SEVENTH PERIODIC REPORT OF UKRAINE ON IMPLEMENTATION OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

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Contents

ABBREVIATIONS/GLOSSARY

AFU	Armed Forces of Ukraine
ART	Antiretroviral therapy
ATO	Anti-Terrorist Operation
CAP	Code of Administrative Procedure of Ukraine
CC	Criminal Code of Ukraine
CGS	Court Guard Service of Ukraine
CEC	Criminal Executive Code of Ukraine
CP	Criminal proceeding
CPC	Criminal Procedure Code of Ukraine
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
Crimea	Autonomous Republic of Crimea and Sevastopol
Donbas	Donetsk and Luhansk regions
ECtHR	European Court of Human Rights
FLA	Free legal aid
IDP	Internally Displaced Person
JFO	Joint Forces Operation
KHPG	Civil organization "Kharkiv Human Rights Protection Group"
MoD	Ministry of Defence of Ukraine
MIA	Ministry of Internal Affairs of Ukraine
MoJ	Ministry of Justice of Ukraine
MoH	Ministry of Healthcare of Ukraine
OHCHR	Office of the High Commissioner for Human Rights
PG	Prosecutor-General of Ukraine
PI	Penitentiary Institution
PC	Penal Colony
PTDC	Pre-Trial Detention Centre
RONP	Regional Office of National Police
RRG	Rapid Reaction Group
SBGS	State Border Guard Service of Ukraine
SBI	State Investigation Bureau of Ukraine
SCES	State Criminal Enforcement Service of Ukraine
SIHC	State Institution "SCES Health Centre"
SMS	State Migration Service of Ukraine
SCU	Supreme Court of Ukraine
SCJ	Supreme Council of Justice
SPT	United Nations Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
SSU	Security Service of Ukraine
THC	Temporary Holding Centre for Foreign Nationals and Stateless Persons of the SMS
THF	Temporary Holding Facility
TOT	Temporarily Occupied Territory

INTRODUCTION

In the second half of July 2021, the UN Committee against Torture (hereinafter — the Committee) should consider the Seventh Periodic Report of Ukraine on implementation of the provisions of the UN Convention against Torture and Cruel Treatment. We recall that the previous Sixth Periodic Report of Ukraine was considered by the Committee in November 2014 and the periodic reports are provided once in four years.

In early 2017, the Committee provided a list of 41 issues completely covering the problems of torture and ill-treatment to the Government of Ukraine. In November 2018 the Government had prepared a draft of the Seventh Periodic Report. The draft is posted on the website of the Ministry of Justice of Ukraine for discussion and it is available at https://minjust.gov.ua/news/announcement/gromadski-obgovorennya-proektu-periodichnoi-dopovidi-ukraini-pro-vikonannya-polojen-konventsii-oon-proti-katuvan?fbclid=IwAR18NrKG6QsgGcRe_ti02XGCs26mkeWIQwPhwv4rtbLnnfHr0j7TwYjM5w.

This draft was prepared ahead of many important amendments in legislation and practice which took place in 2015 — 2018. However, the Kharkiv Human Rights Protection Group (KHPG) has prepared the Shadow Report to the draft report of the Government and offers it to the reader. We hope that it will be useful for the governmental experts. The KHPG continues the tradition of commenting the periodic reports of the Government on implementation of the UN Convention against Torture. In 1997, 2001, 2007 and 2014 the KHPG prepared and published its Shadow Reports to the Third, Fourth, Fifth and Sixth Reports respectively. The Shadow Report of the KHPG represents the answers to all 41 issues of the UN Committee against Torture. It covers a variety of issues of the respect of the Convention during November 2014 — June 2021 and it was prepared on the basis of its own information and the information got from the partner organizations and state authorities. The Shadow Report of the KHPG is submitted to the UN Committee against Torture and it aims at comprehensive coverage of the issues of respect of the rights enshrined in the Convention and attraction of the attention of the Committee`s experts to the most actual problems in the sphere of their implementation which in our opinion are not reflected or which are incompletely covered in the draft report of the Government of Ukraine.

We admit that during the past five years there have been positive changes and trends in Ukraine. However, we set a goal to present our position regarding the situation with torture and other forms of ill-treatment in the most problematic areas of human rights protection in our country in order to assist the Committee's experts to get the fullest possible understanding of the problems in this area. In particular, our concern is the problems of impunity in the cases of torture, conflict of the prosecution functions which makes it difficult to effectively investigate the cases of torture, routine practice of violation of the rights to liberty and other rights of detainees, practice of mass violence in penal institutions, and the lack of adequate medical care for the persons deprived of liberty. When preparing the Shadow Report, we used the materials of monitoring of the situation of torture carried out in 2014 — June, 2021 in all regions of Ukraine by the Coalition of human rights organizations «Against Torture», results of the activity of the KHPG Strategic Litigation Centre (SLC), and analysis and observations provided by other Ukrainian NGOs. For more information, please refer to the Kharkiv Human Rights Protection Group at khpg@ukr.net.

The Shadow Report was prepared by the lawyers of the KHPG Gennadiy Tokarev (§§1, 2, 3, 4, 5, 16, 25, 33, 34, 40, Conclusions and Recommendations), Hanna Ovdiienko (§§6, 7, 9, 12, 13, 17, 30, 31), Maksym Reviakin (§§8, 14, 19, 35, 39), Ihor Sosonskyi (§§20, 24-3, 40), Tamara Horbachevska (§§14, 29, 32, 36), Tamila Bespala (§§10, 11, 15, 18, 21, 23, 27, 28, 41), Dmytro Mazurok (§§22, 37, 38), Vasyl Melnichuk and Oleksiy Skorbach (§§20, 24-1, 24-2) and Vladyslav Dolzhko (§§26). General editing was performed by Yevgeniy Zakharov and Gennadiy Tokarev.

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Yevgeniy Zakharov

FOLLOW-UP QUESTIONS FROM THE PREVIOUS REPORTING CYCLE

Question 1. *With reference to the Committee's previous recommendation to the State party to guarantee that all detained persons are afforded, in law and in practice, all the fundamental legal safeguards against torture and ill-treatment from the very outset of their deprivation of liberty (see CAT/C/UKR/CO/6, para. 9), and in the light of the follow-up information provided by the State party, please provide additional information on whether all persons detained in special institutions and detention centres of the internal affairs agencies and in pretrial detention facilities are entitled to all fundamental legal safeguards, including being informed of and understanding their rights; being informed of the charges against them; having prompt access to a lawyer or legal aid; undergoing a medical examination by an independent doctor; notifying a member of their family or another appropriate person of their own choice of their detention and whereabouts; and having their detention registered.*

ANSWER TO QUESTION No. 1

In its reply to question no. 1, the Government provided information on the legislative and regulatory framework for the fundamental legal safeguards afforded to detainees, which is indeed largely in line with international human rights standards. At the same time, the adoption and implementation in 2012 of the CPC and the appropriate by-laws mentioned by the Government has not fundamentally changed the issues with the observance of the rights of detainees.

In 2014–2015, with the support of the MIA, a study of the observance of the rights of persons detained by the police was conducted, in accordance with a concept and methodology jointly developed with the Maastricht University, with its field stage involving direct monitoring of the daily work of investigators, law enforcement officers and lawyers in criminal cases in 5 regions of Ukraine, including interviews with these persons as well as with the detainees[1]. The study was aimed at determining compliance with legal safeguards in the daily practices of law enforcement and revealed a number of problems when it comes to the actual exercising of each of the procedural rights guaranteed to detainees.

The study yielded the following key takeaways:

— there is no practice of properly registering the outset of detention by the police;
— a significant number of detentions take place without a court order after prolonged periods of time (several days or even months) after the crime was committed, despite the fact that Article 29 of the Constitution of Ukraine and Article 210 CPC allow arrests without a court order only during or immediately after the commission of a crime. The police keep no separate records of arrests on suspicion of murder authorized by courts. One can conclude that the constitutional guarantee against arbitrary detention does not work in Ukraine;
— detainees are not properly informed of their rights during apprehension: only in 1% of monitored cases was information about their rights provided to them at the place of apprehension, in 8% of cases — shortly after it, and in 35% such information was never provided to the detainees at all. In 27% of cases this information was provided during the preparation of a detention protocol, or during interrogation (15%) or notification of suspicion (6%) — that is, a long time after the outset of physical detention. In most cases, the provision of this information was perfunctory; the detainees are often not given the full list of safeguards provided by law or a proper explanation of such safeguards;
— highly widespread are cases when free secondary legal aid centres are not notified of detentions in time;

[1] Human rights behind closed doors. Report on the results of the study "Procedural safeguards for detained persons", Kyiv — 2015, http://ulaf.org.ua/wp-content/uploads/2017/02/UA_Inside_Police_Custody_in_Ukrainian.pdf, pp. 9–11.

— another widespread practice involves having a "conversation" with a detainee without registering this conversation as interrogation. Law enforcement officers often carry out so-called "operative interrogations" of detainees without registering these actions (drawing up a protocol) and consequently without explaining the procedural nature of such actions to the detainees, or their rights;
— yet another common practice involves conducting the first interrogation without allowing a person to meet with their lawyer first. Thus, lawyers were absent during the initial interrogations in 46% of monitored cases;
— the notification of the right to remain silent is perfunctory and law enforcement officers often try to induce detainees not to exercise it by mentioning it in a manner that makes it likely for a suspect to ignore it. It is evident that law enforcement officers lack understanding of this right as well as respect for it;
— the conditions for confidential meetings between lawyers and their clients are not provided; they are often forced to meet in corridors or at the office of the investigating officer;
— there are no rooms specially equipped for interrogations, with the latter often conducted in the offices of investigating officers. Interrogations are often attended by outsiders, usually in order to pressure the detainees, which is not mentioned in the interrogation protocols;
— questioning a suspect as a witness is also a common practice. Even though the CPC does not allow using this as evidence in court, it still makes it possible for the investigators to obtain the necessary information;
— there are no special mechanisms that would allow detainees belonging to vulnerable groups to exercise additional safeguards;
— there is no effective mechanism that would allow detainees who do not speak Ukrainian to have an interpreter present. Translation must be provided at the discretion and expense of the investigating officers. Detainees are also not guaranteed that an interpreter will be present during meetings with their lawyers;
— there are cases when free legal aid lawyers have been neglectful in their duties, such as failing to arrive on call, failing to meet with their client or holding a very brief meeting, or being present during interrogations for show only.

The study allowed us to draw the following conclusions:

— despite significant positive changes in legislation, it has failed, in part or, in some cases, utterly, to change the practices of law enforcement, whose actions, from apprehension onward, are usually guided by old habits;
— all procedural safeguards that were the subject of the study are enshrined in the law, yet a comprehensive mechanism for exercising them only exists in regard to the provision of legal aid to detainees. As for the mechanisms for exercising the right to translation, medical care or safeguards for vulnerable groups, they have yet to be developed and implemented in legislation;
— there is no uniform mechanism and procedures for official recording of everything that happens to a person after apprehension and in the course of detention;
— there is no practice of holding law enforcement officers responsible for violating the rights of detainees, and this impunity causes further violations during detention.

In regard to one of the most important procedural safeguards — the right to free legal aid (FLA) for those who lack the means to hire a lawyer, in 2016 the Council of Europe Office in Ukraine studied the work of the Ukrainian FLA system. When interviewed during the field stage of the study, FLA lawyers complained that police officers put pressure on detainees prior to the arrival of their lawyer, which takes many forms — from deception and threats to physical abuse (and this is one of the reasons for the delays in informing free legal aid centres of the arrests) — in order to force them to waive their right to FLA by dropping their appointed lawyer. In this case, the detainee is supposed to inform their lawyer during a confidential meeting that they would like to use their own lawyer, even though they don't have one. This allows the police to deprive the detainee of legal counsel, at least during the initial stage of the proceedings[2].

[2] Report on the results of the study "Assessment of the system of free secondary legal aid in Ukraine in light of the standards and best practices of the Council of Europe", Council of Europe, Kyiv — 2016, https://rm.coe.int/16806aab13, pp. 45–46.

In regard to the right to medical care, it is provided by an emergency medical team and only when the detainee's life is in immediate danger or if they are suffering from serious injury. These teams as well as doctors of medical institutions are often neglectful in their duties when examining a detainee to determine whether they can be safely held at their place of detention, with these decisions often made under the influence of law enforcement officers. If a detainee has chronic illnesses and/or requires regular medication, they face problems with obtaining and storing the medicines as well as with taking them according to prescribed schedule. The option of using an independent doctor for the provision of medical care at a person's request provided for by para. 6, part 3, Art. 212 CPC, is only available to VIPs. The positions of those responsible for supervising the conditions of detention, which must be present in every pre-trial investigation institution in accordance with Art. 212 CPC, are perfunctory and do not perform their functions on ensuring the observance of the rights of detainees; in fact, as of 2017, there were no such positions at all in half of these institutions.[3]

According to the National Police of Ukraine, the number of arrests made on suspicion of murder (Art. 208 CPC) is declining; specifically, in 2016 compared to 2013, the number of the arrests decreased by more than 30%. However, the main reason for this is that law enforcement officers simply do not register all cases of arrests.[4]

Accordingly, the total number of instances of use of illegal violence towards the detained persons has also declined, but this does not suggest that it stopped being an issue in Ukraine.

Thus, in June 2019 the employees of one of the police departments in Kharkiv region tortured two persons after detaining them with the aim to make them confess in committing a robbery. During the trial both men reported the use of violence against them, however, this information was not submitted to the investigation bodies.

On the night of May 23/24 2020 two police operatives of Kagarlytskiy district police department of Kyiv region tortured and raped a young woman who arrived to the police as a witness, seeking to obtain a confession in a committed crime. At the same time, they were torturing another man who was in the department, they broke his nose and ribs. Both victims were beaten, gas masks were put on their faces and the operatives shot over their heads using their weapons. The administration of the police department has been dismissed, the unit was disbanded, all its employees will be re-certified.[5] Information on the progress of the proceedings in this case is set out in response to question 12 of the Committee.

On June 5, 2020 SSU exposed the illegal activities of a criminal organization under the direction of the chief of the Pavlograd city police department of Dnipropetrovsk region who artificially improved the indicators of operational and investigative activities with his subordinates by falsifying the materials of criminal proceedings by way of intimidation and torture of the detainees in order to receive the requisite testimonies about the commission of non-existant crimes[6]. Arsen Avakov, the Minister of the Interior, said that in Pavlograd police department the law-enforcement officers engaged in criminal activities instead of protecting and ensuring the safety of the citizens[7]. 7 police officers were detained.

