problems resolved, including through improved housing; educational opportunities have been found for 60 persons (40 children and 20 adults); and employment has been found for 164 people.

254. A total of 249 persons (49 children and 200 adults) have been helped to return to normal living conditions and follow rehabilitation programmes. As a result of this work, 175 persons (10 children and 165 adults) have stopped using psychoactive substances.

Compensation for damage

255. Article 56 of the Constitution establishes the right of every individual to be compensated by the State or local authorities for material or moral damage caused by unlawful decisions, actions or omissions of State or local authorities or their officials or employees in the exercise of their powers. This constitutional rule is reflected in the Act on the procedure for compensation for damage caused to a citizen by unlawful acts of bodies of inquiry or preliminary investigation, the procurator's office or the courts, pursuant to which citizens shall be reimbursed for any injury caused as a result of:

(a) Unlawful conviction, unlawful indictment, unlawful detention and remand in custody, conduct of an unlawful search during an investigation or court hearing of a criminal case, seizure, unlawful confiscation of property, unlawful removal from work (duties) and other procedural actions infringing citizens' rights;

(b) Unlawful use of administrative detention or punitive deduction of earnings, unlawful confiscation of property, unlawful imposition of a fine;

(c) Unlawful police searches under the Police Operations Act, the Organizational and Legal Bases for Combating Organized Crime Act, or other legislation.

256. Under article 13 of the Act, in these cases, moral harm is determined taking account of the circumstances, but it should be calculated at no less than one minimum wage for each month that the citizen has been held on remand or by the court. Compensation for moral harm in these cases is awarded from the State budget, regardless of whether the guilty party is an official of the criminal investigation bodies, the pretrial investigation, the Office of the Procurator or the court.

Article 15 of the Convention

Information on paragraph 21 of the list of issues

257. See paragraphs 42 to 62 of the report.

Article 16 of the Convention

Information on paragraph 22 of the list of issues

258. With a view to protecting national interests, and confirming and strengthening the constitutional principles of a democratic State governed by the rule of law in civilian-military relations, human rights and freedoms are safeguarded, in accordance with the country's international obligations, by Act No. 975-IV of 19 June 2003 on democratic civilian control over the military and law enforcement agencies of the State. It defines the legal principles of the organization and implementation of democratic civilian control over the Armed Forces and other formations in accordance with the law, and over the country's law enforcement agencies. Under article 5 of the Act, civilian control in the area of defence, security and law enforcement is aimed at ensuring:

(a) Compliance with the requirements of the Constitution and the law regarding the rights and freedoms of citizens serving in the country's armed forces and other military and law enforcement organizations;

(b) Monitoring of the legal and social protection of persons subject to military conscription or serving in the armed forces, reservists, persons released from military service and the members of their families;

(c) Compliance of State authorities and military officers with the law in examining communications and complaints from persons serving in the armed forces or released from military service or members of their families.

259. Civilian control over the military and the law enforcement authorities is exercised by the following bodies or persons:

- The Verkhovna Rada;
- The Parliamentary Human Rights Commissioner;
- The President;
- The National Security and Defence Council;
- The Cabinet of Ministers;
- Central and local executive authorities within their powers established by the law;
- Local authorities, within the powers established by the law;
- The Office of the Procurator;
- The judiciary;
- Citizens, and public associations established in accordance with the Constitution for the realization and protection of civil rights and freedoms and for upholding the citizens' political, economic, social and cultural interests;
- The media.

260. The Parliamentary Human Rights Commissioner, in exercising his or her powers under the Constitution, the above Act or other legislation:

(a) On his or her own initiative, on instructions from the Verkhovna Rada or in connection with a communication from a citizen or public association, examines the state of compliance with the constitutional rights and freedoms of persons subject to military conscription or serving in the armed forces, reservists, persons released from military service and the members of their families;

(b) Subject to the established information security rules, has the right to request and obtain from senior staff and other officers of the armed forces, other military organizations and the law enforcement agencies documents, other material and explanations necessary for performing his or her legitimate functions;

(c) May call urgent meetings with officials of the armed forces, other military organizations and the law enforcement agencies;

(d) In order to perform his or her functions, may make unannounced visits, unhindered and in accordance with the established rules, to military units and subdivisions and attend the meetings of collegiate bodies of the armed forces, other military organizations and the law enforcement agencies when issues related to his or her responsibilities are discussed.

261. In order to monitor compliance with constitutional human and civil rights and freedoms in the area of national security, defence and law enforcement, the above Act created the office of the deputy Parliamentary Human Rights Commissioner for the protection of the rights of persons serving in the armed forces. The duration of the deputy's mandate is coterminous with that of the Commissioner's.

262. The annual report of the Parliamentary Human Rights Commissioner, which is published, specifically addresses the situation regarding compliance with the constitutional rights and freedoms of persons serving in the Armed Forces and contains proposals for enhancing respect for the law and eliminating weaknesses and violations observed in the functioning of the relevant military and law enforcement services.

263. The powers of the Parliamentary Human Rights Commissioner and his or her deputy to protect the rights of persons serving in the Armed Forces are not restricted by the declaration of a state of war or the imposition of emergency or martial law on the national territory or particular areas thereof.

264. Under article 11 of Act No. 975-IV, the Parliamentary Human Rights Commissioner regularly informs the public, inter alia through the media, on his or her activity and the situation regarding compliance with the constitutional rights and freedoms of persons serving in the armed forces, other military organizations and the law enforcement agencies.

265. However, an analysis of the statistical data for 2010 indicates that the number of military crimes had increased from 442 to 551, or by 25 per cent; one of the most common offences is violations of the Armed Forces' regulations on relations between hierarchically equal personnel (bullying or "hazing"). In 2010, 231 military personnel suffered from such violations, compared to 267 in 2009. Sixty such offences were recorded in military formations during the first half of the current year. The court considered 68 criminal cases involving 75 military personnel.

266. In 2012, 89 reservists were held in detention barracks and disciplinary battalions, compared to 178 in 2011 (decrease of 51 per cent).

267. As with other military crimes, resolving the problem of hazing is further complicated by the lack of forensic methods for their investigation and prevention. The problems of detecting, investigating and preventing non-regulation relations between military personnel are the subject of research by the National Procuratorial Academy. A monograph entitled *Investigating Violent Crimes Committed by Military Personnel, Tactics and Techniques*, covering the period 2010 to 2011, contains methodological recommendations on the specific aspects of investigating this type of offence; 18 academic publications have also been prepared.

Information on paragraph 24 of the list of issues

Combating human trafficking

268. Recently Ukraine seems to have become a transit country for persons from other States who are trafficked for labour and sexual exploitation.

269. Children from Ukraine who become victims of human trafficking at home or abroad are generally subjected to commercial sexual exploitation or forced into begging.

270. The scale of this phenomenon is confirmed by statistical data, including the results of a study by the International Organization for Migration (IOM). Since 1991, approximately 117,000 Ukrainian citizens have suffered from trafficking in persons. According to information provided by the law enforcement agencies, although almost all human trafficking cases identified before 2007 involved sexual exploitation, the problem of human trafficking for labour exploitation is currently becoming a matter of urgency in most

provinces. Since 2000, the local office of IOM has assisted more than 7,000 victims of human trafficking, including 1,669 who were given medical care. As at October 2010, the local IOM office was assisting 1,085 victims, including 5 who had returned to the country. A further 193 victims were assisted at the IOM medical rehabilitation centre in Kyiv. Assistance was provided to 823 victims in 2011 and to 210 during the first three months of 2012.

271. Investigations in 2010 showed that, of 127 criminal cases related to human trafficking, 60 cases were sent for the consideration of the courts, with charges brought against 76 persons; and in 2011, of the 120 cases reported, 50 were sent to court, with charges against 73 persons. In 2010, 40 cases were combined and 3 (1) were handed over to other agencies for investigation; 15 cases were combined in 2011. The remainder are still pending. Of the cases in that category in 2010, three were terminated in connection with the lack of the elements of a crime, while none were terminated in 2011.

272. In 2009, 279 crimes under article 149 of the Criminal Code were detected, the activities of 11 organized criminal groups were stopped and 335 victims of human trafficking, including 42 minors, were repatriated to Ukraine. In 2010, thanks to the work of internal affairs bodies:

- 215 offences under article 149 of the Criminal Code (human trafficking or other illegal agreements in respect of a person) were detected;
- 233 victims of human trafficking, including 28 minors, were repatriated to Ukraine; 78 perpetrators of these offences were identified;
- 9 organized criminal groups in this category were dismantled.

273. In 2011, 197 offences under article 149 of the Criminal Code were recorded, with a further 100 over the first five months of 2012.

274. Given the scale of the phenomenon, the Cabinet of Ministers, in Decree No. 410 of 7 March 2007, approved a special State programme to combat trafficking in persons in the period up to 2010, under which the public policy priorities were:

(a) Preventing and combating human trafficking;

(b) Protecting and assisting persons who have suffered from human trafficking;

(c) Cooperating at international level to combat human trafficking.

