

Prosecutor's Office of Ukraine

## PROSECUTOR GENERAL'S OFFICE

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*01.04.2021 № 20/2-101ВІХ-21*

To No. \_\_\_\_\_ of \_\_\_\_\_

To the Deputy  
of the Minister of Justice of Ukraine  
Vysotska O.V.

### ORDER

**On following the procedures and conditions of detention of the convicts in the institutions of the State Criminal Executive Service of Ukraine, established by the legislation**

The Prosecutor General's Office with the involvement of the specialists has inspected the state of adherence to the laws and rights of the convicts in the state institution "Berdyansk Penal Colony (No. 77)" (hereafter - PC No. 77).

The inspection found a number of violations of the requirements of the Criminal Executive Code of Ukraine (hereafter – CEC of Ukraine), the Law of Ukraine "On Criminal Executive Service of Ukraine" and other legislation that regulates the issues of material and household provision, social and educational work, procedure of application of sanctions etc.

Contrary to the requirements of Art. 18 of the Law of Ukraine "On State Criminal Executive Service of Ukraine", Art. 107, 115 of the CEC of Ukraine, the administration of PC No. 77 **does not provide the adherence to the rights of the convicts to adequate material and household provision in the social and psychological service units (hereafter – units)**, namely, the right to privacy and personal space.

In particular, while the institution is filled to less than a third of its capacity (287 convicts for 947 places), almost all residential premises of the units had bunk beds (54 bunk beds for 108 places), and most of the other beds are almost next to each other.

The convicts are not held in the same conditions due to the different occupancy of living spaces. The conditions are the worst in the first and second units, where

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the beds of convicts are located in one large section designed for 70 people. In such circumstances over 120 persons, or 45 %, are held in densely occupied bedrooms.

The situation is aggravated by the fact that, contrary to the requirements of Art. 20 of the Code of Civil Protection of Ukraine, **for several years, the institution has not resolved a number of issues related to fire safety**, first of all, the equipment of fire protection system, fire retardant treatment of wooden structures, proper condition of the valve sets in the headquarters etc, as stated in the act of inspection of the penal colony of Berdyansk IRD of MD of SPSU of 11.03.2021, which was provided to the management of PC No. 77. The non-elimination of those violations may lead to emergencies with casualties.

**The current practice of accommodation and material support of convicts does not meet international standards**, in particular, the European Prison Rules, paras. 4, 5 pt. I of which states that the life in the places of detention should, as far as possible, be brought closer to the positive aspects of life in society, the detention of prisoners in the conditions that violate their human rights cannot be justified with the lack of resources.

**Contrary to the requirements of Art. 7 of the Law of Ukraine “On Ensuring the Sanitary and Hygienic Well-being of the Population” in PC No. 77 there are no conditions for the proper production process that should meet the sanitary rules and requirements of hygiene, during the baking of bread and cooking.**

Thus, the inspection detected a number of violations related to the use of ventilation, refrigeration chamber, the keeping of food products, the quality of drinking water that is used in the technological process, quality control of finished products by microbiological indicators etc.

**The daily schedule of PC No. 77, adopted by its Head, does not meet para. 1 of Section VI Internal Schedule Rules of Penitentiary Institutions**, adopted by the Order of the Ministry of Justice of Ukraine (hereafter – MJ) of 28.08.2018 No. 2823/5 (hereafter – ISR of PI), as it contains excessively regulated mandatory measures, including those which are not provided by ISR of PI and typical schedule, in particular, the landscaping works (in 2 cases). If these measures are on the agenda, there are risks of replacing permanently paid work with them on a permanent basis.

In addition, the schedule does not contain a period of time for education, it violates the chronology of holding necessary events, such as morning inspection, which should be carried out before breakfast and appointment to works. The time allotted to the phone conversations should also be extended, as it is defined in Annex 8 to ISR of PI, and it is necessary to provide a free time on weekends and holidays for more than once a day instead of after 7 pm.

Those changes are relevant given the need for humanization and the complaints of the convicts expressed during the inspection, concerning the lack of time for the phone conversations with the relatives, which is one of the components of their resocialization.

**Contrary to the requirements of the Article 134 of the CEC of Ukraine, in a number of cases the convicts are subjected to sanctions without clarifying all necessary circumstances of the violations of the regime that they have committed.**

For example, on 15.02.2021 a sanction was imposed on a convict in the form of placement in a disciplinary cell for 3 days for using a mobile phone. However, the conclusion on conducting an official investigation to find out the circumstances of how the cell phone got into the institution, was only made and approved by the head of the institution on the next day. Attached to the materials is a medical certificate on the possibility of undergo punishment in an unspecified form due to health conditions.

**In several cases there were punishments not provided by the law.** In particular, a ruling of 13.07.2020 imposed a sanction on a convict in the form of an educational conversation for non-compliance with the form of clothing. That sanction is not provided by the Article 132 of the CEC of Ukraine.