As for the right to notify a family member or other person of one's detention and whereabouts, according to the study, in 52 rayon police departments in 7 regions of Ukraine, almost 90% of them had no information that the detainees had been given the opportunity to notify close relatives, family members or other persons of their detention and whereabouts, and in 11.9% of cases, law enforcement officers performed such notifications themselves.[8]

During 2019 — the first quarter of 2021, our organization received several complaints about beatings by the police during detention and at the police station.

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[3] Analytical report on the results of the study "Assessment of the efficiency of the institute of officials responsible for monitoring conditions of detainees as a mechanism for preventing misconduct in police work", Council of Europe — 2017 http://ecpl.com.ua/wp-content/uploads/2017/07/Sluzhbovi-osoby-vidpovidalni-za-zatrymanych-1.pdf, p. 44.

[4] Ibid, p. 16.

[5] https://dbr.gov.ua/news/zgvaltuvannya-ta-katuvannya-u-primischenni-viddilennya-policii-dbr-zatrimalo-dvokh-policeyskikh

[6] https://ssu.gov.ua/ua/news/1/category/2/view/7658#.4BWysLhE.dpbs

[7] https://mvs.gov.ua/ua/news/31493_U_Pavlogradskomu_viddili_policii_priznacheno_timchasove_kerivnictvo_ta_provoditsya_sluzhbova_perevirka_.htm

[8] Ibid, p. 51.

Question 3. *Please indicate whether, as previously recommended by the Committee (para. 9), the State party has established a single national register of detention, including all temporary detention facilities, that includes the exact time, date and place of detention from the very outset of deprivation of liberty and not from the time of the writing of the protocol of detention, as well as information regarding transfers. Please also provide information on steps taken to ensure the accuracy of the information included in the detention register, and indicate if any official was disciplined or prosecuted during the reporting period for falsifying information in a detention protocol or detention register.*

Question 4. *Please indicate whether the information concerning the identity and location of all persons detained in the context of the "anti-terrorist operations" in the country's east is available in a detention register that is accessible to the family members and lawyers of those detained.*

Question 16. *With reference to the Committee's previous concluding observations (para. 12), expressing concern about the continued use of administrative detention, please provide information on any measures taken by the State party to reduce the period during which persons suspected of terrorism can be held in preventive detention from the current allowance of 30 days and to permit administrative detainees the right to appeal against their deprivation of liberty.*

ANSWER TO QUESTIONS Nos. 3, 4, 16

In response to these questions, the Government provided information on the implementation of the information system entitled Custody Records (para. 12 of the Report), which is currently a subsystem integrated into criminal records but not a national register of detentions that can provide up-to-date information about the detention of any person from the moment of apprehension. This system is currently implemented only in ITT, while detention may last from several hours to several days (in case of delays in detention registration) up to that point.

On 9 June 2021 one of the police departments of Kharkiv city held the demonstration of the work of «Custody Records» system, in the future it is planned to gradually introduce it in all police departments. On the positive side, the police will be forced to introduce into their staff the persons "responsible for the retention of detainees", as provided for in Article 212 of the CCP of Ukraine, but in practice it was limited to the nominal definition of the pre-trial investigation body (police).

Information from the system that was developed with the aim of improvement of the position of the detainees, is not used as an effective tool for observing the rights of the detained persons, including for launching criminal investigations in case of illegal actions committed by law-enforcement officers during the detention of the persons, as it was designed during the implementation of the system. The Human Rights Department of the National Police is not using it as a tool for monitoring the observance of detainees' rights. A new legislative act (Manual for police on the Use of Custody Records) has not been developed, and without it full-fledged implementing the system in all of Ukraine's THFs and police stations is impossible.

Indeed, the system allows entering information on the actual time and place of apprehension and the law enforcement officers that carried out the actual detaining (apprehension) of a person, but detention protocols, which are usually written by the investigating officer, name the investigating officer's office as the place of apprehension, the time of the detention protocol's preparation as the time of apprehension, and the investigating officer as the arresting officer. Thus, Art. 209 CPC, according to which a person is considered detained when he or she, by force or obeying an order, is forced to remain by the side of an authorized official or in a room indicated by the latter, is essentially ineffectual.

The system is supposed to monitor the observance of the rights of detainees, to prevent torture and other kinds of physical and psychological violence against detainees, to ensure prompt responses to such incidents, including by receiving and registering complaints of detainees and by automatically forwarding them to the bodies responsible for ensuring the observance of the rights of detainees, as well as to provide further action following such complaints. The idea was to place CCTV cameras in virtually every room, thus drastically reducing the number of violations of the rights of detainees, including through physical violence at the hands of law enforcement officers. In practice, however, many cameras quickly stopped working or turned out to be defective from the start.

If we take into account the experience of Western countries, in particular the United Kingdom, in contrast to Ukraine, the persons who guard detainees in their places of detention belong to a service separate from the police. In view of this, as well as the statistics of torture in Ukraine, it can be argued that as long as detainees are under the control of the police investigating the case, the rights of detainees, including the prevention of possible pressure in order to obtain information about the crime, will remain a problematic issue.

As for the reference to the adoption by the MoJ of the Procedure for the Establishment and Maintenance of the Single Register of Convicted and Detained Persons (para. 13 of the Report), this system has no relation to a National Register of Detentions, as it only concerns registration/records of those regarding whom a decision on their detention for the duration of criminal proceedings has been adopted, or those already sentenced by courts, as well as those on probation. Moreover, even this register is still not openly accessible, while the subsystem of online services on medical care for convicts and detainees is scheduled for launch on January 1, 2022.

In para. 16 of the Report, the Government states that no official faced criminal or even disciplinary liability for the falsification of detention protocols over the reporting period. In light of systematic violations of the rights of detainees, including through entry of inaccurate information on the time and place of actual detention as well as on the arresting officer, the obvious conclusion here is that the State party is making no effort to address violations of human rights committed by the police in the course of detentions.

Question 2. *Please provide additional information on efforts by the General Prosecutor's Office to monitor effectively the provision of safeguards to persons held in the temporary detention facilities maintained by the Security Service of Ukraine, as described in the State party's follow-up report (para. 10). Please provide data on the number of complaints received concerning the failure by law enforcement or penitentiary officers to provide such safeguards to persons in detention. Please provide data on any cases during the reporting period in which personnel of the Security Service or State Penitentiary Service of Ukraine were found to have failed to afford the above-mentioned fundamental safeguards to a person in their custody, and indicate the remedial action taken in any such case.*

Question 5. *Please indicate whether the State party has taken steps to ensure that all persons held in administrative detention, including those detained in the context of the "anti-terrorist operations", are entitled to the above-mentioned safeguards, including the right to free legal aid, promptly following their deprivation of liberty and throughout the period of their detention. Please also provide information on the measures taken by the State party in response to allegations, including those identified in the reports of the Human Rights Monitoring Mission in Ukraine of the Office of the United Nations High Commissioner for Human Rights (UNHCR), that officers of the Security Service of Ukraine have deprived persons of their liberty and held them in unacknowledged places of detention and in incommunicado detention, including at the Security Service facility in Kharkiv. Please indicate if any member of the Security Service has been investigated, disciplined or prosecuted for maintaining unofficial places of detention, and the outcomes. Please also describe any progress made in investigations concerning the following individuals who were allegedly held in secret detention at the Kharkiv facility during 2016: Vladimir Alekseevich Bezobrazov; Vyctor Olekeevych Ashkhin (released on 25 July 2016 and previously subjected to torture by Security Service officers at a facility in Kramatorsk); and Mykola Mykolaevych Vakaruk (released on 25 July 2016 and previously subjected to torture by Security Service officers at a facility in Chervonoarmyisk/Pokrovsk).*

ANSWER TO QUESTIONS Nos. 2, 5

According to the Government, in the course of the ATO, instead of preventive detentions provided for by Art. 15-1 of the Law of Ukraine "On Combating Terrorism", criminal procedure detentions, which allow for a number of procedural rights for detainees, were used.

In this regard, it should be noted that, firstly, only the SSU has this information while, according to the National Police, "the National Police of Ukraine does not keep separate records of aggregate data and does not produce statistical data on the basis of such data". Secondly, the existence of procedural safeguards alone is no guarantee against violations of the rights of detainees (see comment to question no. 1). Such types of violations as unlawful detention, delayed registration of detention, detention under a false pretext or administrative detention for the purpose of having a person on hand for criminal proceedings, which we had brought up in our commentary to Ukraine's sixth periodic report, are still being committed.

Between 2014 and 2019, the EctHR delivered a number of judgements in cases against Ukraine, finding violations of Art. 5 ECHR in the following cases: *Anatoliy Rudenko v. Ukraine, Belousov v. Ukraine, Voykin and others v. Ukraine, Korniychuk v. Ukraine, Kotiy v. Ukraine, Kushnir v. Ukraine, Livada v. Ukraine, Malyk v. Ukraine, Semenenko v. Ukraine, Temchenko v. Ukraine, Makarenko v. Ukraine, Beley v. Ukraine.*

In its judgement in the case *Belousov v. Ukraine (no. 4494/07, 7/11/2013*), the EctHR found a violation of Art. 5 ECHR due to the delay between the registration of detention and the moment of apprehension, this delay being 24 hours. In the judgement, the EctHR stated that the absence of a record on detention should in itself be considered a serious violation, as the Court's established case law considers unrecognised detention a breach of the fundamental safeguards provided for in Art. 5 of the Convention and a serious violation of this provision[9].

In the case *Makarenko v. Ukraine (no. 622/11, 30/01/2018)*, the Court found a violation of Art. 5 ECHR, as the applicant had been deprived of liberty for 3 hours and 20 minutes without any required procedural documents[10].

In the case *Livada v. Ukraine (no. 21262/06, 26/06/2014*), the Court once again found a violation of Art. 5 ECHR due to administrative detention of the applicant in order to make him available for further criminal proceedings against the applicant. In the judgement, the EctHR stated that the application of administrative detention to make a person available for further criminal proceedings constitutes arbitrary detention[11].

In the case *Semenenko v. Ukraine (no. 52819/08, 20/10/2016)*, the Court also found a violation of Art. 5 ECHR due to administrative detention of the applicant for questioning within the framework of a criminal investigation and for subsequent notification of suspicion.

Detaining a person suspected of committing a crime without registering such detention, detaining a person under a false pretext for the purpose of making a person available for criminal proceedings have become business as usual during the ATO for the SSU and other law enforcement agencies. If we consider detention-related cases that people are contacting us with for legal aid, every single one of them involves unlawful detentions or abductions accompanied by violations of all procedural rights of the detainees prior to official registration of detention, as well as torture.

In its Report and official responses to inquiries, the Government denies the existence of unofficial detention facilities as well as the use of unlawful detention and torture against detainees; the SSU, in its turn, replied to our inquiry that no representative of the SSU had thus far faced disciplinary action or had been charged with unlawful detention of persons in unofficial detention facilities.

International organizations in their reports have repeatedly brought up the existence of these unlawful detention facilities and the systematic violations of law taking place there.

The information about SSU's secret prisons first appeared in the UN "Report on the human rights situation in Ukraine, 16 November 2015 — 15 February 2016"[12]. This information later also appeared in numerous OHCHR reports.

On May 26, 2016, SPT's delegation had to suspend its visit to Ukraine after the SSU refused to give them access to places which the UN suspected to hold SSU's detainees[13].

On June 3, 2016, the British Times and UN Assistant Secretary-General for Human Rights Ivan Šimonović reported that the SSU had been detaining people in large numbers and systematically torturing them[14]. Information on unlawful detentions, torture and placement of people in unofficial detention facilities practised by the SSU was supplemented by another UN report[15].

On July 29, 2016, Kostiantyn Bezkorovaynyi, Kostiantynivka City Council member, Donetsk Region, spoke about torture and beatings taking place in "SSU's secret prisons"[16].

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[9] https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-127813%22]}

[10] https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-180496%22]}

[11] https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-145012%22]}

[12] https://www.ohchr.org/Documents/Countries/UA/Ukraine_13th_HRMMU_Report_3March2016_ru.pdf

[13] https://news.un.org/en/story/2016/05/530272-citing-obstruction-un-torture-prevention-panel-suspends-ukraine-visit#.V8OW-CgrKUl

[14] https://www.thetimes.co.uk/edition/world/kiev-allows-torture-and-runs-secret-jails-says-un-vwlcrpsjn

[15] https://www.ohchr.org/Documents/Countries/UA/Ukraine_14th_HRMMU_Report_RUSSIAN.pdf

[16] https://korrespondent.net/ukraine/3724312-deputat-rasskazal-o-15-mesiatsakh-v-plenu-sbu

On March 15, 2018, journalists of the Hromadske media outlet published the results of their investigation of "SSU's secret prisons", which revealed signs of life and recent renovations at the SSU detention centre in Kharkiv, which had not been operational since the Soviet era[17].

Human Rights Watch and Amnesty International also made several reports about unlawful detentions in SSU's secret prisons.[18]

In regard to the unlawful detention of V. Bezobrazov, V. Ashykhmin and M. Vakaruk at the SSU Kharkiv department during 2016, there is no information on whether criminal proceedings against them have been opened or about their results, since PG does not consider this information public.

Systematic violations of the detention procedure and denial of such violations by the Government inevitably lead to impunity among those responsible for violating legal safeguards, first and foremost of the right to free legal aid.

Question 6. *Please provide updated information on the status of the draft law "on prevention of disappearance of people and facilitation in tracing missing persons", and indicate whether the State party has established a dedicated, independent entity responsible for tracing missing persons.*

ANSWER TO QUESTION No. 6

The draft law of Ukraine "On Prevention of Disappearance of People and Facilitation in Tracing Missing Persons" was not adopted by the Ukrainian Parliament. Instead, on July 12, 2018, the Parliament passed an alternative draft law "On the Legal Status of Missing Persons"[19]. This law provides for a number of rights for missing persons and their families, the legal consequences of the status of missing person, the search procedure, etc.

Article 10 of the Law provides for the establishment of a special body tasked with tracing missing persons. The body is known as "Commission on Persons Gone Missing under Special Circumstances" (hereinafter — "Commission"). It is a full-time advisory unit of the Cabinet of Ministers of Ukraine (CMU). In accordance with the adopted law, the Commission was to be established by November 2018. However, this still has not been done.

It is only on April 10, 2019 (with a delay of at least five months) that the CMU, with its Order no. 248-r20, approved the Commission's composition. However, as of June 2019, the Commission did not begin its work. So far, records on missing persons have been maintained by the Search Department of the MoD's Office of Civil-Military Cooperation. According to available information, this body's records of missing persons are incomplete and inaccurate and contain numerous errors. The International Committee of the Red Cross has its own records, but the state authorities have not established cooperation with them in this regard.