275. The implementing agencies for the action plan on combating human trafficking for the period up to 2010 were: the Ministry for Family, Youth and Sport, the central executive authorities, the Council of Ministers of the Autonomous Republic of Crimea, the provincial, Kyiv and Sevastopol municipal administrations, NGOs and international organizations. The Interdepartmental Council on Family Issues, Gender Equality, Demographic Development and Combating Human Trafficking coordinated the central authorities and other advisory bodies.

Improvements to legislation

276. The ratification by Ukraine on 21 September 2010 of the Council of Europe's 2005 Convention on Action against Trafficking in Human Beings, which entered into force for Ukraine on 1 March 2011, and that of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, were important steps in preventing and protecting the victims of trafficking in persons. They, in turn, have underpinned implementation of the State policy and the use of systematic measures on a qualitatively new level, and have formed a basis for the adoption of new national legislation in the area.

277. For example, on 20 September 2011, the Verkhovna Rada adopted Act No. 3739-VI on preventing trafficking in persons. The Act consolidates the ground rules for such prevention, unifying the system and setting out the legal basis for a State policy to eradicate human trafficking through comprehensive preventive work, an improved system for restoring the rights of human trafficking victims, compensation for the damage caused to them and the encouragement of condemnation in society in general of the use of their services and the products of their labour.

278. The Act determines the institutional and legal basis for combating trafficking in persons, the basic principles of State policy and the principles of international cooperation in this field, the powers of the executive authorities, the procedure for establishing the status of trafficking victims and the procedure for providing assistance to such persons. In accordance with the Act, the main areas of State policy on combating trafficking in persons are:

(a) Preventing human trafficking by raising awareness, carrying out preventive work and reducing vulnerability;

(b) Combating crime linked to human trafficking by identifying human trafficking offences and persons involved in their commission, to bring them to justice;

(c) Providing assistance and protection to victims of trafficking, by improving the system for restoring their rights, providing a set of services, implementing a mechanism for the interaction between actors in combating human trafficking.

279. The Anti-Human Trafficking Act lists the different entities involved in activities to combat trafficking in persons:

- The Cabinet of Ministers;
- The central executive authorities;
- Local authorities;
- Overseas diplomatic institutions of Ukraine;
- Institutions helping persons affected by human trafficking.

280. To provide effective assistance and protection to trafficking victims, a procedure has been developed for the interaction between those involved in combating trafficking, and was approved by Cabinet of Ministers Decision No. 783 of 22 August 2012.

281. It identifies the agencies concerned and the mechanisms they can use to work together. It also looks at the needs of victims of trafficking, and the agencies or institutions that can accommodate them. The national mechanism for such cooperation between the agencies involved in implementing anti-trafficking measures includes mutual information, respect for confidentiality concerning offences related to trafficking in persons, the provision of assistance to persons affected by trafficking, the development of programmes and plans to combat trafficking, and the exchange of best practices in implementing anti-trafficking measures.

282. Pursuant to the Anti-Human Trafficking Act, the following laws and regulations were adopted in 2012:

- Cabinet of Ministers Decision No. 29 of 18 January 2012 on the national coordinator for the prevention of human trafficking, in line with which the coordinator is appointed by the Ministry of Social Policy;
- Cabinet of Ministers Decision No. 350 of 21 March 2012 approving a special social programme to prevent human trafficking for the period to 2015. The programme includes improvements to national legislation on combating trafficking in persons;

the introduction of a system to monitor the activities of those involved in human trafficking; further training for government specialists in preventing and combating trafficking; research into new challenges and trends in human trafficking; primary prevention of trafficking, including among the most vulnerable sectors of the population; and assistance for victims of human trafficking;

- Cabinet of Ministers Decision No. 417 of 23 May 2012 on the procedure for granting the status of a victim of human trafficking;
- Cabinet of Ministers Decision No. 660 of 25 July 2012 on the procedure for paying lump-sum benefits to victims of human trafficking;
- Cabinet of Ministers Decision No. 783 of 22 August 2012 on the procedure for collaboration between agencies in combating human trafficking.

Awareness-raising activities

283. Analysis of the implementation of government programmes to combat human trafficking shows that activities aimed at raising public awareness were the most effective and comprehensive. They certainly had an impact on the situation in terms of reducing the number of cases of trafficking in persons.

284. The Ministry of Family, Youth and Sports, in close cooperation with international organizations, such as the office of the Organization for Security and Cooperation in Europe (OSCE) Project Coordinator in Ukraine, the IOM Mission in Ukraine, the International Labour Organization and the La Strada Ukraine international women's human rights centre, has conducted the following activities at national level to study the issue of combating human trafficking:

- 28 seminars on coordinating the work of the regional executive bodies in combating human trafficking, and on specific features of preventive work and reintegration;
- 263 training sessions on combating human trafficking for civil servants, trainers, psychologists, community support officers, staff of the procuratorial agencies, lawyers and jurists, representatives of NGOs and members of the media;
- 19 round-table meetings on the subject of online safety for children, government measures to combat trafficking in children and human trafficking and to eradicate child labour, analysis of labour migration policy, national legislation and international standards, and practice in other countries;
- 7 international seminars on combating trafficking in persons.

285. Furthermore, to ensure that diplomatic staff study and have training in combating human trafficking and international cooperation on the issue, 114 such staff were given training during the period of the programme.

286. Two programmes for the social and psychological rehabilitation of children who have suffered from trafficking in persons have been developed and implemented.

287. A training course was developed to integrate the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201) into the criminal process. A special course of lectures on preventing trafficking in persons and child slavery and a training course on labour migration and combating human trafficking are included in the training, retraining and in-service training provided for teaching staff of postgraduate institutes of education and civil servants.

288. During the period 2007–2011, 8 textbooks, 10 brochures and 5 recommendations on combating human trafficking were issued. Furthermore, staff of the scientific institute of the National Procuratorial Academy worked with staff of the Office of the Procurator-

General to prepare recommendations on the organization and verification procedure to prevent domestic violence against children, as well as teaching methods for procuratorial oversight of compliance with the laws on human rights and freedoms.

289. Between 2007 and 2010, to raise public awareness of the dangers of human trafficking and the consequences of irregular migration, the International Labour Organization, the Ministry for Family, Youth and Sport, the La Strada Ukraine international women's human rights centre and the IOM Mission in Ukraine prepared and distributed informational products and educational materials. On the initiative of the Ministry of Internal Affairs, the Security Service and the State Border Service have put together short items for television broadcasts, materials for print publications and the Internet, and radio reports.

290. The IOM Mission in Ukraine prepared around 100,000 copies of informational products on preventing trafficking in persons and 485,000 on preventing labour exploitation of Ukrainians abroad. The products include booklets, posters and informational materials. The social services centres for families, children and young people have prepared two audio recordings, 4 short videos and a documentary film, 17 different posters with a total print run of 7,000, 188 booklets with a total print run of 36,000 and 119 different cards with a total print run of 25,000 on the subject of preventing domestic violence or the threat of violence, violent behaviour and human trafficking.

291. In 2010, the web portal of the Government Employment Service (www.dcz.gov.ua and www.trud.gov.ua) was the most visited Internet resource. It gives a list of popular Ukrainian and foreign Internet sites for finding work, information on labour markets across countries, and bilateral agreements on employment and social protection for labour migrants. In total, 3 million users accessed more than 25 million informational and advisory services through the Government Employment Service Internet site in 2010.

The fight against unemployment as a measure to prevent trafficking in persons

292. Since unemployment is the main factor that affects human trafficking, the Government Employment Service has built up the vocational training it provides for the unemployed. A total of 72 per cent of unemployed persons who applied have found employment. Such indicators have a positive effect on combating human trafficking.

293. The Security Service has carried out checks on 640 business entities to verify compliance with licence requirements for recruiting Ukrainian citizens for work abroad. As a result, 59 licences have been revoked and 147 administrative offence reports compiled under article 164 of the Code of Administrative Offences. In addition, Security Service findings have led to the deportation of 82 foreign nationals employed in the country in violation of legal requirements.

294. Pursuant to article 20 of the Licensing of Designated Economic Activities Act, the Ministry of Social Policy conducted 923 inspections during the programme on businesses involved in recruiting persons for work abroad. The inspections resulted in 188 licences being revoked (of which 139 on the request of the business concerned) and 332 orders to desist from violations being issued.

Provision of assistance to victims

295. There are currently 21 social and psychological support centres providing services to victims of human trafficking. The staff of the social and psychological support centres provide 24-hour emergency assistance, including food, shelter and social support for persons in difficult circumstances, to help them return to normal life as soon as possible.