**The practice of parole of the convicts does not meet the requirements of Art. 154 of the CEC of Ukraine and Art. 81 of CC of Ukraine.**

Thus, in 2019-2021 the commission of the institution denied the parole for the convicts after the result of the examination of the materials in every other case. Their positive characteristics, the seriousness of the crimes, the use of encouragement and the lack of sanctions were not taken into account.

For example, on 12.01.2021 a person convicted for pt. 2 of Art. 190, pt. 2 of Art. 185 of the CC of Ukraine was denied parole under Art. 81 of the CC of Ukraine, despite the positive characteristics, the lack of sanctions and presence of incentives. At the same time, the substantiation of the grounds for refusal in the protocol of the decision of the commission No. 1 is formal and does not correspond to the positive characteristic given to the convict and the available encouragement.

Consequently the convicts often apply directly to a court and are released on parole under Articles 537-539 of the CCP of Ukraine. In 2019-2021 the courts approved 8 such applications of the convicts, which indicates the shortcomings in the organization of this work and the need for a more thorough clarification of the personalities of the convicts.

Contrary to the requirements of Art. 127 of CEC of Ukraine, Section XVIII of ISR of PI, Section II of the Regulations on organizations of persons sentenced to imprisonment, adopted by the order of MJ of 04.11.2013 No. 2300/5, **persons who violated the regime and who were numerously sanctioned, were appointed to the positions of the chairmen of the prisoners' board and senior duty prisoners at the same time** (convicts). It also became possible due to the fact that the nominations for the chairmen of the board of the convicts are made without substantiating the characteristics of the said persons and the grounds for their election.

Such state may lead to negative influence of some prisoners over the others and it requires additional measures to prevent giving them the supervision functions of the administration of the institution, which was stated in the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereafter – CPT) of 06.11.2020.

**Contrary to the requirements of Art. 3, 3-1, 12 of the Law of Ukraine “On remuneration”, Art. 118 of the CEC of Ukraine, the work of convicts is paid for in**

**the amounts that are lower than the statutory minimum**, and without adherence to a number of norms of payment. Those violations became possible due to incomplete accounting and registration of working hours of the convicts, without taking into account the real work hours, weekends, holidays and particularities of the production.

In particular, during the interviewing of the convicts who were cooks it was established that they work in the diner for 7-8 hours a day (between 6:30 am and 2 pm). However, in the timesheet for February 2021, they are paid only 2 hours a day and 20 days a month (0,25 % of the wage), which is obviously insufficient given the scale of work and the full cycle of cooking for around 300 prisoners. The representatives of the administration and the convicts confirmed that the cooks worked in three shifts (including during the night), however, the timesheet only mentioned two cooks.

It is also known from the explanations of the baker that the period of his daily shift is 9 hours (between 6:30 am and 4 pm), although the timesheet only mentions 4 hours. At the same time on the weekends and holidays the work is not registered in the timesheet, despite the constant nature of the manufacturing process.

Also questionable is the reliability of accounting for working time, the work on weekends and holidays of other workers (bath maintenance worker, assistant worker, diner employee, animal care worker), for whom only a small period of work hours is registered - 1 to 2 hours a day, and only 20 days a month. In total, as established by the State Consumer Service, 18 persons actually work in the diner, however, only 5 persons receive wages according to the timesheet.

Under such conditions, the accrued monthly salary of canteen employees is artificially decreased and constitutes between UAH 750 and 1500, baker—UAH 3000. At the same time in the penal colonies in other regions, for example, in Vinnitsia PC No. 86, the convicts are employed for 0,75 % of the cook's rate and receive three times higher wages (UAH 4500), in Kharkiv region in Dykanivka PC No. 12 - 4 times (UAH 6000), which indicates the exploitation of the convicts' labour in PC No. 77.

In addition, certain landscaping works by their nature and duration are unreasonably not attributed to paid work. Thus, the daily work of a convict in the shoes repair workshop (5-6 hours a day) should be attributed to the paid works, like the work in the bath, which is paid.

**Contrary to the requirements of pt. 3 of Art. 119 of CEC of Ukraine, the administration of PC No. 77 organized the work of the convicts with numerous violations of the labour protection rules, safety and industrial hygiene, established by the labour legislation.**

Thus, according to the conclusions of the involved labour protection specialists, proper operation and maintenance of electrical installations, equipment in the boiler room, workshops and production sites is not provided, safety precautions are not observed during the works, the necessary documentation is not kept, etc..

**The study of information on the status of payment on writs of execution by convicts established** that in 2018-2021 7 convicts who have not paid a single hryvnia of damages and alimony were released, and 22 convicts paid a small part of the sum,

which indicates the improper performance of the administration of the PC No. 77 of its tasks set by law, first of all by the Art. 118 of the CEC of Ukraine.