It should be noted that the law adopted by the Parliament contains only general provisions on the Commission's goals, tasks and principles, failing to detail its day-to-day activities and the actual mechanisms for tracing missing persons. This was supposed to be done in one of the CMU's by-laws (namely, the Regulations on the Commission, as provided for in Article 10 of the Law). However, as of June 2019, these Regulations were not adopted and were not even at the stage of consideration by the CMU. Moreover, the adopted law does not even specify the Commission's powers, making the body's authority unclear, and this shortcoming cannot be corrected with a by-law.

The Law also provides for the creation of special search teams to conduct "humanitarian searches" yet fails to specify how the information obtained by these teams is to be used by law enforcement and courts in criminal investigations into people's disappearance/death[21].

[17] https://hromadske.ua/posts/hromadske-ziasuvalo-chy-isnuvaly-taiemni-tiurmy-sbu

[18] https://www.hrw.org/ru/news/2016/08/28/293434,
https://amnesty.org.ru/pdf/Ukraine-report_RUS.pdf,
https://www.amnesty.org/download/Documents/POL1067002018UKRAINIAN.PDF,
https://www.amnesty.org/download/Documents/POL1067002018ENGLISH.PDF

[19] https://zakon.rada.gov.ua/laws/show/2505-19

[20] https://zakon.rada.gov.ua/laws/show/248–2019-%D1%80

[21] https://helsinki.org.ua/articles/pravozahysna-hrupa-sich-analiz-zakonu-pro-pravovyj-status-znyklyh-bezvisty/

On 14 August 2019 the Cabinet of Ministers of Ukraine also adopted Resolution No. 726 of 14 August 2019 "On approval of the Procedure for maintaining the Unified Register of Missing Persons in Special Circumstances".[22] The main purpose of creation of such a register is to consolidate information on persons missing during special circumstances, in particular, during the armed conflict in eastern Ukraine. The data from the register will be used by all public authorities to ensure rapid operation. In particular, such data should be used by law enforcement officials — during the implementation of investigative (operational) actions, etc. However, we have to state that the creation of the registry did not affect the effectiveness of searches. The public authorities authorized to search for missing persons had all the necessary information about the missing persons (from the applicants — relatives or other persons) before the register was created, and after the register was created, they only had an additional obligation to enter the information collected by them into the register. Therefore, the practical necessity of such a register, apart from the statistical necessity, seems rather questionable.

Ukrainian courts granted the missing person status: in 2014 — in 1,318 cases, in 2015 — in 1,500 cases, in 2016 — in 1,508 cases, in 2017 — in 1,618 cases, in 2018 — in 1,806 cases[23]. The State Judicial Administration of Ukraine has no separate statistics on persons gone missing in the TOT, even though such information could shed light on the magnitude of the problem and the number of potential victims of crimes.

Question 7. *Please indicate whether the State party has taken steps to ensure that the identities and whereabouts of all persons eligible for prisoner exchanges with armed groups is shared with the Parliamentary Commissioner for Human Rights and that the process is subject to judicial oversight.*

ANSWER TO QUESTION No. 7

Replying to our inquiry, the Commissioner said that she is not involved in the process of identification, verification and location of captives (other than the persons captured in the Azov Sea on November 25, 2018).[24]

The Commissioner only takes part in the transfer of convicts from the TOT to other regions of Ukraine. In particular, with the MoJ and SCES largely remaining idle (even though they are required by law to protect the rights of prisoners), the Commissioner negotiates with terrorist groups on behalf of Ukraine to arrange exchanges of convicts. The Commissioner's Secretariat also keeps lists of those who wish to be transferred to the Government-controlled territory. There are currently over 800 names on these lists.

Since December 2015 until September 2019, 223 prisoners have been transferred from Donetsk Region and 135 prisoners from the temporarily occupied settlements of Luhansk Region with the Commissioner's support. However, there is a number of negative aspects in the transfer process[25].

In particular, there is still no single register of persons that were in the TOT when the ATO began (April 7, 2014). Thus, it is unknown how many people remain imprisoned under the control of illegal armed groups and how many of them have already been released after serving their sentence. According to the MoJ, as of January 1, 2017, 17,495 detained and convicted persons were held in 12 Pis and 17 PTDCs located in the TOT. Of these, 1,947 persons were at the stage of pre-trial investigation and 8,312 persons were at the trial stage (before sentencing)[26]. However, it is a list of names of those remaining in the TOT, not statistics, that is required for identification and verification of convicts.

Secondly, the identification and verification of convicts remaining in the custody of illegal armed groups began almost a year after the occupation of the respective settlements. Prisoner transfers and negotiations regarding them only began in December 2015. It should also be noted that the prisoners were left under the control of illegal armed groups due to MoJ's inaction. Since the conflict in eastern Ukraine began in April 2014 and the active shelling of settlements started in June 2014, public authorities should have realized the danger and should have evacuated the convicts in time. This option had been open until November

[22] https://zakon.rada.gov.ua/laws/show/726–2019-%D0%BF#Text

[23] Reply of the State Judicial Administration of Ukraine to KHPG's inquiry

[24] Reply of the Parliamentary Commissioner for Human Rights to KHPG's inquiry

[25] http://www.univ.kiev.ua/content/upload/2019/-697223196.pdf

[26] http://khpg.org/files/docs/1539109440.pdf

2014, and in some cases until February 2015, yet it was never taken. The availability of this course of action is also indicated by the fact that convicts from one PI (Chervonopartyzanska PI no. 68) were successfully transferred from the TOT.

At present, it is only possible to transfer convicts in small groups (20–50 people). Given their total numbers (about 16,000) and the delays in the evacuation process (transfers are carried out every two to three months on average), at the present rate it would take about 10 years to transfer all the convicts. In addition, such transfers are only available to those convicts that were put on the Commissioner's lists of persons wishing to serve their sentence in the Government-controlled territory. They make up only 5.6% of the total number, even though the numbers of those interested are much greater (about 70% according to our information).

Due to the absence of mail communications between the Government-controlled territory of Ukraine and the TOT, not everyone is able to mail a request to the Commissioner to be put on the lists. Since January 2018, the TOT has also been experiencing problems with telephone communications due to damage sustained by the lines of local operators[27]. Moreover, members of illegal armed groups in many Pis do not allow phone calls for convicts. In light of this, we can conclude that the majority of those wishing to be transferred to the Government-controlled territory are not on the Commissioner's lists and thus are not taken into account during negotiations. At the same time, the SSU does not take part in the transfers or exchanges of convicts from the TOT on the grounds that these persons are not hostages.

Until 2018, prisoner transfers had only been possible from the territory controlled by the "DPR", with negotiations on transfers from the "LPR"-controlled territory remaining unsuccessful. The situation has changed since then. Recently, three transfers from the "LPR"-controlled territory have taken place, while evacuation of convicts from the uncontrolled areas of Donetsk Region has been paused for a year. According to unofficial data provided by the convicts themselves, their transfer stopped due to a breach of agreements by Ukraine.

In 2021, the convicts repeatedly reported the final suspension of the process of transferring them from the temporarily occupied territory to other regions of Ukraine. Representatives of the quasi-administration of penitentiary institutions told them that the representatives of the state authorities of Ukraine had allegedly stopped negotiations on the transfer of convicts. As such information has been obtained from different convicts serving sentences in different penitentiaries, it seems to be quite reliable. In addition, the Verkhovna Rada Commissioner for Human Rights, who coordinated the process of transferring convicts, provided formal responses to requests to resume the transfer process, stating only that such a transfer would take place and providing no information on the reasons for the delay in transfers lasting more than two years.

The absence of judicial oversight over the identification and transfer of convicts from the TOT to other regions of Ukraine should also be noted. As per Art. 1 of the Law of Ukraine "On the Administration of Justice and Criminal Proceedings in Connection with the Anti-Terrorist Operation"[28], the work of all courts in the TOT was suspended. Moreover, as of November 7, 2014, the State Enterprise "Ukrposhta" (Ukrainian Post) stopped delivering correspondence to and from the TOT[29]. As a result, convicts are unable to request the courts to confirm that they remain in the TOT, or to obtain other procedural documents, and neither can they submit an application with the courts online. Although in December 2017 amendments to the procedure Codes made it possible to communicate with courts via the internet, convicts are unable to take advantage of this, at the very least due to the inability to get a digital signature.

On July 5, 2018, draft law no. 8560 "On Regulation of the Legal Status of Persons Against Whom Criminal, Criminal Procedure and Criminal Executive Legislation of Ukraine Has Been Initiated as a Result of Armed Aggression, Armed Conflict or Temporary Occupation of Ukrainian Territory" was registered in the Parliament. The draft law is aimed at restoring the constitutional rights, freedoms and legitimate interests of convicts serving their sentence in the TOT, but so far it has not even been put on the Parliament's agenda. It is currently being examined by an appropriate Parliamentary Committee, but the Committee has not reached any conclusion yet. The latest developments regarding this bill took place on December 4, 2018[30]. Now it would have to be examined all over again by the new Parliament. On 29 August 2020 the draft law

[27] https://censor.net.ua/ua/news/3043834/na_okupovaniyi_chastyni_donbasu_propav_mobilnyyi_zvyazok_vodafone

[28] https://zakon.rada.gov.ua/laws/show/1632-18

[29] https://ukrposhta.ua/robota-ukrposhti-v-doneckij-ta-luganskij-oblastyax/

[30] http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64360

was revoked by the deputies who submitted it. According to the information contained on the official web portal of the Verkhovna Rada of Ukraine, no new bills similar in content have been submitted.

Question 8. *With reference to the Committee's previous concluding observations (para. 10) expressing concern about the status of investigations into allegations of excessive use of force during popular protests at the Maidan in Kyiv from December 2013 to February 2014 and in Odessa and Mariupol in May 2014, and in the light of the follow-up information provided by the State party, please provide information on:*

a) Whether the investigations into the unlawful use of physical violence by law enforcement agencies and mass shootings in Kyiv have resulted in any criminal convictions and, if so, details on the resulting sentences and verdicts. Please also provide specific information on the six proceedings on which courts had already reached decisions, as referenced in paragraph 87 of the State party's follow-up report;

b) Specific information about the outcome of the criminal trial of "Berkut" police officers Serhiy Zinchenko and Pavlo Abroskin, accused of killing protesters on 20 February 2014, and information as to whether any other of the indicted members of the "Berkut" regiment have been apprehended and tried;

c) Specific information concerning progress in the trial of Oleksandr Yakimenko, former head of the Security Service of Ukraine, and his deputy, on charges of abuse of power, including with respect to the operation involving arson of the Federation of Trade Unions of Ukraine building, which resulted in the deaths of 17 people;

d) Whether the investigation into violence on 2 May 2014 in Odessa, which resulted in the deaths of 48 people (criminal case No. 12014160500003700 before the Malynovsky District Court) has resulted in any criminal convictions and, if so, details on the resulting sentences and verdicts; the status of the investigation into the House of Trade Unions fire and the failure of the fire brigade to respond; the investigation into the failure of the police to ensure public safety; and the outcome of the six criminal proceedings against 26 persons relating to events in Odessa referenced in the State party's follow-up report;

e) Information on measures taken by the State party to ensure the safety of judges and participants involved in all of the judicial proceedings related to the events in Odessa so as to ensure the effective and independent administration of justice, in the light of reports that the judges and accused in certain proceedings have been subjected to aggressive behaviour by activists and inadequately protected by police; (f) Whether the investigation into the events on 9 May 2014 in Mariupol (criminal case No. 222001050000000047) has resulted in any criminal convictions and, if so, details on the resulting sentences and verdicts.

ANSWER TO QUESTION No. 8

1) Investigation of the events that took place during the mass protests at the Maidan Nezalezhnosti Square in Kyiv between December 2013 and February 2014

In its Report, the Government provides statistics on the number of notices of suspicion served, indictments sent to trial by the prosecutor's office as well as the number of convictions in connection with the crimes committed during the mass protests at the Maidan. These statistics are incapable of demonstrating the objective state of investigation of the highest-profile cases related to the protests, or the serious shortcomings of these investigations.

On December 8, 2014, the Department (renamed Office since June 2018) of Special Investigations (SIO) was established within the PG's office to investigate crimes committed during the Maidan protests.

The SIO will lose its investigative authority on November 20, 2019[31], and by February 20, 2020, all case files on Maidan events will be given to the SBI. The investigation of cases that are at the stage of pre-trial investigation will essentially start from scratch[32].

The first killings at the Maidan that took place on January 22, 2014 — of Nigoyan, Zhyznevskyi and Senyk — are still not solved, and the PG has no suspects in this case[33].

[31] para. 3, part 1, Section X and part 1, Section XI of the CPC

[32] https://www.facebook.com/dbr.gov.ua/posts/1159586844196954, https://dt.ua/UKRAINE/yakscho-gpu-peredast-dbr-spravi-maydanu-to-yih-rozsliduvannya-bude-zablokovano-truba-301023_.html

[33] https://www.pravda.com.ua/rus/news/2018/11/21/7198868/

On February 19, 2019, the SIO head announced that 48 sentences had been delivered in the Maidan cases. However, only nine of these sentences were for actual imprisonment[34]. Cases involving beatings of a large number of victims have had no convictions or even a finished pre-trial investigation[35].

On February 1, 2019, Ukraine's PG Yuriy Lutsenko announced the completion of the pre-trial investigation against those who ordered the Maidan shootings, adding that he was expecting the Parliament to make an important decision that would allow for the case to be taken to trial[36]. On February 20, 2019, the SIO head refuted the PG's statement[37]; he also made numerous statements regarding the inefficiency of the investigation and attempts of obstruction, including by the police and the government[38].

Over 30 persons charged with Maidan-related crimes still work in law enforcement[39]. The constant postponements and delays of Maidan trials are torture to the relatives of the dead and the injured. 17 parents of the Maidan victims have died over the past 5 years[40].

On 17 December 2020 the prosecutor's office announced the completion of a special pre-trial investigation into two members of the group of "Titushky" suspected of, in particular, the abduction and murder of Yury Verbytsky in January 2014, and charged them. On 28 December two more members of the group of "Titushky", detained in March 2020, were charged with his abduction and torture. One of them has also been charged with murder. We also note that the EctHR found that the abduction, ill-treatment and murder of Yury Verbytsky was not effectively investigated[41].

On 10 April 2020 the SBI notified a journalist who took part in protests on the Maidan of the suspicion of premeditated murder. She is accused of setting fire to the premises of the then ruling "Party of Regions", which resulted in the death of an office worker, Volodymyr Zakharov[42].