296. In accordance with article 17 of the Anti-Human Trafficking Act, child victims of trafficking are placed in children's socio-psychological rehabilitation centres and children's service shelters where they are given psychological support and help with rehabilitation. There were 87 children's shelters and 41 children's socio-psychological rehabilitation centres in 2011.

297. With financial support from the office of the OSCE Project Coordinator in Ukraine, the Ministry of Internal Affairs has worked actively to pilot-test a National Referral Mechanism for victims of trafficking in Chernivtsi and Donetsk provinces. During implementation of the project, the Ministry for Family, Youth and Sport drew up proposals for improvements to the legal framework, including the provision of assistance to victims of trafficking, and developed training programmes for civil servants, social workers and law enforcement officials.

298. When it was approved, the programme was allocated 1,469,700 Hrv in State funding. It has actually received 618,700 Hrv. Regional programmes and activities to combat trafficking in persons were funded from local budgets.

299. Information from the provincial administrations shows that, in 2007–2010, funding for the State programme from local budgets totalled 3,047,600 Hrv. Other sources provided 33,587,600 Hrv. Thus, the total funding for the State programme to combat human trafficking for the period to 2010 amounted to 37,253,900 Hrv.

300. An analysis by the central executive bodies of implementation of the programme shows that the conditions have been created for combating trafficking and related criminal activities; the work to prevent and detect these offences has become more effective.

International cooperation

301. In view of the particular nature of the subject and the transnational character of such offences, the law enforcement agencies regularly take measures aimed at establishing effective cooperation with the International Criminal Police Organization (INTERPOL), the Southeast European Cooperative Initiative (SECI) Regional Centre for Combating Transborder Crime, the Organization for Democracy and Economic Development-GUAM, and other international governmental and non-governmental organizations, as well as law enforcement agencies of other countries, in preventing and combating crimes related to trafficking in persons.

302. As part of international cooperation, to ensure full and proper documentation of this category of offence and to close off channels for recruiting Ukrainian citizens and taking them abroad for purposes of exploitation, regular exchanges of operational information and joint investigative activities and inquiries take place with the law enforcement agencies of other States.

303. In particular, to shut off international trafficking channels between Ukraine and the Czech Republic, there has been close collaboration with the Ministry of Internal Affairs of the Czech Republic in a pilot project known as Zero, which is being implemented with the support of IOM in Ukraine.

304. In accordance with national legislation, the law enforcement agencies work closely with international governmental and non-governmental organizations involved in protecting the rights and legitimate interests of persons who have suffered from international trafficking, providing them with legal assistance, reintegration, rehabilitation, financial help, and psychological and medical support.

305. With a view to expanding and updating the international contractual and legal framework aimed at protecting the rights and legitimate interests of Ukrainian citizens working outside the country, the Ministry of Foreign Affairs, in close cooperation with the

Ministry of Social Policy, has been involved in active negotiations with countries that host significant numbers of Ukrainian citizens. As at 1 January 2011, Ukraine had concluded agreements concerning the employment of its citizens abroad with Azerbaijan, Armenia, Belarus, Latvia, Libya, Lithuania, Poland, Portugal, the Republic of Moldova, the Russian Federation and Viet Nam. It also has bilateral treaties on social protection with Azerbaijan, Armenia, Belarus, Bulgaria, the Czech Republic, Latvia, Lithuania, the Republic of Moldova, the Russian Federation, Slovakia, Spain and Viet Nam.

306. The Ministry of Internal Affairs and the State Border Service participated in the Intercept-2009 and Intercept-2010 international operations under the auspices of GUAM aimed at combating illegal migration and the recruitment of Ukrainian citizens to take them abroad.

307. Thus, trafficking in persons, the victims of which can be women, men and children, is a crime that leads to labour exploitation, including forced labour, sexual exploitation and illegal organ or tissue transplants. The fight against human trafficking is currently aimed at preventing the expansion of the phenomenon, identifying and punishing the perpetrators, and providing assistance and protection to the victims.

Preventing and combating domestic violence

308. The increase in the number of communications received concerning domestic violence should be seen not as indicating that it has become more common, but rather as reflecting public trust in the authorities and institutions working in the area of domestic violence and the fact that they offer assistance and protection.

309. To combat and prevent the phenomenon, the Government has a domestic violence prevention and control policy that includes:

(a) Fostering a zero-tolerance attitude to violence as a form of conflict resolution;

(b) Improving the legal and regulatory framework;

(c) Improving the mechanism for interaction between bodies and institutions working on domestic violence;

(d) Enhancing the effectiveness of the law enforcement agencies and the prosecution of offenders;

(e) Capacity-building among civil servants;

(f) Supporting community organizations that work to combat domestic violence.

310. Improvements to the legal and regulatory framework include a bill amending some legislation on the prevention of domestic violence. It includes amendments to the Prevention of Family Violence Act, the new version of which is called the Act on preventing and combating domestic violence. The bill introduces the concept of domestic violence, which will make it possible to broaden the range of persons to whom the law applies, specifically to include former spouses. The list of bodies and institutions working on family violence is also expanded. It is suggested that the courts be allowed to order referrals for therapy programmes.

311. The bill also provides for amendments to article 173 of the Code of Administrative Offences to exclude punishments such as fines from the list of penalties for domestic violence. This is because fines are paid from the general family budget, meaning that it is primarily the victim and the children who suffer.

312. Activities to combat violence in the family form a separate section in the draft State programme approving special family support social programmes to 2016.

313. The Cabinet of Ministers adopted Order No. 2154-r (amended) of 1 December 2010 approving a plan of action for a national "Stop violence!" campaign for the period to 2015.

314. A nationwide bracelet campaign against violence in the family has been launched with the support of the European Union project on women's and children's rights in Ukraine – communication component (200,000 bracelets with the inscription "I am against violence" were distributed in six cities).

315. In addition, a number of activities in line with the Committee's concluding observations were carried out in the framework of the above measures.

- A brochure entitled *Programme and Basic Principles of Corrective Work with Perpetrators of Violence in the Family* was published in 2,500 copies, together with 1,000 copies of a methodological manual for professionals running the intervention programme for perpetrators of family violence;
- Training was provided for 336 specialists in charge of running intervention programmes;
- A survey of specialists was conducted to look at problematic issues in the introduction of intervention programmes;
- The introduction of intervention programmes for perpetrators of family violence was monitored.

316. During the monitoring, the key challenges to introducing the programmes were identified and recommendations were developed to address them:

- The issue of intervention programme implementation should be included in in-service training programmes for specialists;
- When deciding on the status of their departments, local executive bodies and local authorities should provide for a family violence prevention unit, and set aside resources for family violence prevention when drawing up their budget;
- Furthermore, a video training course entitled *Family Violence and the Role of the Internal Affairs Agencies in Addressing It* has been produced, with 100 copies sent out to the provincial community support offices and Ministry of Internal Affairs higher education institutions to be included in the studies offered to service staff;
- A manual on the legal and criminological principles of preventing family violence has been sent to libraries in the Ministry of Internal Affairs higher education system to be used in the training process.

317. Staff of the social and psychological support centres care for family members who have been or may be victims of family violence; they organize the provision of the necessary psychological, educational, medical and legal assistance. Article 9, paragraph 2, of the Prevention of Family Violence Act stipulates that the medical and social rehabilitation centres for victims of family violence offer accommodation to victims (with their agreement or at their request) on the basis of a decision by the centre's medical board. In the case of family members under the age of 18, agreement is required from one of the parents or adoptive parents, a guardian or a tutor, if the child has not suffered violence from any of those persons, or from the child welfare agency. These rules are laid down in the regulations (No. 38) of the medical and social rehabilitation centres for victims of family violence approved by the Ministry of Health on 23 January 2004. Paragraph 13 of the regulations states that the centre provides rehabilitation activities on the basis of a decision by the centre's medical board for victims of any sex or age category (with their agreement or at their request).

318. A network of institutions has been set up and is being further developed to work with victims and to introduce intervention programmes for perpetrators of family violence (1,400 social service centres for families, children and young people, 21 social and psychological support centres, 87 children's shelters and 41 children's socio-psychological rehabilitation centres). An intervention programme has been developed for perpetrators of family violence.

319. In the first half of 2012, the children's service shelters were able to help 56 children, including: 11 victims of psychological violence; 39 victims of physical violence; 2 victims of economic violence; 2 victims of sexual violence; 1 victim of child trafficking; and 1 child who was used in the worst forms of child labour. In all, there were 4,570 children in the shelters.

320. During 2011, the social and psychological rehabilitation centres helped 10 children who had suffered from different types of violence.

321. Working with perpetrators of family violence is new in Ukraine; the direction and functioning of the intervention programmes thus improved in the first quarter of 2012 compared to the same period in 2011, with an increase of 238 in the number of persons going through the intervention programme.

322. There were 4,335 families registered in the family violence section of the regional databanks of families in difficult circumstances in 2011. The social services received 12,105 persons who had experienced domestic violence and 136 families were sent to social and psychological support centres. A total of 647,831 Hrv was allocated to family violence prevention measures in 2011.