Thus, in 2018, according to the writs of execution, the released convicts failed to pay over UAH 1,1 million under claims, including the alimony, in 2019 - UAH 250 000, in 2020 - more than UAH 650 000, in 2021 - UAH 26 000.

**The state of implementation of remarks and recommendations provided to the bodies of the Ministry of Justice and the leadership of the PC-77 as a result of previous visits and inspections is unsatisfactory.**

First of all, the completeness of the implementation of the CPT's recommendations on the functioning of the PC No. 77, provided in the report of 06.11.2020 (hereafter – the Report) raises significant remarks, most of the recommendations were not implemented in practice.

Thus, the Report was sent by the MJ to the Prosecutor General's Office on 21.12.2020, however, only a month later (20.01.2021) it was received in PC No. 77. The report was sent by the South-Eastern Interregional Department for the Execution of Criminal Punishments (hereafter – the Interregional Department), which also received it with a significant delay (12.01.2021).

As a result, the management of the institution, having very limited time for implementation, meaning only 5 days, has not properly fulfilled the tasks set by the interregional department on taking measures to prevent similar violations in the future and providing suggestions to improve the activities of the State Criminal Executive Service of Ukraine. **A formal response** was provided under the signature of a former Head of the institution on 25.01.2021 on the processing and taking into account the report of the CPT (without any information on the measures taken).

**The information on implementation of the recommendations of CPT sent by the interregional department to the Department for the Execution of Criminal Punishments of the Ministry of Justice on 27.01.2021 also has a formal nature.** In particular, it concerns the numerous visits of various bodies to the PC No. 77 and only on this basis are conclusions drawn about the absence of ill-treatment of convicts.

At the same time that information **lacks the data about the events held for the implementation of the CPT's recommendations (paras. 36, 37, 40 of the Report)**, in particular, concerning:

- solving basic household problems of convicts (violation of privacy and personal space in residential premises);
- raising the level of staff training and reviewing the staffing;
- reducing the dependence of employees of institutions on “duty prisoners” in exercising control over convicts;
- the use of video recordings to prevent possible abuse of excessive force by prison staff, etc.

**The inspection conducted by the Prosecutor General's office confirmed most of the violations of the rights of the convicts, found in PC No. 77 during the visit of CPT, which were not eliminated, despite the fact that a number of them did not require significant material expenses.**

Similarly, in PC No. 77 the recommendations of the Secretariat of the Verkhovna Rada Commissioner for Human Rights were not properly implemented, according to the results of the visit on 26.02.2020-27.02.2020, which is confirmed by the violations re-discovered by the Prosecutor General's Office, in particular regarding the violations of the right of convicts to privacy, incomplete fixation of bodily injuries of convicts, illegal use of their labour, possible delegation of functions of the staff of the institution to convicts (pages of the Report 7-9, 14, 17).

Those violations of the legislation and shortcomings became possible due to improper organization of activity of the penal colony by the management and employees of the relevant divisions of PC No. 77, misinterpretation and practical application of the requirements of legislation, international standards for the observance of the rights of convicts. At the same time, the departmental control of the interregional department of the Ministry of Justice over the activities of the penal colony is inefficient. As a result, effective and systematic measures to address numerous human rights violations in the PC No. 77 have not yet been taken..

Given the above, guided by Art. 22 of the Criminal Procedure Code of Ukraine, Art. 26 of the Law of Ukraine "On the Prosecutor's Office",

### **I DEMAND:**

1. To take a set of comprehensive measures to eliminate the identified violations of the law, the causes and conditions that contributed to them.

2. To resolve the issues on:

- responsibility of managers and other officials of the penal colony, interregional administration, who violated the law and did not take measures to eliminate them for a long time, including after receiving the recommendations of the CPT and the Ombudsman;

- quashing of the ruling of 13.07.2020 on imposing sanctions on the convicts

- quashing of the decision of the commission, repeated and proper consideration of the issue of parole of the convicts

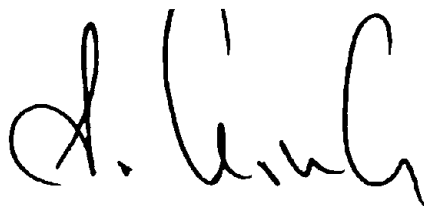
3. To inform the Prosecutor General's Office about the results of consideration of the instruction and the measures taken within a month.

Part 4 of Article 26 of the Law of Ukraine "On the Prosecutor's Office" provides that the written instructions of the prosecutor are mandatory and subject to immediate execution.

Failure of an official to comply with the lawful requirements of the prosecutor shall result in liability provided by pt. 1 of Art. 185-8 of the Code on Administrative Offences.

**Deputy**

**Prosecutor General**



**G. Mamedov**