In Ukraine, it is impossible to prosecute for crimes committed by protesters against law enforcement officers due to a law that requires all criminal proceedings against the protesters suspected of committing certain crimes, particularly murder or attempted murder of police officers, to be closed and the information about them destroyed[43]. Due to this law, certain Maidan activists and "third parties" have evaded prosecution. Thus, on April 3, 2018, one of the Maidan protesters was arrested on charges of intentional murder of two police officers on February 20, 2014[44]. In a documentary of the Babylon 13 studio released on May 14, 2016[45], the suspect admits to killing two police officers with gunshots to the head in the morning of February 20 from the building of the Conservatory at the Maidan. His first arrest drew harsh condemnation from high officials, namely Parliament members, for violating the 2014 law[46], which freed protesters from prosecution for certain crimes committed during the Maidan protests. At least three MPs, including Volodymyr Parasyuk (a prominent figure during the Maidan protests, who, according to the suspect, was with him at

[34] https://zn.ua/UKRAINE/sudy-vynesli-pochti-50-prigovorov-po-delam-maydana-gpu-309428_.html)

[35] https://www.rbc.ua/rus/news/prigovory-nebolshih-delah-maydana-vlyayutsya-1550565717.html

[36] https://www.youtube.com/watch?v=Ags83drS3j8&t=31s

[37] https://nv.ua/ukraine/events/resheniy-ne-prinyato-gorbatyuk-o-zavershenii-sledstviya-po-chinovnikam-podozrevaemym-v-organizacii-rasstrelov-na-maydane-50007148.html

[38] https://lb.ua/news/2017/05/28/367549_gorbatyuk_obvinil_matiosa.html,
https://zn.ua/UKRAINE/gorbatyuk-o-rassledovanii-del-maydana-problemy-sozdavalis-na-vysshem-urovne-314970_.html,
https://censor.net.ua/news/3122438/prezident_vspomnil_o_problemah_v_rassledovanii_prestupleniyi_na_mayidane_tolko_v_period_predvybornoyi,
https://news.liga.net/politics/news/podozrevaemye-esche-rabotayut-gpu-zayavila-o-sabotaje-del-maydana,
https://strana.ua/articles/interview/107326-serhej-horbatjuk-rasskazal-o-svoej-otstavke-i-tsarjakh-vo-hlave-silovykh-struktur-ukrainy.html

[39] https://comments.ua/politics/641880-bolee-30-figurantov-del-maydana-sih.html

[40] https://gordonua.com/news/politics/syn-geroya-nebesnoy-sotni-za-pyat-let-umerli-17-roditeley-pogibshih-maydan-ovcev-ne-dozhdalis-spravedlivosti-753232.html

[41] http://hudoc.echr.coe.int/fre?i=001–207417, п. 73.

[42] https://dbr.gov.ua/news/zvernennya_v_o__direktora_dbr_oleksandra_sokolova_schodo_spravi_chornovol_video

[43] Law of Ukraine "On Preventing Prosecution and Punishment of Persons in Connection with Events that Occurred During Peaceful Demonstrations, and On Invalidating Certain Laws of Ukraine".

[44] https://www.gp.gov.ua/ua/news.html?_m=publications&_t=rec&id=227036&fp=50

[45] https://www.youtube.com/watch?v=9b6BiN7Eo3s&t=3s

[46] Law of Ukraine "On Preventing Prosecution and Punishment of Persons in Connection with Events that Occurred During Peaceful Demonstrations, and On Invalidating Certain Laws of Ukraine".

the Conservatory building at the time), accused the Prosecutor of targeting "patriots" instead of investigating the killings of protesters[47]. On the same day, the PG made a statement that the acts for which the suspect was charged were incorrectly classified, and replaced the head of the prosecution team in this case with his deputy, who immediately dropped the charge of intentional murder[48].

2) The trial of six former Berkut officers (Sergiy Zinchenko, Oleksandr Ambroskin and others) accused of killing protesters on February 20, 2014

In its Report, the Government mentions a large number of victims and witnesses questioned in court, yet the "Georgian snipers", who admitted to being involved in the Maidan killings, were never questioned[49]. On December 19, 2017, the court granted the motion to question the "Georgian snipers" via videoconferencing[50], but this has not been done to this day. On April 18, 2019, the Svyatoshynskyi Court, as part of the criminal case against the Berkut officers and contrary to its earlier decision, refused, without giving any explanations, to question the "Georgian snipers", who are potentially important witnesses in the Maidan shootings case[51].

On January 10, 2017, members of the right-wing organization S-14 disrupted a hearing in the Berkut officers' case. Nothing is known about any investigation into this incident and no one has been brought to account for it so far[52]. On September 14, 2018, an assault was made on a judge in the Maidan shootings case. The judge was hospitalized. The judge attributes the attack to his professional activities[53].

On October 31, 2018, the SBI arrested a MIA sniper on suspicion of murder of Maidan activist Oleksandr Khrapchenko. On November 3, 2018, the Pecherskyi District Court of Kyiv authorized a 60-day detention for him[54]. On December 12, 2018, his case was separated from the cases of the five Berkut officers to avoid another pre-trial investigation. Nevertheless, the investigation is still ongoing due to a large number of required investigative actions.

Two Berkut officers were arrested on April 3, 2014[55]; three others were arrested on February 20, February 23[56], and June 26[57], 2015 respectively, with four of the five officers remaining in custody since then until 29 December 2019 when they were transferred to the temporarily occupied territory of Ukraine during the exchange[58], and one officer being kept under 24-hour house arrest after the court changed the restraining measure for him on July 16, 2019[59]. This is cause for concern for the detainees' rights, as they have remained in custody between four and a half to five and a half years without the possibility of bail.

On February 22, 2019, the court refused to sequester the land where the Dignity Revolution Museum[60] was to be built. In May 2019, the Museum's construction began at the Institutska Street[61], which could impede reconstructions of events, which are regularly conducted there, due to the construction covering the crime scenes.

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[47] https://www.youtube.com/watch?v=eWP33VrFCZY

[48] https://gordonua.com/news/politics/lucenko-schitayu-nepravilnoy-kvalifikaciyu-deystviy-uchastnika-revolyucii-dostoinstva-bubenchika-239894.html

[49] https://www.youtube.com/watch?v=l7fLPPqVfqM

[50] https://www.youtube.com/watch?v=NvJl6r9mmhM

[51] https://www.youtube.com/watch?v=qMB4PLQUAUU

[52] https://www.youtube.com/watch?v=79omJrOz2uk

[53] http://rsu.gov.ua/ua/news/do-uvagi-gromadskosti-ta-zmi-zdijsneno-napad-na-suddu-akij-sluhae-spravu-pro-vbivstvo-ludej-na-majdani

[54] https://gordonua.com/news/localnews/gorbatyuk-podtverdil-chto-podozrevaemogo-v-ubiystvah-na-maydane-snaypera-arestovali-3-noyabrya-507677.html

[55] http://reyestr.court.gov.ua/Review/54849886, http://reyestr.court.gov.ua/Review/53126587

[56] https://www.facebook.com/arsen.avakov.1/posts/790773834346058

[57] http://reyestr.court.gov.ua/Review/45973462

[58] https://www.pravda.com.ua/rus/articles/2019/12/30/7236255/

[59] https://zik.ua/ru/news/2019/07/16/berkutovtsa_tamtura_otpustyly_yz_zala_suda_na_kruglosutochniy_domashnyy_1607283

[60] https://www.youtube.com/watch?v=St_UT0UoNHg

[61] https://www.ukrinform.ua/rubric-kyiv/2698951-u-kievi-pocali-zvoditi-memorial-geroiv-nebesnoi-sotni.html

December 29, 2019 the trial of five Berkut officers was interrupted by their transfer to the territory which is temporarily controlled by the self-proclaimed "DPR" and "LPR" within the framework of exchange between Ukraine and the so-called "DPR" and "LPR".

In February 2020 two accused persons confident of their innocence who believed their persecution to be politically motivated, returned to the territory controlled by Ukraine [62].

On 20 October 2020 the court declared wanted three accused persons who in December 2019 were transferred by Ukraine to the so-called "LPR" and "DPR" as part of the exchange and who did not return to the controlled territory of Ukraine[63].

On 25 November 2020 the court separated the materials concerning the three suspects who were declared wanted into a separate set of proceedings and stopped it until the search for these persons is completed[64].

The consideration of the case concerning two other suspects who remain on the territory of Ukraine is ongoing.

3) Information concerning progress in the trial of Oleksandr Yakimenko, former head of the Security Service of Ukraine

In March 2015, the Prosecutor General's Office notified Oleksandr Yakymenko of suspicion of illegally declaring an anti-terrorist operation during the Maidan on 18 February 2014. Oleksandr Yakymenko fled to Russia on 22 February. He did not appear for questioning.

On 15 September 2017, the Prosecutor General's Office of Russia refused to extradite Yakymenko to Ukraine, and Interpol refused to declare him internationally wanted. On 1 December 2017, Pechersky District Court of Kyiv allowed the Department of Special Investigations of the Prosecutor General's Office to investigate Oleksandr Yakymenko in absentia. After the prosecutor's office was deprived of its powers to investigate crimes, the case was transferred to the State Bureau of Investigations.

At the end of December 2020, Pechersky District Court of Kyiv again granted the request of the investigator from the State Bureau of Investigations to conduct a special (in absentia) investigation into the former head of the Security Service of Ukraine Oleksandr Yakymenko. According to the press service of the Prosecutor General's Office, Pechersky court granted the right to conduct a pre-trial investigation into the suspect in his absence (in absentia). The investigation is ongoing.

On 26 February 2019, the National Security and Defence Council imposed economic sanctions against 10 former high-ranking officials, including Oleksandr Yakymenko.

4) Investigation of the May 2, 2014 events in Odesa

In its Report, the Government described the investigation of the May 2, 2014 events in Odesa in 4 paragraphs (paras. 37–40), only providing general statistics on the results of the investigations.

The investigation of the events of May 2, 2014 in Odesa focused on three aspects: riots in the city centre, during which six men were shot dead; riots at the Kulykove Pole Square followed by a fire at the Trade Unions House, which claimed the lives of 42 people; as well as negligence of the police and the State Emergency Service.

Investigation into the city centre riots that killed six men

Of those who took part in the riots, 29 persons were charged, with 28 of them being anti-Maidan supporters as well as one Euromaidan supporter. The latter is the only person charged with murder committed on May 2, 2014 (the murder of Yevgen Losynskyi). The investigation into the death of 5 other men — Andriy Biryukov, Oleksandr Zhulkov, Igor Ivanov, Hennadiy Petrov and Mykola Yavorskyi — is still ongoing and has named no suspects so far.

[62] https://www.dw.com/uk/двоє-ексберкутівців-яких-обміняли-з-ордло-повернулись-в-київ/a-52305397

[63] https://zaxid.net/sud_ogolosiv_u_mizhnarodniy_rozshuk_berkutivtsiv_yakih_peredali_rosiyi_pid_chas_obminu_n1509333

[64] https://espreso.tv/news/2020/11/25/rozstrily_na_maydani_sud_vydilyv_u_okremu_spravu_epizody_schodo_obminyanykh_quoteksberkutivcivquot

Criminal investigation of the murder of Yevgen Losynskyi

On May 18, 2014, the police arrested a Euromaidan supporter suspected of killing Yevgen Losynskyi, an anti-Maidan supporter, as well as of attempted murder of a police officer in the city centre. On May 20, 2014, the court, in the presence of multiple Euromaidan supporters who were demanding that the court release the suspect, ordered house arrest as the suspect's restraining measure[65]. In November 2014, the house arrest's maximum duration expired and now the suspect is free of any restraining measure.

In April 2015, an indictment was sent to the Primorskyi District Court of Odesa. Between June and March 2016, three district courts of Odesa — Malynovskyi[66], Suvorovskyi[67] and Kyivskyi[68] — refused to consider this case, justifying it with the lack of judges, the participation of their judges in the pre-trial stage, and fears of potential disturbances by radicals that support the defendant.

On May 31, 2016, the Kyivskyi District Court of Odesa ruled to return the indictment to the prosecutor on the grounds that it was not in line with CPC requirements[69]. After the indictment had been once again sent to this court on November 14, 2016[70], the court again decided to return the indictment on January 5, 2017, citing vague legal classification[71].

In July 2018, the indictment was sent to the Primorskyi District Court of Odesa, but due to the insufficient number of judges for a panel (earlier all judges had participated in the case as investigative judges), the case was once again referred to the Malynovskyi District Court of Odesa[72]. Malinovsky district court began considering the case.

On 10 February 2021 the court released the jurors from participating in the criminal proceedings in connection with their dismissal from the duties of jurors and included a reserve juror in the court[73]. After that, only two jurors remained in the court, with the required three[74], and the reserve jurors were absent. This makes it impossible to further consider the case and the proceedings must begin anew[75].

The defendant's radical supporters, including the now former MP Igor Mosiychuk, pressured the court by disrupting court hearings[76] and forcing judges withdraw from the case[77].

Investigation into the murders of five men in the city centre

The police have failed to find the murderers of Andriy Biryukov, Oleksandr Zhulkov, Igor Ivanov, Hennadiy Petrov and Mykola Yavorskyi.

According to the Council of Europe's International Advisory Panel, the difficulties with finding those responsible for these killings are due to the lack of accurate information on how exactly some of the victims received fatal wounds (only the deaths of three of them were properly documented in a hospital) as well as the fact that the crime scenes had not been properly secured[78].

The case against 19 anti-Maidan supporters charged with participating in the city centre riots

The most high-profile case that shows the inefficiency and bias of the investigators is the case against 19 anti-Maidan supporters charged with participating in the city centre riots.

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[65] https://www.youtube.com/watch?v=aePVsT10MNc

[66] http://reyestr.court.gov.ua/Review/47969390

[67] http://reyestr.court.gov.ua/Review/55273736

[68] http://reyestr.court.gov.ua/Review/56213379

[69] http://reyestr.court.gov.ua/Review/58007236

[70] http://reyestr.court.gov.ua/Review/63933419

[71] http://reyestr.court.gov.ua/Review/63933992

[72] http://reyestr.court.gov.ua/Review/75208386

[73] https://reyestr.court.gov.ua/Review/94784913

[74] In accordance with Part 3 of Art. 31 of the CCP of Ukraine, criminal proceedings in the first instance court for crimes punishable by life imprisonment, are carried out <…> at the request of the accused — by a court of two judges and three jurors.

[75] In accordance with Part 3 of Art. 390 of the CCP of Ukraine, in the case of removal of a juror, a reserve juror is included in the court, after which the trial continues, or, in the absence of a reserve juror, a new juror is selected <…>, after which the trial begins anew.