323. A national helpline for family violence prevention and the protection of children's rights has been set up and is functioning well in the La Strada Ukraine international women's human rights centre. There are 67 telephone helplines in the social services centres for families, children and young people, and voluntary and charitable organizations.

Protection of children from domestic violence

324. Protecting the rights and freedoms of the more than 8 million children in Ukraine is a priority in the activities of government bodies. These efforts are aimed at respecting their rights from birth until they complete their education or enter their first place of work. The Constitution, the United Nations Convention on the Rights of the Child, the Child Protection Act and the Prevention of Family Violence Act set out the legal and organizational basis for preventing family violence, as well as the agencies and institutions responsible for implementing the related measures.

325. The child welfare agencies, the children's services and the social services centres for families, children and young people identify cases of child abuse, provide the children with the necessary assistance and transmit the relevant information to the criminal police units dealing with minors for them to review and stop the violence. Particular attention is paid to children in difficult circumstances, as well as refugee children, orphans and children deprived of parental care, who are cared for in children's homes, foster families, family-type children's homes, in care and in guardianship.

326. In order to protect the rights of the child, the Office of the Procurator has instituted more than 7,000 criminal cases, most of which have been taken to court. A total of 54,300 procuratorial action documents have been produced, leading to the prosecution of 60,000 officials. In all, 23,000 unlawful acts have been overturned. On the initiative of the procuratorial agencies, 243 million Hrv in child support, bursaries and social benefits have been reimbursed. The rights of 890,000 children have been restored.

327. Checks are also conducted regularly for compliance with legislation aimed at preventing the use of any form of violence against children, including within the family. In the course of these checks, it has been found that child abuse occurs predominantly in families in which the parents abuse alcohol or drugs, do not work or have an immoral way of life.

328. As a result of these checks, 327 criminal cases have been brought, with 284 of them taken to court. More than 1,500 procuratorial action documents have been produced, leading to the prosecution of 1,600 officials. In all, objections have been lodged against 182 unlawful acts.

329. Under the 2010–2011 action plan for the national "Stop violence!" campaign, approved by Cabinet of Ministers Order No. 2154 of 1 December 2010, capacity strengthening exercises were carried out in the Academy to improve procuratorial oversight of compliance with laws on preventing family violence and child abuse. The exercises were facilitated by representatives of the United Nations Children's Fund (UNICEF) in Ukraine, the Parliamentary Human Rights Commissioner, the Ministry of Education and Science, Youth and Sports, the Office of the Procurator-General and the Ministry of Internal Affairs.

330. This year, the research and teaching staff of the Academy, in conjunction with the Volunteer social centre, published a manual on procuratorial oversight of enforcement of the law preventing violence against children, which will be used in the training offered by the Academy during the period 2011–2015.

Information on paragraph 25 of the list of issues

331. A framework plan for the development of a juvenile criminal justice system, including measures to introduce probation for juveniles, was approved by Presidential Decree on 24 May 2011. The framework sets out the main lines for juvenile criminal justice. The implementation of these main lines should broaden the responsibility of the family, society and the State for children's education and formative stages of development, ensure respect for the rights and freedoms of children in conflict with the law by enhancing their legal and social protection, and reduce juvenile delinquency.

332. The strategy aims to build a comprehensive juvenile criminal justice system ensuring the legality, soundness and effectiveness of any decision related to rehabilitating and providing further social support to children in conflict with the law.

333. With a view to carrying out the tasks laid out in the framework, Cabinet of Ministers Order No. 1039-r of 12 October 2011 approved a plan of action for implementation of the framework plan for the development of a juvenile criminal justice system, identifying a range of legislative, organizational, methodological, information and staff training activities, as well as the implementing partners and the time frame.

334. The development of juvenile criminal justice calls involves:

(a) Stepping up preventive and proactive work by, inter alia, strengthening the role of the family and the community in the process of bringing up children, undertaking a number of integrated educational initiatives, and improving the monitoring of juvenile delinquency and respect for the rights of children in conflict with the law;

(b) Protecting the rights of minors during initial inquiries, pretrial investigations and the administration of justice, taking into account their age, socio-psychological, psychophysical and other developmental characteristics by: guaranteeing access for minors to free legal assistance; training staff of the relevant bodies, introducing a specialization for judges in cases involving minors; and establishing 24-hour emergency centres with the assistance of lawyers and social workers;

(c) Developing restorative justice programmes for minors who have committed an offence, by: introducing mediation procedures, encouraging juvenile offenders to feel a sense of responsibility for their actions, and involving society in conflict resolution;

(d) Establishing an effective rehabilitation system for underage offenders with a view to their re-education and social reintegration through, inter alia, corrective, educational, awareness-raising, psychological and pedagogical programmes; educational, preventive, cultural and spiritual measures; and the creation of a probation system.

335. The Prison Service carried out an analysis of the effectiveness of the rehabilitation, re-education and resocialization system for minors detained in young offenders' institutions and detention centres and registered with the criminal executive inspectorates as part of the implementation of Presidential Decree No. 597 of 24 May 2011 on the framework plan for the development of a juvenile criminal justice system and Prime Minister's Order No. 26914/1/1-11 of 7 June 2011. The need to establish the logistical basis required for the ethnic, cultural, spiritual and physical development of young persons was also studied.

336. Article 8 of the Pretrial Detention Act provides that minors must be held separately from adults. In exceptional cases and in order to prevent infringement of the rules governing places of detention, cells where juveniles are being held may, with the authorization of the Procurator's Office, also be occupied by not more than two adults who are being prosecuted for the first time and for minor offences.

337. However, procuratorial inspections in June 2011 identified violations of the Act on children's affairs agencies and offices and special institutions for children, the Pretrial Detention Act and legislation governing criminal procedure, in respect of the placing and holding of children in remand centres, temporary detention centres, young offenders' institutions, and temporary centres for foreign nationals and stateless persons. Minors have been placed in remand centres for children without a court decision, in violation of the Act on children's affairs agencies and offices and special institutions for children. Their rights have been violated in detention centres. Juveniles in remand centres in Vinnytsya, Zhytomyr, Mykolayiv, Zakarpattia, Rivne and Khmelnytskyy provinces have not had their rights and responsibilities explained during their detention and custody. Based on the checks carried out by the procuratorial agencies for compliance with children's rights, 163 directives and recommendations were issued, 35 unlawful acts were successfully challenged, and more than 50 officials were prosecuted.

Information on paragraph 26 of the list of issues

338. There are a number of constitutional and legislative norms aimed at suppressing and preventing incitement to and the commission of acts of violence against members of ethnic minorities, including unlawful actions on the part of law enforcement officers. In particular, article 24 of the Constitution prohibits the direct or indirect restriction of citizens' rights on the basis of race, colour, political or religious beliefs, sex, ethnic or social origin, or other characteristics. Article 161 provides for criminal liability for actions that violate the equal rights of citizens on the basis of their race, ethnic origin or religion. Article 67, paragraph 1 (3), furthermore states that racial, ethnic or religious motives in offences committed for other reasons are considered to be aggravating circumstances.

339. On 5 November 2009, the Verkhovna Rada adopted an Act amending the Criminal Code, providing for harsher penalties under article 161 and amendments to some of the other articles. For example, motives of racial, ethnic or religious intolerance were added as an element of the offences covered in article 115 (Murder), paragraph 2, and article 121 (Intentional grievous bodily harm), paragraph 2.

340. To monitor offences motivated by racial, ethnic or religious intolerance, and to detect and investigate such crimes, the Ministry of Internal Affairs and the Office of the

Procurator-General issued Joint Order No. 11/128 on offences committed on grounds of racial, ethnic or religious intolerance, and the outcome of their investigation.

341. The State Security Service also works constantly to prevent offences committed on grounds of ethnic, racial or religious intolerance that may lead to the commission of crimes against national security. The main focus is on establishing collaboration with other law enforcement agencies, particularly with the procuratorial agencies, which are responsible for investigating crimes provided for in article 161 of the Criminal Code (Violation of the equality of citizens on grounds of race, national origin or religious belief).

342. On 27 January 2008, the Ministry of Internal Affairs central office investigating agency in Schevchenko district, Kyiv, initiated a criminal case for an offence under article 115, paragraph 2, of the Criminal Code. On 31 January 2008, it was decided to recategorize the offence in this case under article 115, paragraph 1, of the Criminal Code. During the pretrial investigation, it was found that, on 27 January 2008, at 15, Salyutna Street, Kyiv, K.O. Degtyarev and A.I. Yegorov attacked Joseph Silvain Bunta, a citizen of the Democratic Republic of the Congo, on grounds of incitement to racial animosity, and K.O. Degtyarev intentionally murdered him, stabbing him a number of times with a knife. On 25 February 2008, A.I. Yegorov and E.O. Degtyarev were detained for involvement in the offence. On 19 August 2008, the criminal case against E.A. Degtyarev under article 115, paragraph 1, and article 161, paragraph 3, and against A.I. Yegorov under article 161 of the Criminal Code was sent to the Kyiv Court of Appeal. The final decision in the case has not been taken; the case has not been returned to the Ministry of Internal Affairs central office investigating agency in Schevchenko district, Kyiv.