[76] https://www.youtube.com/watch?v=Yd6HjYHgppE

[77] https://www.youtube.com/watch?v=ueHHestJUgk, https://www.youtube.com/watch?v=S-N8a7eIwmc

[78] para. 131 https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168048851b

On September 18, 2017, the Illichivsk City Court of Odesa Region acquitted all 19 defendants, emphasizing the inefficiency of the investigation as well as the biased and politically motivated criminal prosecution of anti-Maidan supporters for their participation in the events of May 2, 2014 in Odesa[79]. Following the acquittal, all 5 defendants that had been in custody since May 2014 were released in the courtroom. However, immediately after their acquittal, 2 of them were arrested by the Prosecutor's Office right there in the courtroom on new charges, specifically organization of the riots. On October 18, 2017, the Appeals Court of Odesa Region found that the detention had not been officially registered from the moment of apprehension to the moment of determination of the restraining measure on September 19, 2017, which was pre-trial detention[80].

The Prosecutor's Office appealed against the acquittal, and on December 4, 2017, the Appeals Court of Mykolayiv Region opened proceedings on this appeal[81]. Between February 2018 and January 2020 23 court hearings were postponed. Only in February 2020, 2 years after the opening of the proceedings, The Court of Appeal ordered to bring 10 defendants, who did not systematically appear in court, and thus led to delays in the case. On 25 September 2020, the Court of Appeal declared the 10 defendants wanted[82].

As of May 2021, the trial has not begun.

Investigation of the riots at the Kulykove Pole Square followed by a fire at the Trade Unions building that claimed the lives of 42 people

The investigation into the fire at the Trade Unions building has been ongoing for five years now and no suspects have turned up. Moreover, the investigation does not even aim to find those responsible for setting fire to the Trade Unions building while there were people inside. Instead, the focus is on cases in which anti-Maidan supporters are prosecuted for participating in the city centre riots, while the May 2, 2014 episode in Odesa that killed 42 people is simply being ignored.

The criminal investigation of police misconduct during the city centre riots and at the Kulykove Pole Square

On December 24, 2014, criminal proceedings were opened against the former head of MIA's Main Directorate in Odesa Region on charges of abuse of authority, negligence and dereliction of the duty to rescue people during the city centre riots and at the Kulykove Pole Square, which claimed 48 lives.

On May 13, 2015, the Pecherskyi District Court of Kyiv ordered to place the suspect under house arrest[83]. In December 2015, the investigation was completed and the case file was sent to the Primorskyi District Court of Odesa[84]. On June 6, 2016, the court returned the indictment to the Prosecutor's Office on the grounds that it was not in line with CPC requirements[85]. On July 12, 2016, the Appeals Court of Odesa Region overturned this decision and returned the case to the Primorskyi District Court of Odesa[86]. On March 20, 2017, the judge was dismissed and the trial had to start anew[87].

As of May 1, 2021, the proceedings at the Prymorskyi Court of Odesa are still ongoing, but neither the court nor the law enforcement or the media are providing proper coverage for them. There is no public or official information on the current progress of the trial.

Criminal investigation into the actions of officials of the State Emergency Service

On October 16, 2014, over five months after the fire at the Trade Unions building, criminal proceedings were opened against State Emergency Service officials for deliberate abandonment of people that were inside the Trade Unions building, which resulted in 42 deaths.

[79] http://reyestr.court.gov.ua/Review/68926870

[80] http://reyestr.court.gov.ua/Review/69748399

[81] http://reyestr.court.gov.ua/Review/70681462

[82] https://reyestr.court.gov.ua/Review/91838037

[83] https://www.gp.gov.ua/ua/news.html?_m=publications&_t=rec&id=155920&fp=5310

[84] http://reyestr.court.gov.ua/Review/58184124

[85] http://reyestr.court.gov.ua/Review/58184124

[86] http://reyestr.court.gov.ua/Review/58879753

[87] http://reyestr.court.gov.ua/Review/65421379

On March 3, 2016, the Primorskyi District Court of Odesa ordered to place the former deputy head of the Main Directorate of the State Emergency Service in Odesa Region[88], the former shift head[89] and his former assistant[90] under house arrest.

In June 2016, an indictment against these three officials of the State Emergency Service was referred to the Primorskyi District Court of Odesa. On September 26, 2016, the court ordered the return of the prosecutor's indictment on the grounds that it was not in line with CPC requirements[91]. In January 2017, the Prosecutor sent a revised indictment to the court. Between April 2016 and January 2018, 6 judges stepped away from the case, citing their participation in the pre-trial stage[92]. On May 14, 2018, the Appeals Court of Odesa Region sent the case to the Kyiv District Court of Odesa due to the insufficient number of judges for a panel at the Prymorskyi District Court of Odesa[93]. On October 29, 2018, the Kyiv District Court of Odesa once again returned the indictment to the Prosecutor for revision[94]. The Prosecutor appealed against this decision and on January 16, 2019, the Odesa Appeals Court overturned the decision of the first instance court and returned the case to the Primorskyi District Court of Odesa[95].

As of May 1, 2021, the court consideration still did not begin. The preparatory court hearing that was repeatedly postponed due to the court's inability to ensure the presence of all victims is scheduled for May 26, 2021.

Question 9. *With reference to the Committee's previous concluding observations (para. 11) expressing concern at reports of torture, ill-treatment, enforced disappearance, deprivation of life and other violations by members of armed groups, including in the Donetsk and Luhansk regions, and in the light of the follow-up information provided by the State party, please provide information on:*

a) Any cases in which alleged perpetrators of acts of torture, ill-treatment, enforced disappearances and deprivation of life committed on the territory of the State party but in areas not under governmental control — whether officials of the State party, members of armed groups or officials of the Russian Federation — have been prosecuted during the period under review;

b) The status of the criminal investigations pertaining to such abuses being undertaken by the Security Service of Ukraine and the Military Prosecutor;

c) Whether redress and rehabilitation have been provided to victims identified during the above investigations, including to those who were wounded and to the families of those killed, in accordance with the Committee's general comment No. 3 (2012) on the implementation of article 14.

ANSWER TO QUESTION No. 9

Cases on instances of murder, torture or enforced disappearances in the TOT are the responsibility of the National Police, SSU, as well as, partially, PG's Main Military Prosecutor's Office. Such proceedings, however, are largely ineffective due to a number of external and internal factors.

The Prosecutor's Office of Luhansk Region in August 2014 and the Prosecutor's Office of Donetsk Region in September 2014 ceased their activities in the TOT. The SSU and police departments followed suit soon after, with some of their personnel joining illegal armed groups. After the autumn of 2014, terrorists captured a number of cities in Donetsk and Luhansk regions. After that, the work of Ukrainian public

[88] http://reyestr.court.gov.ua/Review/56273137

[89] http://reyestr.court.gov.ua/Review/56273219

[90] http://reyestr.court.gov.ua/Review/56246023

[91] http://reyestr.court.gov.ua/Review/61840750

[92] http://reyestr.court.gov.ua/Review/66832215, http://reyestr.court.gov.ua/Review/66772122, http://reyestr.court.gov.ua/Review/66724245, http://reyestr.court.gov.ua/Review/66802885, http://reyestr.court.gov.ua/Review/70836669, http://reyestr.court.gov.ua/Review/71558122

[93] http://reyestr.court.gov.ua/Review/74078416

[94] http://reyestr.court.gov.ua/Review/79278196

[95] http://reyestr.court.gov.ua/Review/79278196

authorities in this territory became impossible. The authorities moved to other cities in their respective regions.

Nevertheless, criminal proceedings have been opened regarding crimes committed in the TOT, although investigative actions proved impossible due to the lack of access to the crime scenes. As a result, some evidence has been lost. Law enforcement agencies today are unable to examine the crime scenes, collect physical or written evidence, interview witnesses, apprehend suspects, etc. In their replies to inquiries regarding the course of investigations, the authorities report that it is impossible to carry out proper investigations.

However, even if the required evidence were to be gathered, it is hardly possible to bring the perpetrators to justice. Most of them are hiding in the TOT or in Russia. None of the leaders of illegal armed groups responsible for torture, murder or forced disappearances have faced justice thus far. The PG has repeatedly asked Interpol to put those responsible for violent crimes in the territories controlled by illegal armed groups on wanted lists, but many of these requests have been rejected, specifically those regarding Mr. Zakharchenko (head of the so-called "DPR"), Mr. Bezler (Horlivka Unit head responsible for capturing and torturing hundreds of people), Mr. Plotnytskyi (head of the so-called "LPR"), Mr. Strelkov (commander of terrorist groups in Slovyansk), Mr. Pavlov (commander of the Sparta Battalion), etc. In accordance with Article 3 of the Interpol Statute, it has no right to interfere in political, military, religious or racial matters and considers the conflict in Ukraine to fall under this definition[96].

In these conditions, with no access to the areas where investigative actions are required and with no power to apprehend and prosecute the perpetrators, it appears impossible to conduct effective investigations in the near future. Moreover, those who suffered in the course of the ATO (prisoners, wounded, families of those killed) still have no special status, nor has a special state register of civilians affected by the armed conflict been created. As a result, there is no official government statistics on the numbers of prisoners, missing persons or persons deprived of life. According to the UN Human Rights Monitoring Mission in Ukraine, over 3.3 thousand civilians have been killed and about 9 thousand civilians have received injuries[97].

The majority of criminal investigations have to do with the capture of civilians and soldiers, torture, murder, extra-judicial killings and abductions as well as damaged or destroyed property. In these situations, testimonies of witnesses that were near the victim at the time and saw the crime being committed constitute the only source of evidence available to the State. However, this source has its own limitations, for instance, when it is difficult to locate a witness or when a witness refuses to testify, particularly out of fear of retribution. Moreover, in a large number of investigations, there are no eyewitnesses in the first place. At the same time, even those investigative actions that could be carried out in the territory controlled by the Government of Ukraine were in many cases performed so poorly that evidence of crimes was irretrievably lost, and this was the responsibility of the investigative authorities. Victims of terrorism were often not recognized as the injured party in such proceedings, which, naturally, was not conducive to the investigations.

According to PG's official website, only 72 pre-trial investigations under Article 258 CC "Terrorist Act" resulted in indictments sent to court over the 2014–2017 period, which is only slightly over 1% of the total number of criminal proceedings initiated during this period (6044)[98].

ARTICLES 1 AND 4

Question 10. *With reference to the Committee's previous concluding observations (para. 7), please indicate whether the State party has amended the Criminal Code to include a definition of torture that is in conformity with article 1 of the Convention and that specifically includes the inflicting of torture by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.*

[96] https://www.pravda.com.ua/news/2015/04/15/7064810/

[97] https://www.ohchr.org/Documents/Countries/UA/ReportUkraineFev-May2018_UKRAINIAN.pdf

[98] http://www.gp.gov.ua/ua/statinfo.html

Question 11. *With reference to the Committee's previous concluding observations (para. 8), please indicate if the State party has amended its legislation to ensure that the crime of torture is considered a grave crime and subject to penalties commensurate with the seriousness of the offense.*

ANSWER TO QUESTIONS Nos. 10, 11

The concept of torture was introduced into the Criminal Code for the first time in 2001 with Article 127, and its definition there differs from the one in Article 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter — Convention). Among other things, the provision lacked the special subject of "public official".

In 2005, another element was added to the definition of the crime of torture — its commission by law enforcement officials, with a corresponding increase in the severity of punishment of up to life imprisonment if the act has resulted in the victim's death. The definition of "torture" was also expanded with the motive of torture or threat of torture.

In 2008, another version of Article 127 CC was adopted, which added the motive of discrimination to the definition of "torture", with the special subject of "law enforcement official" and with the severity of punishment for this crime significantly reduced — between 3 and 7 years in prison. Thus, CC no longer considered torture a serious crime, which contradicts the "grave nature" of such crimes within the meaning of para. 2, Article 4 of the Convention.

The final changes to Article 127 CC were made in 2009, removing officials from the list of potential perpetrators and introducing the following classifying features: "on the grounds of racial, national or religious intolerance", with the potential sentence increased to 5-10 years in prison.

Thus, the definition of the crime of torture in Ukrainian law has no provision for instances when it is committed by a public official carrying out the torture in the official capacity.

Despite the Government's assurances that the MoJ has already drafted a bill that should, among other things, amend Article 127 CC and bring it in line with the Convention, on March 27, 2019 this bill was returned for elaboration, which means that Ukraine has failed to fulfil its commitment to bring the definition of torture in domestic law in line with Article 1 of the Convention over the reporting period. Thus, Article 127 CC continues to provide for a general perpetrator instead of a "public official or other person acting in an official capacity" as in Article 1 of the Convention.

Question 12. *Please provide data on prosecutions of public officials carried out during the reporting period under articles 127 (torture), 364 (abuse of authority), 365 (exceeding authority) and 373 (compelling testimony) of the Criminal Code. Please provide data on the number of such prosecutions that resulted in a conviction and the sentence handed down in each case, disaggregated by the institutional affiliation of the perpetrators. Please in particular indicate whether any member of the Security Service of Ukraine has been prosecuted on charges of torture during the reporting period, and the outcome(s).*

Question 13. *Please provide additional information on the progress of the Prosecutor-General's investigation into the 24 complaints resulting in indictments of 40 law enforcement officers for torture or ill-treatment received in the first nine months of 2015, as referenced in the State party's follow-up report, and information on any investigations into allegations of torture and ill-treatment that have led to indictments since September 2015.*

ANSWER TO QUESTIONS Nos. 12, 13

In most cases, reported criminal offences under Articles 127, 364, 365 and 373 CC are not entered by investigators in the Single Register of Pre-Trial Investigations, in violation of Art. 214 CPC, which requires for this to be done within 24 hours. As a result, the applicants in these cases must file complaints on failure to enter information in the SRPTI with the investigating judges. Crime reports are also groundlessly considered in accordance with the Law of Ukraine "On Citizens' Applications". Due to these circumstances, pre-trial investigations in criminal proceedings start after significant delays, which often results in loss of evidence, such as medical evidence in the form of signs of injuries.