343. The Ministry of Internal Affairs central office investigating agency in Obolon district department, Kyiv, has completed its pretrial investigation into a criminal case against V.S. Leschenko for the commission of an offence under article 115, paragraph 2 (12) and E.G. Sokolovsky for an offence under article 115, paragraph 2 (12), article 161, paragraph 3, and article 304, paragraph 1, of the Criminal Code in respect of the intentional killing of Gbende Charles Victor Pape, a citizen of Sierra Leone. On 12 December 2008, the Kyiv Court of Appeal convicted V.S. Leschenko of the offence and sentenced him to 10 years' deprivation of liberty; E.G. Sokolovsky was convicted of the offence and sentenced to 14 years' deprivation of liberty.

344. In 2009, Ukrainian courts considered and ruled on four criminal cases concerning nine persons for offences related to manifestations of racial and ethnic intolerance and xenophobia (Criminal Code, art. 161). Four of the persons found guilty were released under an amnesty, and compulsory re-education measures were adopted in the case of one person:

345. On 15 January 2009, the Primorsk district Court of Appeal, Odesa, found I. Volin-Danilov, the chief editor of the Odesa provincial newspaper *Nashe Delo* (Our Business), guilty of an offence under article 161, paragraph 2, of the Criminal Code for the publication, in 2008, of an article entitled *Kill the Best of the Goyim*, and gave him a suspended sentence of 1 year and 6 months' imprisonment;

346. On 9 February 2009, a court handed down a two-year prison sentence to three residents of Simferopol district, who, in March 2008, committed an act of vandalism (they demolished 38 tombstones) in a Muslim cemetery in the village of Chistenke, Simferopol district, in the Autonomous Republic of Crimea;

347. On 21 December 2009, the Kyiv Court of Appeal passed sentence on S.V. Kuchma and A.D. Davydov, who were found guilty of offences under article 115, paragraph 2 (12) and article 161, paragraph 3, of the Criminal Code and were each sentenced to 13 years' imprisonment. They were found guilty of intentionally committing acts aimed at offending ethnic honour and dignity, as well as the intentional killing of Muzafa Edin Anwar Amin al Farroukh, a Jordanian citizen, committed by prior conspiracy of a group of persons.

348. In 2010, one judicial decision concerning two persons was issued for this category of offences. On 2 September 2010, Enerhodar city court, Zaporizhzhya province, handed down a sentence against O.V. Kushnarev and S.O. Tsypanov under article 161, paragraph 1, and article 194, paragraph 2, read in conjunction with article 69, of a fine in the amount of 1,700 Hrv each. They were found guilty of the intentional arson, committed on grounds of ethnic intolerance, of the Obuv commercial unit, owned by A.A. Vartanyan, and writing words on it offensive to the ethnic honour and dignity of persons of Armenian ethnic origin.

349. Four criminal cases were brought and investigated in 2011, one of them for death threats under article 129 of the Criminal Code and three for violations of the equality of citizens under article 161. As a result of the pretrial investigations, all these cases were sent to court.

350. Furthermore, on 29 January 2008, the Ministry of Internal Affairs central office investigating agency in Solomyan district department, Kyiv, initiated a criminal case for an offence under article 115, paragraph 2 (12), of the Criminal Code. It was found during the pretrial investigation that, at approximately 8.30 p.m. on 29 May 2008, at No. 9 Vasilenko Street, Kyiv, two unidentified persons attacked Joel Taye Olubayode, a citizen of Nigeria, inflicting numerous knife wounds, from which he died. The perpetrators of the crime were not established during the investigation; therefore, on 30 March 2012, the pretrial investigation was suspended on the basis of article 206 of the Code of Criminal Procedure.

Information on paragraphs 27, 28 and 29 of the list of issues

351. The Act on the principles of preventing and combating discrimination in Ukraine was adopted in September 2012 to establish the foundations for a comprehensive system to combat and prevent discrimination in all its manifestations, and in implementation of the recommendations of the United Nations Committee on the Elimination of Racial Discrimination, the United Nations Human Rights Committee, Recommendation CM/Rec (2010)5 of the Committee of Ministers of the Council of Europe, as well as the recommendations received during the universal periodic review in 2008.

352. The Act lays out a framework for preventing and combating discrimination in Ukraine and provides a statutory definition of the legal basis for doing so, with a view to ensuring equal opportunities for the realization of individual and civil rights and freedoms.

353. It does this by: defining the concept of discrimination and its basic forms; affirming the principle of non-discrimination, prohibiting discrimination and defining actions that are not regarded as discrimination; and defining those agencies mandated to prevent and combat discrimination, and the supplementary powers of the Parliamentary Human Rights Commissioner to do so. Combating discrimination has been made a compulsory part of all bills, Presidential instruments and other legal instruments produced by the Cabinet of Ministers, ministries and other central and local executive authorities.

354. Pursuant to the Act, discrimination is defined as decisions, actions or inaction intended to impose restrictions or privileges in respect of a person and/or group of persons on the grounds of race, colour, political, religious or other beliefs, sex, age, disability, ethnic or social origin, family status or property, place of residence, linguistic or other grounds, if they render impossible the recognition and realization of human and civil rights and freedoms on an equal basis. The Act distinguishes between direct discrimination, indirect discrimination, incitement to discrimination and harassment.

355. The Verkhovna Rada, the Parliamentary Human Rights Commissioner, the Cabinet of Ministers, other public bodies, the authorities of the Autonomous Republic of Crimea, local authorities and community organizations are responsible for preventing and combating discrimination.

Criminal responsibility and monitoring of compliance with legislation

356. One important mechanism in combating manifestations of intolerance and discrimination in all its forms is their criminalization. The Criminal Code contains articles that criminalize offences committed on grounds of racial, national, religious or other intolerance. Furthermore, in 2009, changes were made to the Criminal Code in respect of criminal responsibility, introducing grounds of racial, ethnic or religious intolerance to be considered as aggravating circumstances by the court.

357. The law enforcement agencies regularly carry out activities to prevent and combat xenophobia, racial discrimination and other forms of intolerance in implementation of these legal provisions, and units of the Ministry of Internal Affairs and the Office of the Procurator-General work constantly to detect violations related to racial and ethnic intolerance or xenophobia. The record of offences motivated by racial, ethnic or religious and other forms of intolerance (pursuant to article 161 of the Criminal Code) and statistical data are posted on the official website of the country's State Judicial Administration.

358. The Ministry of Internal Affairs and the Office of the Procurator-General issued Joint Order No. 11/128 on offences committed on grounds of racial, ethnic or religious intolerance, and the outcome of their investigation, in order to monitor, detect and investigate offences motivated by racial, ethnic or religious intolerance.

359. The State Security Service also works constantly to prevent offences committed on grounds of ethnic, racial or religious intolerance that may lead to the commission of crimes against national security. The main focus is on establishing collaboration with other law enforcement agencies, particularly with the procuratorial agencies, which are responsible for investigating crimes provided for in article 161 of the Criminal Code (Violation of the equality of citizens on grounds of race, national origin or religious belief).

360. This work remains focused on combating and preventing any possible manifestations of intolerance, xenophobia, anti-Semitism, religious intolerance or hatred in the media.

Preventive work

361. Although the inter-ethnic situation in Ukraine is characterized by a relatively high level of tolerance and, in general, no place in society for any manifestations of xenophobia or incitement to inter-ethnic conflicts, the State is, nevertheless, taking steps to improve legislation in the area. Bills are also being developed on a framework for relations between the State and religious faiths, on a new version of the Freedom of Conscience and Religious Organizations Act, and on returning worship-related property to religious organizations.

362. In the context of implementing the Memorandum on Cooperation of the All-Ukrainian Council of Churches and Religious Organizations, the National Expert Commission for the Protection of Public Morality, established by Cabinet of Ministers Decision No. 1550 of 17 November 2004, created the Scientific Advisory Board on religious and ethnic issues to work on questions related to the need to scrutinize publications and other material for incitement to religious or ethnic enmity or offences to the religious sentiments of the faithful. Interested representatives of churches and religious organizations were invited to participate in the work of the National Expert Commission.

363. The Office of the Procurator-General and the Kharkiv province Procurator's Office have developed methodological recommendations for procuratorial oversight of compliance with the law, aimed at overcoming expressions of ethnic and national intolerance and xenophobia. Staff of the scientific and research institute of the National Procuratorial Academy are also involved in studies on problems related to racial discrimination, xenophobia and related violence.