Even after a pre-trial investigation has begun, investigators largely fail to conduct the necessary investigative actions. In particular, applicants in many cases — the victims of crimes — are not recognized as

victims, which prevents them from taking an active part in the proceedings. The applicants are then forced to file complaints against this with the investigating judges. Moreover, even once they are recognized as victims, their requests for necessary investigative actions are often denied[99]. Data on criminal proceedings under Articles 127, 364, 365 and 373 CC are given in the following table[100]:

CC Article	Article 127 CC (Torture)			Article 364 CC (abuse of authority or office)			Article 365 CC (excess of authority or office)			Article 373 CC (compelling testimony)		
Year	Registered	Indictment issued	Court decision reached	Registered	Indictment issued	Court decision reached	Registered	Indictment issued	Court decision reached	Registered	Indictment issued	Court decision reached
2014	39	19	0	4919	231	210	4121	58	67	61	0	0
2015	4	2	0	4925	187	85	3885	38	31	48	0	0
2016	38	11	0	4947	99	59	3599	46	27	63	0	0
2017	47	28	0	5657	189	45	4130	30	24	60	0	0
2018	115	52	2	4945	250	34	3621	24	14	76	0	0
2019	96	22	4	2272	101	25	137	0	0	4	0	0
2020	80	22	22	1456	9	61	2444	44	38	52	2	0

Currently there are no official statistics on crime reports, except for a handful of registered reports, while the real figure is much greater. Moreover, as the above statistics show, the number of cases taken to trial is far lower than the number of applications. In addition, the number of cases that go to trial is much lower than the number of crime reports, while the court judgements are even fewer.

At the same time, Kharkiv Human Rights Protection Group with Kharkiv Institute for Social Research conducted the research with the aim of creating a comparative analysis of opinions of regular citizens and the representatives of the police concerning the events of dissemination of unlawful violence in the police in 2004–2020. The research was aimed at studying the following issues: analysis of the attitude to the problem of unlawful violence in the police and its admissibility; Ukrainians' views on the dynamics of change in this area in recent years, the causes of illegal violence and possible ways to improve the situation. During the research most of the respondents deemed the police ineffective — indicated by 56,2% of the respondents.

Assessing the general trends of unlawful violence (beatings, torture, intimidation) in the police, the majority of respondents (51,8%) indicated that they considered such cases common. After a slight decrease in the number of such cases in 2018, the scale of this phenomenon returned to the indicators of the previous years and amounted to more than 698,000 per year. The estimated number of beatings and injuries during detention also increased to 559,140, respectively, and the number of cases of unlawful violence during investigations doubled to 419,355 cases per year. At the same time, almost 100,000 people are subjected to various types of torture (from causing pain to thirsty torture, failure to provide medical care) in the police each year.

Dozens of police officers from among those who ended up in the selection stated that in 12 months they saw the cases of beatings, the infliction of suffering and torture numerously, and 78 — that those only happened once. The police officers who witnessed ill-treatment indicated that victims were most often beaten, injured, insulted and degraded. But at the same time, the opinion of police officers about the prevalence of unlawful violence differs significantly from the opinion of the population. Thus, less than one percent of police officers consider it "very common", and the number of those who consider violence to be somewhat widespread does not exceed 5%. More than half of police officers believe that unlawful police violence is not common at all.

A significant part of the society (59,7%) considers that the potential risk of becoming a victim of torture or ill-treatment by the police persists for virtually anyone in Ukraine, regardless of their past and personal characteristics. The police officers themselves have a completely different idea of this. In general, about

[99] http://search.ligazakon.ua/l_doc2.nsf/link1/VRR00212.html

[100] Information based on PG's reply to the KHPG.

half of the police officers surveyed believe that torture and ill-treatment by the police do not threaten anyone, and this opinion is more common among police officers (55.5%) than among patrol officers (44,9%)[101].

Thus, we have to state that the official statistics on the number of cases of illegal violence by the authorities differ hundreds of times from the data obtained during the independent sociological survey. Most cases of torture remain hidden due to a number of factors: such as people's disbelief in the effectiveness of public authorities; fear of repeated abuse or torture; low legal education of victims of torture, who do not know how to record and complain about such actions, and often have limited access to legal aid; corruption etc. It is possible to overcome unfavourable factors only with a complete change of administrative practice, the creation of a truly independent and effective system of investigation of torture, and, accordingly, the implementation of a fair trial and bringing the perpetrators to justice.

As for the progress of investigations of 24 reports by the PG, which have resulted in indictments against 40 law enforcement officers during the first 9 months of 2015, we have received no information in response to our inquiries. In its reply, the PG's office claims that it has no such information and no statistics on the matter.

Concerning the investigation of complaints on the threat of use and/or use of sexual violence by the employees of the law-enforcement bodies to the detainees/suspects/witnesses

The most high-profile case in this reporting period was the rape of a witness. Thus, on the night of 23–24 May, 2020, two police officers raped and beat a female witness in the Kagarlyk Regional Police Department in Kyiv Oblast, as well as mocked another witness, a man.

The preliminary investigation data show that on the night of 24 May, an operative summoned a girl to the Kagarlyk police station as a witness — put a gas mask on her head, handcuffed her and fired a shotgun over her head. He then raped the victim several times. In addition, law enforcement officers used physical force on a man who was in the police station then. Threatening the victim with rape, the police brought him to his knees, beat him on the head with batons, put a gas mask on his head and fired a pistol over his head. As a result of these actions, the victim received fractures of the ribs and nose[102].

On 26 May 2020 SBI handed two police officers the notice of suspicion of beating and rape of a witness girl[103]. On the same day, the Holosiivskyi District Court of Kyiv chose a preventive measure for these police officers in the form of detention without bail[104].

On 2 July 2020 SBI handed two more police officers the notice of suspicion of rape. The SBI noted that after the start of the pre-trial investigation into the beating and rape of a woman in the Kagarlyk police department, people began to apply to the SBI with reports of torture that had previously taken place in this department. According to the investigation, in early January 2020, the employees of the Kagarlyk police department, previously suspected of torture and rape, tortured two people in order to make them confess of the theft[105].

On 3 July 2020 the Holosiivskyi District Court of Kyiv chose a preventive measure in the form of a round-the-clock house arrest for one police officer, who, according to the investigators, under his supervisor's orders held the victim's hands on the night of 23-24 May 2020, while his supervisor put a gas mask on the woman's head and periodically clamped the breathing tube seeking to obtain incriminating statements. The court chose a measure of restraint in the form of detention without bail for the second police officer suspected of another episode of torture, in early January 2020[106].

On 27 October 2020 Holosiivskyi District Court of Kyiv replaced a preventive measure of one suspect in the form of pre-trial detention with house arrest[107].

On 28 October 2020 the Prosecutor General's Office reported the suspicion to the former head of the Kagarlyk regional police department. According to the investigation, the head of the police department knew that on 9 January 2020, his subordinates detained two people without registration and kept them

[101] http://khpg.org/1608808709

[102] https://www.radiosvoboda.org/a/news-kagarlyk-poterpiliy-nadaly-ohoronu/30691708.html

[103] https://www.radiosvoboda.org/a/news-dbr-kaharlyk/30635038.html

[104] https://www.radiosvoboda.org/a/news-sud-areshtuvav-politseiskykh-pidozriuvanykh-u-zgvaltuvanni/30635751.html

[105] https://hromadske.ua/posts/zgvaltuvannya-v-kagarliku-pro-pidozru-u-torturah-povidomili-she-dvom-policejskim-sbu

[106] https://hromadske.ua/posts/katuvannya-u-kagarliku-sud-obrav-zapobizhni-zahodi-she-dvom-pidozryuvanim-policejskim

[107] https://hromadske.ua/posts/zgvaltuvannya-u-kagarliku-odnogo-policejskogo-vidpustili-z-pid-varti

overnight in the police station handcuffed to the radiator. However, the chief did not take measures to stop the unlawful actions of the police and did not inform the competent authorities about this crime. On the same day, the Holosiivskyi District Court of Kyiv chose a preventive measure for the ex-chief in the form of a round-the-clock house arrest[108]. He became the fifth suspect in that case.

According to the Obukhiv District Court of Kyiv region, in January 2021 the indictment against five defendants was received by the court. On 22 January 2021 the Obukhiv District Court of Kyiv oblast held a preparatory court hearing, scheduled a closed court hearing and extended the precautionary measures for all defendants. On 9 March 2021, the court began consideration of the case on the merits. The consideration of the case is ongoing.

The next high-profile case was in April 2015, where the SBU tortured detainees suspected of involvement in the conflict with elements of sexual violence. The only thing known about this case from the media is the story of two men of 15 and 17 March, 2017. According to them, unknown armed men stopped one man on the road, handcuffed him, put a bag on his head and took him to the Kharkiv SBU. He was interrogated and demanded to admit that he was a member of the "Kharkiv Guerrilla" group.

The man was kicked in the stomach and head. One of the SBU officers grabbed the victim by the genitals and twisted them. During the harassment, which lasted about an hour, SBU officials constantly threatened to harm his family.

The second man was detained at his friend's house, where he was beaten in the groin before interrogation. SBU officers put a gas mask on his head and blocked the air so that he began to suffocate. He was threatened with other tortures. And when SBU officers threatened to give his girlfriend's address to the "Right Sector", hinting that they could "do anything" to her, the victim agreed to "cooperate" and sign everything.

As of 15 May 2017, those men were detained[109].

The subsequent course of the investigation was not covered in the media, there is no other information.

Unfortunately, such cases are often hidden by law enforcement agencies and have neither publicity, nor effective investigation, nor punishment of those guilty of their crimes.

Question 14. *Please provide information concerning any prosecutions carried out by the Office of the Military Prosecutor relating to allegations stemming from the conflict zone, including:*

a) Charges of voluntary homicide and illegal abduction or confinement by members of special police battalion "Tornado". Please also provide information on steps taken to investigate allegations of sexual violence perpetrated by members of the battalion and the measures taken by the State party to ensure the safety of all participants in court proceedings related to those allegations;

b) Charges against members of the territorial defence battalion "Aidar".

ANSWER TO QUESTION No. 14

c) Investigation of crimes committed by members of the Special Police Battalion "Tornado"

In its Report, the Government only provides information on the number of episodes being investigated concerning the crimes committed by members of the Special Police Battalion "Tornado".

Given the closed nature of the investigations into most of these crimes, any information about them, either in the court decisions register or in the media, is virtually non-existent. It is possible to find out the results of these investigations only from official statements or replies from the state bodies responsible, which raise questions due to discrepancies between the number of investigated episodes and the actual number of episodes involving crimes committed by the Tornado battalion, especially considering the large-scale nature of its criminal activities reported by a number of media outlets, human rights activists and international organizations.

In response to our inquiry, the PG reported that in 2015–2016, the Main Military Prosecutor's Office was conducting pre-trial criminal investigations into the commission by certain officers of the Special Police Battalion "Tornado" and individuals that were unofficial members of the Tornado battalion, of

[108] https://www.gp.gov.ua/ua/news?_m=publications&_c=view&_t=rec&id=282685

[109] https://zmina.info/news/na_kharkivshhini_sbu_z_torturami_vimagala_vid_cholovikiv_ziznatis_v_uchast_u_zbrojnomu_konflikti__oon-2/

a number of grave and particularly grave crimes between December 2014 and June 2015 in the territory of Luhansk and Donetsk regions.

The PG also reported that four indictments had been sent to first instance courts with charges against 12 persons, whose trial had been consolidated into one court proceeding.

The first instance court sentenced 8 defendants to 8-11 years in prison, and 4 defendants to 5 years in prison or to 2–3 years of probation.

This number of prosecuted Tornado battalion members and the extent of their punishment clearly do not match the number and gravity of crimes committed by the battalion.

The appeals court is currently considering appeals filed by the Prosecutor's Office (against the mildness of the sentences) and by the Defence (against the lawfulness and validity of the sentences)

On November 22, 2019 Kyiv City Court of Appeal upheld the court decision in the criminal proceedings concerning the former officers of Tornado battalion[110]. The fighters of "Tornado" appealed against such decision to the Supreme Court.

On 2 March 2020 the Supreme Court opened the cassation proceedings[111]. The court hearings are constantly postponed due to the absence of the convicts' lawyer. The next court hearing is scheduled for 7 May 2021[112].

c) Allegations against members of the Territorial Defence Battalion "Aidar"

The Government provided information, which the PG confirmed, on the conviction of five persons for the commission of grave and particularly grave crimes committed as part of an armed gang, as well as on a pending criminal investigation of another 6 persons.

In addition to the Government's information, we would like to add the following.

Since the Main Military Prosecutor's Office investigates only crimes committed by members of the military — namely the crimes committed by servicemen in violation of the law-prescribed military service procedure — the Main Military Prosecutor's Office only investigates those crimes committed by Aidar members that fall under the agency's specific jurisdiction[113]. As of 2016, crimes committed by the military became the responsibility of the SBI[114], yet the Main Military Prosecutor's Office still investigates such crimes.

According to media reports, investigations of crimes committed by Aidar members involve a large number of procedural violations and attempts to conceal the true extent of crimes committed by Aidar members[115]. The investigations are inconsistent and do not give enough reason to believe that all the necessary investigative actions have been carried out to ensure a thorough investigation[116].

The sentences for Aidar members are also inconsistent. In early 2019, the SCU Court of Cassation overturned prison sentences of three Aidar members for unlawful detention of a person and sent the case for retrial[117]. After the case was sent for retrial, as of May 5, 2020 more than 50 court hearings were held in this set of criminal proceedings. However, most decisions of the local court concern procedural issues, no decision on the merits of the accusation was made[118].

In November 2019 SSU questioned the former commander of Aidar assault company in the context of the criminal proceedings that were opened in Luhansk region and concerned the creation and activities of

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[110] http://www.apcourtkiev.gov.ua/?p=19646

[111] https://reyestr.court.gov.ua/Review/87985395

[112] https://reyestr.court.gov.ua/Review/96503048

[113] Moskal submits to the PG and MIA a list of Aidar's crimes committed under the direction of Melnichuk, < https://ukr.segodnya.ua/politics/moskal-peredal-v-genprokuraturu-i-mvd-dokazatelstva-prestupleniy-aydarovcev-pod-rukovodstvom-melnichuka-621900.html>.

[114] Criminal Procedure Code of Ukraine, < https://zakon.rada.gov.ua/laws/show/4651-17>.

[115] MP sends a report to the police on crimes committed by officials of the Prosecutor General's Office, <https://www.rbc.ua/ukr/news/melnichuk-obvinil-sledovateley-gpu-sokrytii-1435667464.html>.

[116] Crimes of violence: SSU finds evidence against Aidar, <https://www.obozrevatel.com/crime/47153-nasilstvennyie-prestupleniya-sbu-nashla-dokazatelstva-protiv-ajdara.htm>.

[117] Aidar members sentenced in 2017 have been released, but the case is still pending: see details, < https://www.5.ua/kyiv/zasudzhenykh-u–2017-rotsi-aidarivtsiv-vypustyly-na-voliu-odnak-spravu-ne-zaversheno-podrobytsi-186073.html>.

[118] http://reyestr.court.gov.ua/Review/87686905

the terrorist organizations. However, the questioned person, Mr. I. said that the criminal proceedings concerned the actions that were lawfully performed during the breach of blockade of Luhansk airport[119].

During 2020 and the first half of 2021, more than 30 court hearings were held, 58 rulings were issued. However, almost all rulings concerned video conferences, and no decision was taken on the merits.

As a result, there is no final decision even in this one case that made it to trial.

Question 15. *Please indicate whether legislation or regulations have been enacted to provide for mandatory video recording of interrogations and to ensure that video monitoring equipment is installed in all places where interrogations are permitted in all places of deprivation of liberty.*

ANSWER TO QUESTION No. 15

One of the Committee's recommendations was to require mandatory videotaping of suspects' interrogations and to take steps to arrange video surveillance in all places of detention. This recommendation has not been implemented. Although Article 224 CPC, including its original version of April 13, 2012 (that is, during Ukraine's previous reporting period), provides for the possibility of photo, audio and/or video recording during questioning, this is only mandatory if the participant of the procedural action has filed the appropriate request (Article 107 CPC).

Interrogation rooms and detention facilities, including police departments, where suspects are most frequently interrogated, are not equipped with video recording devices. The Government's reference in para. 89 of the Report to the existence in pre-trial detention facilities and centres of premises equipped for videoconferencing does not relate to the questioning of suspects, but rather to the participation of detained defendants in court proceedings via videoconferencing.

As we have been informed by the National Police of Ukraine, investigators are guided by their subjective assessment when determining how to record an investigative action, as well as whether to use technical means for this.

When conducting interrogations on the premises of pre-trial investigation facilities, the police use offices of the investigating officers or other rooms, with the consent of the person to be questioned.

As for the number of interrogation rooms with recording equipment, a perfect example is the central building of the National Police, which has no such rooms at all.

Question 19. *Please provide information on any measures taken during the reporting period to safeguard the independence of the judiciary from political interference and other forms of pressure, particularly in the context of high-profile cases. Please also provide information on instances in which investigating judges have ordered the investigation of allegations of torture or ill-treatment aired in court by a criminal defendant, pursuant to article 206 of the Criminal Procedure Code.*

ANSWER TO QUESTION No. 19

Protection of the judiciary from political interference

In its report, the Government states that the High Qualification Commission of Judges conducts judge evaluations to determine whether a judge is fit to administer justice in a certain court, in particular, based on the criteria of political neutrality, competence, integrity and professional ethics. However, this evaluation is only able to show whether a judge has certain political bias rather than safeguard judges from political pressure.

In the reported period, one of the most effective ways to pressure judges was to initiate groundless criminal prosecutions under Art. 375 CC (delivering a deliberately unjust verdict), against a judge or a group of judges responsible for a verdict that is deemed unacceptable by the Prosecution). On 11 June 2020 Article 375 of the CC of Ukraine was declared unconstitutional by the Decision of the Constitutional Court of Ukraine.[120] However, after declaring this article unconstitutional, the pre-trial investigation authorities continue to register criminal proceedings under this article (see table below).

[119] https://www.5.ua/suspilstvo/ekskomandyra-roty-aidara-vyklykaly-v-sbu-na-dopyt-chomu-u-spravi-fihuruiut-rosiiany-podrobytsi–202625.html

[120] https://zakon.rada.gov.ua/laws/show/v007p710–20#n57

After information is entered in the Single Register of Pre-Trial Investigations on a court decision that the Prosecutor's Office or other criminal prosecution body deems unjustified, the pre-trial investigation body may, even without notifying the judge of the suspicions, initiate an investigation, including by conducting a search at the judge's office/home, wiretapping the judge's telephones (subject to court authorization), etc.

In the period between 2014 and March 2021 there were 1525 criminal proceedings registered under Art. 375 of CC. The notice of suspicion was served only in 58 (3.8 % from the total number of those criminal proceeding). And only in 20 criminal proceedings (1.3 % from the total number of the registered criminal proceedings) the indictment was sent to trial.

PG statistics on registered criminal offences (proceedings) and the results of their pre-trial investigations under Art. 375 CC for 2014 — 3 months of 2021.

Year	CPs registered	CPs where notices of suspicion have been served	CPs where indictments have been sent to trial
2014	110	13	1
2015	206	22	7
2016	174	7	6
2017	258	12	3
2018	295	1	1
2019	408	3	2
2020	67	0	0
Q1 2021	7	0	0
Total	**1525**	**58 (3,8%)**	**20 (1,3%)**

The most obvious instances of attempts to put pressure on judges concerned the CP under Art. 375 CC on January 27, 2017 against a judge of the Krasnogvardiyskyi District Court of Dnipro who had denied the prosecutor's request regarding a restraining measure on the grounds that the prosecutor failed to observe territorial jurisdiction[121]; as well the CP under Art. 375 CC initiated on August 10, 2018 against a judge of the Kyiv District Court for closing a CP against Kharkiv Mayor Hennadiy Kernes[122].

The Council of Judges of Ukraine and the SCJ have made numerous statements regarding the Prosecutor's Office's attempts to pressure judges through Art. 375 CC[123]. The SCJ has submitted numerous requests to the PG to prosecute those responsible for trying to pressure judges by bringing against them criminal charges under Art. 375 CC[124].

The Council of Europe's Group of States Against Corruption GRECO also reported the prosecutors' attempts to pressure judges by means of Art. 375 CC. In this regard, GRECO, referring to the Council of Europe's standards, states that interpretation of the law, assessment of circumstances or evidence by a judge to resolve a case should not be cause for criminal prosecution, except for instances when criminal intent exists. The authors of the GRECO report also recommended to remove Art. 375 from the CC[125].

High officials have made numerous public attempts to pressure judges, including by threatening them. For instance, MP Vitaliy Kupriy wrote a letter to the SCU asking it to "consider the information in this petition carefully, after which to take immediate action to restore the citizen's rights". On May 25, 2017,

[121] http://www.vru.gov.ua/news/2231

[122] https://pol.gp.gov.ua/ua/news.html?_m=publications&_c=view&_t=rec&id=234759

[123] http://rsu.gov.ua/en/news/statta-375-kk-ukraini-domokliv-mec-dla-suddiv,
http://rsu.gov.ua/ua/events/view/risenna-rsu-no-45-vid-13-serpna–2018-sodo-zahodiv-dla-zabezpecenna-dotrimanna-principu-rivnosti-pered-sudom- i-zakonom,
https://ukr.lb.ua/news/2018/03/05/391818_tisk_suddiv_trivaie_golova_vrp.html
http://www.vru.gov.ua/news/2231
http://www.vru.gov.ua/mass_media/1041

[124] http://www.vru.gov.ua/news/2231,
http://www.vru.gov.ua/chronology_single/1836,
http://www.vru.gov.ua/news/4671,
http://rsu.gov.ua/ua/events/view/risenna-rsu-no-45-vid-13-serpna–2018-sodo-zahodiv-dla-zabezpecenna-dotrimanna-principu-rivnosti-pered-sudom- i-zakonom

[125] http://rsu.gov.ua/uploads/news/grecoeval4rep20169ukraineukr-ae17f067a2.pdf

Prosecutor General Yuriy Lutsenko stated that he "will be concerned about the fire safety of the Pechersk (Pecherskyi District Court of Kyiv)" if "it were to deliver another compassionate verdict"[126]. Valeriya Gontarieva, head of the National Bank of Ukraine, wrote a letter to the SCU chairman demanding to sort out the courts that were bringing back "zombie banks" eliminated by the National Bank of Ukraine[127]. Minister of Internal Affairs Arsen Avakov threatened to withdraw guards from judges after disapproving of a decision in the case of Odesa Mayor Hennadiy Trukhanov[128].

Since 2016, the SCJ has been maintaining a public register of reports on interference with the work of courts[129]. As of May 1, 2021, the register contained 1667 reports: 104 for first three months of 2021, 562 reports for 2020, 231 reports for 2019, 436 for 2018 and 334 for 2017. In these reports, judges complain, among other things, about interference by the National Police, SSU, National Anti-Corruption Bureau of Ukraine, General and local prosecutors as well as MPs that send letters to the courts with requests for objective examination of circumstances or visit court in the company of athletic men and spit into judges' faces[130]. The list of MPs that judges complain about contains, aside from the aforementioned Vitaliy Kupriy, the names of 22 other Parliament members.

The mayors of Drogobych[131] and Zolochiv[132] as well as the Irpinsk City Council[133] and the Kozelets Village Council[134] sent letters to courts in which they criticized and openly questioned certain court verdicts.

There were numerous instances when judges were summoned to court as witnesses in cases they had been involved in earlier as investigating judges[135], as well as instances of searches[136] and detentions of judges[137].

Of course, in the cases when a verdict is clearly unjust, criminal proceedings against a judge under Article 375 CC are justified and necessary. However, we would like to draw attention to the abuse of power practised by prosecuting authorities in order to influence judges, regardless of the circumstances of a case and the evidence that speaks in favour of the party that represents the interests of the public in court.

Information on cases in which the investigating judge ordered the investigation of allegations/complaints of torture or ill-treatment voiced by criminal defendants in court under Article 206 CPC

In its report, the Government failed to answer the question about instances when investigating judges would order the investigation of allegations/complaints concerning torture or ill-treatment reported by criminal defendants in court, in accordance with Article 206 CPC.

There are no official statistics in Ukraine on the examination by judges of torture or ill-treatment allegations reported by defendants in court under Article 206 CPC.

Of particular concern here are instances when the investigating judge refused to order an investigation into allegations of torture or ill-treatment[138] reported by defendants or their lawyers, in defiance of part 6, Art. 206 CPC, which requires judges to take action in these situations. Moreover, in accordance with part 6, Art. 206 CPC, after hearing a torture allegation, the judge must arrange for the defendant's medical exami-

[126] https://www.facebook.com/LlutsenkoYuri/posts/741109972754847

[127] https://www.unn.com.ua/ru/news/1639292-nbu-zvernuvsya-do-verkhovnogo-sudu-iz-prokhannyam-zobovyazati-sudi-priymati-rishennya-na-yikh-korist

[128] https://www.pravda.com.ua/news/2018/02/19/7172086/

[129] http://www.vru.gov.ua/add_text/203

[130] http://www.vru.gov.ua/content/file/2690-0-6-17_.pdf

[131] http://www.vru.gov.ua/content/file/1972-0-6-18_.pdf

[132] http://www.vru.gov.ua/content/file/1766-0-6-18_.pdf

[133] http://www.vru.gov.ua/content/file/450-0-6-18_.pdf

[134] http://www.vru.gov.ua/content/file/507-0-6-18_.pdf

[135] http://www.vru.gov.ua/content/file/1218-0-6-18_.pdf

[136] http://www.vru.gov.ua/content/file/1024-0-6-17_.pdf

[137] http://www.vru.gov.ua/content/file/2176-0-6-17_.pdf

[138] http://reyestr.court.gov.ua/Review/75766275,
http://reyestr.court.gov.ua/Review/77562495,
http://reyestr.court.gov.ua/Review/63181158,
http://reyestr.court.gov.ua/Review/75162968,
http://reyestr.court.gov.ua/Review/82973056,
http://reyestr.court.gov.ua/Review/46124012

nation, order the pre-trial investigation authority to look into the defendant's complaint, and take the necessary steps to ensure the defendant's safety. However, in most cases the investigating judge simply orders the prosecutor to investigate the allegation. When the defendant has no lawyer and the investigative judge considers the investigator's request for a restraining measure in the form of detention, such complaints are not always recorded by the investigating judge.

Question 20. *With reference to the Committee's previous concluding observations (para. 17) expressing concern about the unnecessary detention of asylum seekers, please provide information on measures taken by the State party to ensure that asylum seekers are detained only as a matter of last resort and for as short a period as possible, and provide data on the number of asylum seekers currently in detention and the length of time they have been detained. Please also provide data on the application of alternatives to detention for asylum seekers by courts during the reporting period.*

ANSWER TO QUESTION No. 20

Detention of asylum seekers

After the CAP was supplemented with Article 183-7 on detentions of foreign nationals, the courts started making decisions on whether to place foreign nationals in SMS THCs, yet prosecuting authorities had also continued performing this function for a long while, in violation of the law.

After the changes introduced by the Law of Ukraine no. 2147-VIII[139] on December 15, 2017, part 18, Article 289 CAP allows detaining foreign nationals for the duration of the consideration of their appeal without a court order authorizing such detention. This amendment contradicts part 2, Art. 29 of the Ukrainian Constitution which prohibits detention of a person without a court order.

When representatives of the SBGS detain foreign nationals at airport checkpoints, the foreigners held "incommunicado" on special premises are not allowed to see their lawyer, in spite of the appropriate provision in the Law of Ukraine "On the State Border Service of Ukraine". This unlawful detention could last for days or even longer. SSU officials almost always fail to draw up protocols on administrative detention in due time when detaining foreign nationals, or forgo this altogether, which means that they do not inform FLA centres about detentions and the need to provide detainees with legal assistance.

It is not possible to provide the actual number of persons seeking protection when crossing the border, as such foreigners are often denied crossing the border and their applications (mostly oral, due to ignorance of requirements, language and procedure) are not recorded. The defenders find out about the intentions of foreigners (stateless persons) ex post facto, when such persons report the refusal of border guards only after the return of the means of communication on the plane or from another country.

SMS THCs for foreign nationals and stateless persons staying in Ukraine illegally

There are SMS THCs[140] in Mykolayiv (opened on April 20, 2018), Volyn and Chernihiv regions. Their maximum capacity is 473 people. The actual amount of their filling is provided in the table below:

Indicator		2014	2015	2016	2017	2018
Persons placed in THCs over the year	per-sons	291	358	473	656	1037
Persons held in THCs as of the beginning of the year	per-sons	116	172	172	186	444
Total number of persons held in THCs over the year	per-sons	407	530	645	842	1481
Persons expelled from THCs over the year	per-sons	116	198	265	309	511
Persons released from THCs over the year	per-sons					356

The number of persons detained for subsequent expulsion is increasing. Thus, first instance courts delivered 498 decisions in 2014 regarding applications for the detention and expulsion of foreign nationals

[139] https://zakon.rada.gov.ua/laws/show/2147-19#n6636

[140] https://dmsu.gov.ua/pro-dms/struktura-ta-kontakti/punkti-timchasovogo-perebuvannya-inozemcziv-ta-osib-bez-gromadyanstva.html

and stateless persons, of which 405 were fully satisfied; in 2015 — 527 decisions in total and 465 satisfied; in 2016 — 753 decisions and 654 satisfied; in 2017 — 1,234 decisions and 1,035 satisfied; in 2018 — 1,829 decisions and 1,666 of those satisfied.