International cooperation

364. Ukraine has acceded to the main international treaties that concern the rights of national minorities. The Verkhovna Rada has ratified the Council of Europe Framework Convention for the Protection of National Minorities, as well as the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the European Convention on Human Rights and the European Charter for Regional or Minority Languages.

365. With a view to regional stability and security and the development of intergovernmental relations based on reciprocal trust, Ukraine has concluded a series of bilateral agreements with neighbouring States providing for, inter alia, cooperation in the area of protection of the rights of national minorities.

Roma population

366. A strategy has been developed for the protection and integration of the Roma population of Ukraine up to the year 2020, with particular emphasis on four key issues: education, employment, health and housing. It also includes issues such as legal protection, overcoming intolerance, culture and information. State resources are thus provided not only to promote the social integration of Roma communities, but also to support their specific identity.

367. A shift has also occurred recently in the provision of identity papers to the Roma population. Persons who have expressed the wish to receive a document but do not have a specific place of residence or who live in housing that is not suitable for residence may register for a passport or identity document in institutions for homeless people. More than 10,000 persons have already been registered in this way, and 1,700 Ukrainian citizens' passports have been issued.

368. To meet the educational needs of the Roma community, the conditions have been created for Roma children to have access to good quality education.

369. Among other things, in 2004, for the first time, the Ministry of Education approved a curriculum in the Roma language and literature for school pupils in years 5 to 11; in 2011, for years 1 to 4; and in 2012, a new curriculum for years 5 to 11. The children are given meals at school funded from the State budget, as, where necessary, is their travel to and from school.

The work of the Interdepartmental Working Group on combating xenophobia and ethnic and racial intolerance

370. In 2008, an Interdepartmental Working Group on combating xenophobia and ethnic and racial intolerance,[1] comprising experts from executive bodies, scientists and representatives of voluntary associations, was set up under the Cabinet of Ministers with a view to combating xenophobia and racism in Ukrainian society in an integrated and comprehensive manner. The main aim of the Group's work was to develop systemic approaches to preventing any manifestations of intolerance or prejudice towards individuals on account of their ethnicity.

[1] Pursuant to Presidential Decree No. 1085 of 9 December 2010 on improving interaction between the central authorities, the State Committee on Ethnic and Religious Affairs, to which the Interdepartmental Working Group on combating xenophobia and ethnic and racial intolerance reported, was closed down. The Working Group has currently suspended its work.

371. The activities of the Interdepartmental Working Group were accessible and open to the public. Representatives of Ukrainian and international human rights organizations and ethnic minority NGOs and others were involved in its work. In accordance with its statute, the Group carried out its work mainly through meetings, convened at least twice a year. Since most of the issues it considered needed to be addressed in an efficient and timely fashion, meetings took place on a quarterly basis.

Public condemnation of discriminatory statements

372. In addition to established laws prohibiting such speeches and statements, and the fact that they are classified as criminal offences, a plan of action to promote civic culture and improve tolerance in society was approved under Cabinet of Ministers Order No. 236-r of 25 April 2012.

373. The plan includes awareness-raising activities, as well as work to improve the public's general knowledge of legal issues, and the necessary measures to respond to information in the media that could lead to incitement of ethnic, racial or religious hatred and intolerance.

Information on paragraph 29 of the list of issues

374. A review of the system of indicators of militia activities, and issues related to recruitment and proper training for law enforcement officers is constantly monitored by the Ministry of Internal Affairs. On 5 October 2011, parliamentary hearings took place on the reform of the Ministry of Internal Affairs system and the introduction of European standards, in which the main (strategic) aim of the reform was the phased transformation of the Ministry of Internal Affairs agencies into a civilian law enforcement agency along European lines.

375. We cannot accept the Committee's recommendation on increasing the number of persons belonging to ethnic and national minorities recruited into the law enforcement agencies, as that would violate the principle of equality of citizens. Candidates who apply to work in the law enforcement agencies, as in other State services, must be selected on the basis of their professional and personal qualities, not because they belong to specific racial or ethnic groups.

Information on paragraph 30 of the list of issues

376. In 2011, main areas for cooperation between the militia and journalists were identified during a joint meeting between the Ministry and representatives of the media. After the meeting on 19 December 2011, Order No. 936 was published on some issues in improving interaction between the internal affairs agencies and the media, on the basis of which methodological recommendations were developed for cooperation between the agencies and journalists in carrying out their professional duties.

377. During 2011 and the first quarter of 2012, the interdepartmental working groups of representatives of the law enforcement agencies and the media held a number of sessions to consider, inter alia, the status of the detection and investigation of offences committed against media workers.

378. The deliberate obstruction of the legitimate professional activities of journalists and the persecution of a journalist for the performance of professional duties or criticism, by an official or a group of persons acting in collusion, are punishable under article 171 of the Criminal Code. Procurator's offices are responsible for the investigation of such criminal cases.

379. Since 2000, 1,328 offences have been committed against media workers. Specifically, in 2010, Ukrainian courts heard 11 criminal cases involving 12 persons accused of offences against representatives of the media, of which only 5 cases against 5 persons concerned offences related to the professional activity of representatives of the media. These cases resulted in the conviction of 10 persons, of whom 2 on charges of offences related to the professional activities of representatives of the media. Five of the persons convicted were sentenced to deprivation of liberty, three were released from serving a custodial sentence on the basis of article 75 of the Code of Criminal Procedure, and two were sentenced to a fine. The courts closed three criminal cases in this category, involving three persons, on the grounds of reconciliation between the offender and the victim and of expiry of the statute of limitations.

380. As at 23 August 2012, 81 offences had been committed against media workers in 2012, according to data from the Central Investigation Office. The perpetrators were identified in 32 criminal cases, and 21 of the cases were taken to court in this period.

381. The study found that, of the 1,376 criminal cases filed in the previous 13 years for offences against journalists, 1,319 cases, or 95.8 per cent, were not linked to the professional activities of the media workers.

The murder of journalist Georgiy Gongadze

382. On 19 September 2000, the procurator of Perchersk district, Kyiv, instituted a criminal case into the disappearance of Georgiy Gongadze, which was then investigated by the Office of the Procurator-General. The investigation established that Georgiy Gongadze was murdered by Ministry of Internal Affairs officials Aleksey Pukach, Nikolai Protasov, Valery Kostenko and Alexander Popovich, acting on the instructions of the former Minister of Internal Affairs, Yuri Kravchenko.

383. On 5 March 2008, the Kyiv city Court of Appeals handed down a verdict against Nikolai Protasov, Valery Kostenko and Alexander Popovich. The Court found them guilty of abuse of power and authority, with aggravating circumstances, of the intentional murder of journalist Georgiy Gongadze, and sentenced them to deprivation of liberty for various periods. The judgement became enforceable.

384. As at 1 June 2011, on information provided by the Office of the Procurator-General, the investigation into the murder of Mr. Gongadze followed two main lines.

385. The first concerns the cases against Yuri Kravchenko, who has since died (accused under article 27, paragraph 4, Intention to commit an offence), and Aleksey Pukach (Murder in connection with the performance by the victim of his or her official duties or public obligations, committed by prior conspiracy of a group of persons or an organized group). The cases were sent to Perchersk district court, Kyiv, for consideration on the merits and for a decision on closing the criminal case concerning the deceased Mr. Yuri Kravchenko.

386. The second relates to cases involving charges against the former President of Ukraine, Leonid Kuchma, under article 166, paragraph 3, of the 1960 Criminal Code (Improper exercise of authority or official powers with serious consequences). As at 1 June 2011, the requirement of article 217 of the Code of Criminal Procedure that victims and their representatives be allowed to examine the case-file was being met. The case-file will then be made available to the accused and his or her counsel, pursuant to the requirements of articles 218 to 220 of the Code of Criminal Procedure.

387. Information from the Office of the Procurator-General indicates that an investigation is under way into the criminal case of improper exercise of authority or official powers by persons holding positions of particular responsibility with serious consequences on the

legally protected rights and interests of Mr. Gongadze, according to the indicia of the crime, under article 166, paragraph 3, of the Criminal Code.

Other issues

Information on paragraph 31 of the list of issues

388. Pursuant to the Act on the Parliamentary Human Rights Commissioner, the Commissioner carries out his or her activities independently from other State organs and public officials. Interference by the State or local authorities, citizens' associations, companies, institutions or organizations, regardless of the forms of ownership, or their officials or employees, in the activities of the Commissioner is prohibited (arts. 4 and 20).

389. Funding for the activities of the Parliamentary Human Rights Commissioner comes from a separate line in the State budget and has been gradually increasing. For example, the 2012 State Budget of Ukraine Act provided funding for the expenses of the Office of the Parliamentary Human Rights Commissioner in the amount of 18,998.7 million Hrv, compared to 22,966 million Hrv in 2011, 21,335 million Hrv in 2010, and 17,823 million Hrv in 2009.

390. In accordance with the Act on the Parliamentary Human Rights Commissioner, the Commissioner is obliged to protect confidential information. This obligation applies even after the Commissioner's mandate ends (art. 14) and if such information is disclosed, the Commissioner bears responsibility, in accordance with the procedure laid down by law.

391. Under article 21 of the Act, a person deprived of liberty may submit a written communication to the Commissioner or his or her representatives. In this case, the restrictions on the exchange of correspondence are not applied. Communications by such persons must be forwarded to the Commissioner within 24 hours. Correspondence between the Commissioner or his or her representatives, and detainees, remand prisoners, persons in custody, prisoners in custodial institutions of a coercive or curative nature, or any other Ukrainian citizens, foreign nationals or stateless persons, irrespective of their whereabouts, shall be exempted from censorship or checks.

Information on paragraph 32 of the list of issues

392. To ensure that Ukraine fulfils its responsibilities as set forth in the Council of Europe Convention on the Prevention of Terrorism and to create additional conditions for enhancing the effectiveness of the fight against this dangerous phenomenon, both in the country and at international level, the Verkhovna Rada on 21 September 2006 adopted an Act amending the Criminal Code and the Code of Criminal Procedure to prevent terrorism, which criminalized involvement in an act of terrorism (Criminal Code, art. 258^1), public calls for the commission of a terrorist act (Criminal Code, art. 258^2), the establishment of a terrorist group or a terrorist organization (Criminal Code, art. 258^3) and assisting in a terrorist act (Criminal Code, art. 258^4) (excerpts attached).

393. On 18 May 2010, the Verkhovna Rada adopted an Act amending the Act on preventing and combating the legalization (laundering) of income obtained by criminal means; this was to incorporate into domestic law, pursuant to section 2.1, paragraph 25 (Political dialogue and reform, activities to be carried out in 2006), of the European Union/Ukraine action plan, the international norms on combating the laundering of the proceeds of crime and the financing of terrorism, which were approved by Cabinet of Ministers Order No. 243-r on 27 April 2006 and aimed at ensuring implementation of the 40 recommendations of the Financial Action Task Force (FATF) adopted by the Berlin meeting of the Task Force in June 2003, together with the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the

Financing of Terrorism, and Directive 2005/60/EC of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing. The Act contains, inter alia, a new version of article 166^{9} of the Code of Criminal Procedure concerning violations of the Act, and article 209^{1} of the Criminal Code concerning intentional violations of the Act, as well as a new article 258^{5} of the Criminal Code specifically establishing criminal liability for the financing of terrorism.

394. In response to the comments made in respect of Ukraine in the FATF Public Statement of 22 October 2010 on finding a legislative solution and freezing terrorist assets (Special Recommendation III), and in implementation of article 17 of the Act on preventing and combating the legalization (laundering) of the proceeds of crime, on 21 April 2011, the Verkhovna Rada adopted Act No. 3266-VI amending some legislation on the freezing of assets linked to the financing of terrorism and concerning financial transactions frozen in line with a decision adopted on the basis of the United Nations Security Council resolutions, and determining the procedure for access to such assets.

395. The Act amended the Code of Administrative Procedure, the Counter-Terrorism Act and the Security Services Act and defined the mechanism for freezing terrorist assets, as set out in the United Nations Security Council resolutions (freezing subsequent to a court ruling on an application by the Security Service; the assets may be frozen for an indefinite period), and governing access to them.

General information on the national human rights situation, including new measures and developments relating to the implementation of the Convention

Information on paragraph 33-35 of the list of issues

Judicial reform

396. As a State governed by the rule of law, where human beings and their lives, health, inviolability and security are recognized as fundamental social values, and rights, freedoms and related safeguards guide State activity, Ukraine guarantees the freedom of all persons and their equality in terms of dignity and rights.

397. As noted in the previous report, international treaties in force which are recognized as binding by the Verkhovna Rada form part of the country's legislation and must be conscientiously implemented in keeping with the *pacta sunt servanda* principle. Thus, Ukraine has the international obligation, which must be honoured unconditionally, to protect the rights and freedoms enshrined specifically in the Convention.

398. Since one of the main rights guaranteed under the Convention is the right to a fair trial, together with the right to appeal to a court against a decision, action or omission by the State or local authorities, or their officials or employees, it is particularly important to note the judicial reform introduced with the adoption of the Organization of the Courts and Status of Judges Act of 7 July 2010.

399. The Act takes account of the opinion of the European Commission for Democracy through Law (Venice Commission), as well as the opinions of the Council of Europe experts expressed prior to its adoption, except those related to amendments to the Constitution. In its opinion on the above Act, adopted at its session of 15–16 October 2010, the Venice Commission considered that most of the Act's provisions met European standards. In particular, it welcomed the change in the status of the State judicial administration, the elimination of military courts, and the introduction of automated court-case assignment and of control by the judiciary over the professional training of judges.

400. The Organization of the Courts and Status of Judges Act confirmed the constitutional principle of independence of the courts as a basic tenet safeguarding the effectiveness of the judicial protection of human rights and freedoms. Article 5 of the Act reflects article 124 of the Constitution in providing that justice is administered exclusively by the courts and prohibiting the delegation or assignment of court functions to other bodies or officials.

401. To present the Act properly, its legislative innovations are described below.

Court system

402. The Act establishes a uniform cassational system formed by the relevant high courts. In particular, the High Specialized Court for Civil and Criminal Cases, the High Administrative Court and the High Economic Court function as courts of cassation.

403. In that framework, the main role of the Supreme Court consists in ensuring uniformity in judicial practice, specifically by reviewing cases in which:

(a) Non-uniform application of the same rules of substantive law by the cassational court or courts has led to essentially different court rulings on similar legal situations;

(b) An international court, whose jurisdiction is acknowledged by Ukraine, has found Ukraine to have violated its international obligations in relation to court proceedings.

404. It has also resolved the problem of "dual cassation" (review by way of cassation of common court decisions handed down by the high specialized courts and possible subsequent review of those courts' decisions by the Supreme Court), which existed before the adoption of the Act and contravened the international principle of *nemo iudex in propria causa*.

405. The court system proposed by the new Act is consonant with Constitutional Court Decision No. 8-rp/2010 of 11 March 2010, according to which the constitutional status of the Supreme Court does not give it cassational powers in respect of decisions of high specialized courts acting as courts of cassation.

406. Moreover, the Act eliminates military courts, whose existence was incompatible with European standards and with the practice of the European Court of Human Rights.

Appointment of judges

407. The above Act introduces a new judicial selection mechanism, based on competitiveness and transparency. Under the Act, authority for the selection of candidates will for the first time reside in the High Judicial Qualification Commission, a permanent body of the judiciary that is constituted mainly of judges. This approach reflects Council of Europe standards.

408. The judicial appointment procedure will include: special training for candidates for the position of judge, who must take a qualifying examination (by anonymous testing); the rating of candidates; their placement on a reserve list for filling vacant judicial posts; and recommendations on individual candidates for judicial posts on the basis of their rank.

409. The proposed procedure will help to build a body of judges consisting exclusively of persons with the requisite professional training and thereby reduce the risk of corruption. The Act takes into account the recommendations of the Council of Europe and the conclusions of the Venice Commission, which require the establishment of a judicial appointment procedure that is free from political interference.

Liability of judges

410. The Act improves the procedure for taking disciplinary measures against judges. The High Judicial Qualification Commission is authorized to investigate violations of the Act by judges. In order to facilitate the effective examination of cases involving a judge's liability, the Commission uses a service of disciplinary inspectors who, on instructions issued by a Commission member, will proceed with a preliminarily analysis of petitions and communications involving claims of judicial misconduct.

411. The Act lists clear-cut grounds for disciplinary measures against judges. Anyone may file a complaint against a judge directly with the Commission.

412. This mechanism is expected to ensure prompt and transparent responses to offences committed by judges.

Judicial administration

413. The Act takes into account previous opinions of the Venice Commission and incorporates the State Judicial Administration into the judiciary. This body will provide organizational support for the activity of the organs of the judiciary within the framework of powers provided for by the Act. The leadership of the State Judicial Administration is designated or dismissed by the Council of Judges of Ukraine, a judicial self-governance body, through the Congress of Judges of Ukraine.

Financial security of judges and financing of courts

414. The Act abolishes privileges for judges and provides for their adequate remuneration, as required by the Constitution and European standards regarding the independence of judges.

415. With a view to ensuring the independence of the judiciary, the Act proposes new approaches to the financing of the courts. Thus, funds for maintaining the courts are provided for in the Budget Act and specifically earmarked for every local, appellate and high specialized court. This procedure makes it possible to provide for the actual expenditure required for the administration of justice by the courts. Furthermore, the funds in question are managed by court staff, rather than the relevant executive authority, as was the case previously.

Independence of judges

416. The Act introduces an automated document-management and case-assignment system in all courts of general jurisdiction, thereby preventing presiding judges from in any way influencing the logistical support provided to the judges of a given court and from bringing procedural leverage to bear on the hearing of cases.

417. Moreover, the Act regulates the issue of criminal liability of judges in a new manner. Only the Procurator-General or his or her deputy may institute criminal proceedings against a judge. As a result, it is impossible for other bodies, law enforcement agencies in particular, to influence judges.

418. One of the anti-corruption regulations under the Act consists in a judge's obligation to transmit a copy of his or her annual property and income statement (tax declaration) and expenditure to the State Judicial Administration for publication on the judiciary's official website.

419. The above and other innovations introduced by the Act are aimed at safeguarding the independence of the courts and judges with a view to ensuring the proper functioning of

the judiciary and, thereby, the protection of the civil rights and freedoms enshrined in the Constitution.

420. Moreover, in order to optimize judicial proceedings, the final provisions of the Act introduce the following amendments to procedural law:

(a) Time limits for case review at the appellate and cassational instances are significantly reduced (under economic procedures, for instance, the time limit for hearing a complaint by way of cassation is reduced from two months to one);

(b) Appellate courts have the possibility of taking a decision on the dispute, thereby preventing the case being sent back for further consideration of the court of first instance;

(c) In terms of administrative procedures, it is now possible to serve a summons on the parties by fax or e-mail;

(d) In terms of administrative and civil procedures, a person may appeal without prior petition.

421. In addition, on 20 October 2011, the Verkhovna Rada adopted an Act amending legislation on the consideration of cases by the Supreme Court, which aims to improve the procedure, ensuring that the Court functions more efficiently and that its status in the system of courts of general jurisdiction is raised. In particular, the Act:

(a) Revives the activities of the trial chambers of the Supreme Court and increases the number of judges from 20 to 48;

(b) Gives the Supreme Court authority to hand down a new decision based on the outcome of its review of cases;

(c) Obliges judges, when considering cases, to use the conclusions of the Supreme Court concerning the application of rules of substantive law.

422. On 20 December 2011, the Verkhovna Rada adopted an Act amending some laws to improve the procedure for judicial proceedings; it introduced amendments to the Code of Civil Procedure, the Code of Economic Procedure and the Code of Administrative Procedure in respect of the regulations governing the withdrawal and the timing of appellate and cassational appeals, as well as the review of judicial decisions in the light of new evidence.

423. Moreover, pursuant to Act No. 4874-VI of 5 June 2012, which amended some legislation with a view to strengthening guarantees of judicial independence, the authority of procurators to propose disciplinary action against judges or their removal from office has been restricted. Thus, in accordance with the High Council of Justice Act and the Organization of the Courts and Status of Judges Act, as amended, if a procurator has taken part in proceedings in a case, the procuratorial bodies may file a complaint with the High Judicial Qualification Commission or the High Council of Justice concerning inappropriate conduct by the judge only if no court of any instance is considering the case or if the deadline established in procedural law for lodging an appeal or application for cassational review has expired. Furthermore, a member of the High Council of Justice who is a procurator or was a procurator at the time of his or her appointment to the Council may not be tasked with investigating reports of violations of the judicial oath or disciplinary breaches by judges of the Supreme Court or of one of the high specialized courts.

424. The adoption in 2011 of the Act on the principles of preventing and combating corruption was a significant step in making law enforcement measures against corruption in judicial bodies more effective. Thus, between 2008 and the beginning of 2012, criminal proceedings for corruption offences were instituted against 63 judges, 45 of whom were

convicted; charges were not pressed against the remainder. Between 2011 and the beginning of 2012, however, 44 criminal cases were brought, including 18 under article 368 (Receiving a bribe) of the Criminal Code; 9 court employees were convicted, 7 of them judges, and 7 reports were filed concerning administrative offences involving corruption.

Reforming criminal procedure

425. The new Criminal Code has been in effect for almost 10 years now, while the scope of the criminal process is still unreformed. The current Code of Criminal Procedure was introduced in 1961, and includes rules and standards that were applicable in the Soviet Union but no longer meet the current needs of society and the State. In the 50 years of its existence, more than 80 per cent of the articles in the Code have been amended. The most numerous changes in the Code of Criminal Procedure were made by the Act of 21 June 2001, which has entered history as the "small judicial reform". In total, the Code has been amended more than 150 times. At the same time, many of the standards in the Code have been found to be inconsistent with the Constitution. However, in spite of the many changes that have been made, it is becoming increasingly clear that the practice of piecemeal improvements cannot change the situation, and only serves to delay the introduction of a new model for criminal procedure, constructed on ideologically different principles and foundations. Detailed information on the new features introduced in the draft code is set out in paragraphs 42 to 62 of the report.

Non-enforcement of court decisions

426. One of the major problems in protecting property rights is the non-enforcement of decisions of national courts. The State Guarantees of the Enforcement of Judicial Decisions Act was adopted to address this problem; it will enter into force on 1 January 2013. The Act provides for the introduction of a new procedure for the enforcement of judicial decisions relating to the recovery of funds from State bodies (State institutions and enterprises). It is thus proposed that awards against State bodies should be paid from the State budget within three months and, if the decision is not executed within that time, compensation will be paid. For State enterprises (State institutions and organizations), if a decision is not executed through payment by the debtor within six months, then the payment will be made from the State budget. The payment from the State budget must be made within three months, failing which the claimant is paid compensation.

The criminal process and reform of the Prison Service

427. Act No. 270-VI amending the Criminal Code and the Code of Criminal Procedure with a view to humanizing criminal liability (paragraph 8 of this report).

428. Act No. 1188-VI of 19 March 2009 amending article 11 of the Militia Act (paragraph 81 of this report).

429. Presidential Decree No. 394/2011 of 6 April 2011 approving the regulations on the State Prison Service (paragraph 197 of this report).

Improving detention conditions

430. Act No. 1828-VI of 21 January 2010 amending the Code of Criminal Procedure to safeguard the rights of convicted persons in penal establishments (paragraph 199 of this report).

431. Act No. 1829-VI of 21 January 2010 amending some legislation concerning the right to correspondence of persons on remand and convicted persons.

Protection of the rights of children and justice for minors

432. Act No. 1819-VI of 20 January 2010 amending some legislation to prevent the dissemination of child pornography.

433. Presidential Decree No. 597 of 24 May 2011 on the outline plan for the development of the juvenile justice system (paragraph 335 of this report).

Combating human trafficking

434. The Trafficking in Persons Act, No. 3739-VI, of 20 September 2011 (paragraph 282 of this report).

435. Act No. 3140-VI of 15 March 2011 amending article 4 of the Act on the procedure for leaving and entering Ukraine for Ukrainian nationals (paragraph 81 of this report).

436. Act No. 2530-VI of 21 September 2010 ratifying the Council of Europe Convention on Action against Trafficking in Human Beings.

Establishment of a national preventive mechanism

437. Act No. 5409-VI of 2 October 2012 amending the Act on the Parliamentary Human Rights Commissioner (paragraph 179 of this report).

Combating discrimination in all its manifestations

438. Act No. 1707-VI of 5 November 2009 amending the Criminal Code in respect of liability for offences based on racial, national or religious intolerance (paragraphs 11–12 of this report).

439. Cabinet of Ministers Resolution No. 727 of 25 August 2010 amending the list of licensing authorities and documents to be provided when applying for a licence for a specific type of economic activity.

440. Order No. 3716 of 10 September 2008 of the Ministry of Family, Youth and Sports approving the plan of activities to combat xenophobia, racial and ethnic discrimination in Ukrainian society 2008–2009.

441. Ministry of Internal Affairs Order No. 94 of 18 February 2010 on the plan of activities to combat racism and xenophobia in the period up to 2012. Ministry of Culture Order No. 528 of 25 May 2012 implementing the plan of activities to promote civic culture and improve tolerance in society (paragraph 164 of this report).

Protecting the rights of refugees and migrants

442. Act No. 3671-VI of 8 July 2011 on refugees and persons requiring subsidiary and temporary protection (paragraph 89 of this report).

443. Act No. 2286-VI of 21 May 2010 amending the Code of Criminal Procedure in respect of extradition (paragraph 112 of this report).

444. Act No. 3773-U1 of 22 September 2011 on the legal status of foreign nationals and stateless persons.

445. The Free Legal Assistance Act, No. 3460-VI, of 2 June 2011 (paragraph 27 of this report).

446. Presidential Decree No. 622 of 30 May 2011 on the State Migration Policy Framework (paragraph 94 of this report).

447. Presidential Decree No. 494/2011 of 22 April 2011 on the national plan for the implementation of the European Union Action Plan on Visa Liberalization for Ukraine (paragraph 95 of this report).

448. Cabinet of Ministers Order No. 653-r of 15 June 2011 approving the plan of measures for the integration of foreign migrants and the reintegration of Ukrainian migrants in Ukraine in 2011–2015.