As of the beginning of 2018, 444 persons were held in THCs, 1,666 were detained by courts and placed in THCs, so the total number of detained persons would be 2,110.

In 2020, these figures decreased almost twice, compared to 2019 (810 were detained against 1408, 439 were placed against 1005). Such a sharp decrease in detainees and remand prisoners in 2020 is due to quarantine measures, strengthening of the border regime and national lockdowns.

During 2020 and 2021, there were several restrictions on bringing individuals to justice due to the closure of public bodies.

In 2018, 356 persons were released from THCs and 511 were expelled. Thus, if we assume ideal conditions for the state, that is, that 356 persons were released and 511 persons were expelled from THCs on the first day of 2018, even though this is not the case, the state still had to house 1,243 persons in THCs, but how could it have been done if the maximum capacity of THCs is 473 people? The answer is obvious: the THCs were overcrowded. It should be noted that according to an oral account given by a SMS representative during the presentation of the comments to the 7th Periodic Report of the Government, which took place on December 16, 2018 at the Ombudsman's Office, THCs are currently 60–70% full.

Another notable fact is that in 2018, the courts ordered for 1,666 persons to be detained and placed in THCs for subsequent expulsion, yet only 1,035 were actually placed in THCs. This is examined below.

It should be noted that in 2017, the SMS provided UNHCR and its partners access to UNHCR-protected persons that were being held in THCs, for monitoring and provision of legal assistance. However, as of January 2018, the SMS decided to restrict access for UNHCR partners[141]. The representative of the SMS explained it by the non-compliance of the UNHCR with formal SMS requirements in getting permission to visit the facilities.

According to the Ombudsman's report for 2018[142], NPM monitoring revealed the following violations of the rights of foreign nationals and stateless persons in SMS THCs:

— inadequate conditions of detention;
— violations of the right to freedom of thought and religion;
— violations of the right to maintain communications with the outside world;
— violations of the right of foreign nationals and stateless persons to legal aid.

Alternatives to measures aimed at enforcing decisions on expulsion

Such alternatives include 1) having an enterprise, institution or organization vouch for a foreign national or stateless person, 2) releasing a foreign national or stateless person on bail. Nevertheless, aside from isolated cases, the courts are not using alternatives to measures aimed at enforcing decisions on expulsion.

The vouching for a foreign national or stateless person by an enterprise, institution or organization has not been used in Ukrainian courts (information taken from the Single State Register of Court Decisions (SSRCD)[143].

Currently, only one such decision is known, which was made by the Lychakiv District Court of Lviv on 3 October 2019, it set a bail of UAH 384,200 for a citizen of Tajikistan and set a deadline for its payment, as well as other obligations, related to personal movement. The decision of the Lychakiv District Court of Lviv of 11 October, 2019 at the request of the Lviv Border Detachment (military unit 2144) of the Western Regional Department of the State Border Guard Service extended the detention period in connection with the non-payment of bail to ensure identification for 6 months (till 07.04.2020). After the appeal by a lawyer of the Kharkiv Human Rights Protection Group a ruling of the Eigth Appellate Administrative Court of 10 January 2020 quashed the decision of the Lychakiv District Court of Lviv of 3 October 2019 and a new court decision was adopted, which set bail of UAH 192,100.00 and determined that the citizen of Tajikistan

[141] https://www.unhcr.org/ua/wp-content/uploads/sites/38/2018/08/2018-08-UNHCR-UKRAINE-Refugee-and-Asylum-Seekers-Update-FINAL-UA.pdf

[142] http://www.ombudsman.gov.ua/files/Dopovidi/Report–2018-1.pdf (p. 259)

[143] http://reyestr.court.gov.ua/

is released from the point of temporary stay of foreigners and stateless persons staying in Ukraine on the day of providing supporting documents on the bail. That person was released after bail by a family friend — a citizen of Ukraine, however, it is obvious that this amount is too large for asylum seekers. The bail amount is between one and two hundred minimum subsistence wages for able-bodied persons and must be transferred within five business days after the court adopts the decision to grant release on bail. In 2021 the subsistence minimum is UAH 2,270 per month, which puts bail between USD 8.4 and USD 16.8 thousand, which is obviously too much for someone staying in Ukraine in violation of migration law.

A representative of KHPG prepared and filed a cassation appeal to the Supreme Court, in which the basis of the cassation appeal was stated as paragraph 3 of part 4 of Article 328 of the CAJ of Ukraine and it indicated the absence of an opinion of the Supreme Court on the application of the norm of law in such legal relations. After a preliminary hearing, the Supreme Court agreed with the arguments that there was no opinion and on 16 December 2020 it opened proceedings in the case (https://reyestr.court.gov.ua/Review/93595044). At the moment, the documents were requested from the first instance court, and the court began consideration (the decision has not yet been made).

Violation of the rights of asylum seekers who remain in conditions of imprisonment due to extradition

The settled case-law of the European Court of Human Rights states that deprivation of liberty under Article 5 §1 (f) of the Convention will only be justified as long as the deportation or extradition proceedings are ongoing. If such a procedure is not applied with due diligence, the detention under Article 5 §1 (f) of the Convention shall cease to be admissible. In other words, the duration of detention for this purpose should not exceed the reasonably necessary period.

However, the most common preventive measure is the detention of a person in accordance with Article 584 of the CCP of Ukraine "Application of a preventive measure in the form of detention to ensure the extradition of a person (extradition arrest)". In fact, preventive measure is automatically extended by the courts at the request of the prosecutor every two months for a maximum period of 12 months. In some oblasts there is a practice of applying up to 40 days of temporary arrest separately from 12 months of extradition arrest. The legislation stipulates that in accordance with Part 4 of Article 585 of the CCP of Ukraine, if there are circumstances that prevent the escape of a person and ensure his further extradition, the investigating judge may choose a preventive measure unrelated to detention (extradition arrest). When deciding on the possibility of applying a preventive measure unrelated to detention, the investigating judge must take into account the strength of the person's social ties, including the presence of his/her family and dependants. In practice, first instance judges almost do not apply this provision of the Code of Procedure and it is very rarely applied by the judges of the appellate courts. The change of the preventive measure is only possible in case of blatant violations of the law and publicity in the media due to the well-known nature of the asylum seeker (for example — replacement of extradition arrest of a Russian citizen, a representative of the Anti-Corruption Foundation with house arrest, replacement of the asylum seeker's preventive measure with personal undertaking due to the absence of a crime under Ukrainian law after 6 months in custody, reduced term of temporary arrest of a well-known Kazakh opposition journalist Zh. Akhmetova). It should be understood that such cases are the exception rather than the rule.

The courts formally respect the rights of the asylum seeker in court, providing, at best, an interpreter and granting the right to speak. The further court decision is a complete duplication of the prosecutor's request and the general phrase "the lawyer and the detainee were against".

In case of an asylum seeker being in custody, he is deprived of the right to submit a reasoned application to the migration service on the need for protection, because in response for his application submitted through the administration of the penitentiary institution, he receives application forms and questionnaires in Ukrainian. Restrictions on explanations, lack of knowledge of the language and the impossibility of providing documentary evidence, including the provision of well-known information on the country of origin, lead to refusals of territorial units of the migration service to accept applications and refusals to process documents for further consideration of the application, due to lack of grounds. A significant disadvantage is the deprivation of the right of a representative, including a lawyer, to submit an application for protection or documents directly to the migration service, as departmental rules in the case of a person in detention provide filing the application through the administration of the institution by the applicant himself.

Question 21. *With reference to the Committee's previous concluding observations (para. 14) expressing concern at the persistently high rate of domestic violence in the country, please provide information on whether the State party's legislation now specifically criminalizes domestic violence; data on complaints received, investigations undertaken and the outcome of any prosecutions concerning domestic violence during the reporting period; steps taken to ensure that victims of domestic violence benefit from protection, including access to shelters in all parts of the country, medical and legal services, psychosocial counselling and redress, including rehabilitation; and any training provided to law enforcement officials, judicial authorities and medical and social workers to deal with cases of domestic violence.*

ANSWER TO THE QUESTION No. 21

Despite the Committee's recommendation to the Government to create adequate conditions for the victims to enjoy their right to appeal and provide the timely, objective and efficient investigation of each such case, such conditions were not created. A relatively new Article of the CC, 1261 — domestic violence, contains the notion of "systematic" committing of violence. In practical terms, this is as follows: if a victim of domestic violence complains to the police about domestic violence, the first three such complaints will, at best, result in administrative reports, but in order for the police to open criminal proceedings under the above article, court decisions must be made under each of the three protocols. At the same time, the courts refuse to deliver the decisions according to the protocols in case of non-appearance of the offender at the court hearing. Meaning, that in order to initiate criminal prosecution of the offender even the victim's systematic appeals to the police are not enough, rather, it is necessary to pass a long and difficult procedural way in the law enforcement and court systems. Such practice significantly decreases the efficiency of the legal protection from domestic violence, and, on the other hand, reduces the real statistics of the cases of domestic violence in Ukraine.

According to official data from the State Judicial Administration, 159 people were convicted in 2019 and 778 in 2020 for domestic violence[144]. At the same time, Prosecutor General's Office reports that in 2020 there were 2192 victims of domestic violence, and in January-April 2021 — 1048 victims[145].

As for the functioning of the groups of the so-called "POLINA", the reliability of that subdivision is low — they do not always come to the place of events after the calls to the hotline "15-47". The above indicates the inefficiency of the work of not only the law-enforcement bodies, but also the groups within the "POLINA" project reported by the Government in their Report.

Question 22. *With reference to the Committee's previous concluding observations (para. 15) expressing concern that the crime of human trafficking is not properly investigated and prosecuted and victims lack access to effective remedies and redress, please provide updated information on the number of investigations, prosecutions and sentences handed down for human trafficking; funds provided to the State Targeted Social Program; the results of international cooperation initiatives to combat human trafficking; whether victims of trafficking are provided with redress and effective remedies, including psychological and legal support, medical care, access to shelters and welfare benefits and work permits; whether specialized training is provided to police, prosecutors, judges, immigration officers, border police, psychologists and community support officers aimed at the effective prevention, investigation, prosecution and punishment of acts of trafficking; and any awareness-raising or media campaigns on the criminal nature of such acts.*

ANSWER TO QUESTION No. 22

According to KHPG's information, there's a transnational criminal group operating in Ukraine since no later than 2015, tricking Ukrainian citizens into going to Russia and forcing them into a life of crime through coercion, threats and blackmail, specifically criminal activities related to the production and distribution of drugs. Due to the obvious collusion between the drug dealers and Russian law enforcement, the reports of Ukrainians about this criminal network are not being investigated. Russian courts are ignoring the fact that

144 Reply to the request of SCA of Ukraine of 24.05.2021 No. інф/Б615-21-566/21

145 Reply to the request of the Prosecutor General's Office of Ukraine of 26.05.2021 No. 27/3-1796вих-21

these Ukrainians are victims of human trafficking. After a brief investigation and an unfair trial, they are convicted under Art. 228.1 of Russia's Criminal Code (illegal production, sale or trafficking of drugs).

According to our information, over 300 Ukrainian citizens that fell victim to this transnational criminal group have been prosecuted. 197 victims of human trafficking have already been convicted in Russia for drug trafficking with sentences between 5 and 20 years in prison. 46 Ukrainians have returned to Ukraine but continue serving sentences in Ukrainian prisons. 35 others have already requested transfer and are awaiting Russia's Justice Ministry's response. However, 22 of our countrymen are at risk of being left in Russia as their requests to be returned to Ukraine were denied.

In para. 226, the Government states that in 2014–2018, 531 Ukrainian citizens were recognised as victims of human trafficking. However, according to our information received from the victims themselves or their families and confirmed by the evidence uncovered in the course of criminal investigations, over 300 persons fell victim to that one criminal group alone over the specified period[146]. This figure keeps growing with each month as human rights defenders and victims' families continue their investigations. Thus, the information provided by the Government of Ukraine does not reflect the actual number of victims of human trafficking and the real extent of these criminal activities.

The main problem for victims of human trafficking lies in the lack of effective legal remedies. In defiance of Art. 214 CPC, crime reports are not registered immediately and appropriate entries are not made in the Single Register of Pre-Trial Investigations, and even after the investigating judge issues an appropriate order, this is still done with considerable delays.

The procedure for granting the status of a victim of human trafficking does not take into account the specifics of this category of victims and does not meet international legal standards. Thus, people recruited for drug distribution in Russian territory and convicted there are transferred to Ukraine to continue serving their sentence, and the possibility that they were coerced into criminal activities is never considered.

The procedure for granting the status of a victim of human trafficking is established by the Procedure for Establishing the Status of a Victim of Human Trafficking adopted by CMU Resolution no. 417 of May 23, 2012 (hereinafter — the Procedure).

Thus, the victims have to send applications for obtaining that status while being held in places of detention, which in practice creates a number of problems for them.

Firstly, their correspondence is not confidential. Every detail of how they became victims of human trafficking becomes known to the administration of their PC and soon to the rest of the convicts. This often has a negative effect on the attitude toward victims, conditions of their detention and relations with other convicts.

Secondly, the officials responsible for interviewing victims have neither time nor resources to visit PCs, which are often located far from regional and rayon centres, which makes it difficult to arrange for an interview. With no portable communications devices, such interviews require two visits at the very least. Moreover, if the victim of human trafficking wishes for their lawyer or family members to be present, the interview becomes practically impossible to organise.

Thirdly, responsible officials from local state administrations as well as the relative and lawyers of the victims have trouble getting into PCs in the first place. In accordance with Art. 24 CEC, such visits can only be done with permission from the PI's administration or from the bodies responsible for supervising PCs. Having made inquiries in Kharkiv, Mykolayiv and Dnipropetrovsk Regional State Administrations, we discovered that no such permissions have been granted to them and so they never conducted any visits to PCs.

Thus, the Procedure fails to meet the needs of victims of human trafficking serving their sentences in prisons.

Another urgent problem for victims of human trafficking that were forced into criminal activities is the impossibility of being exempt from criminal liability. Article 26 of the Council of Europe Convention on Action against Trafficking in Human Beings, which came into force for Ukraine on 1 March 2003, establishes the obligation of each party, in accordance with the basic principles of its legal system, to provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so. Nevertheless, this provision of the CoE Convention has not been implemented into Ukrainian legislation.

[146] http://khpg.org/index.php?id=1570605859

According to a study conducted by a group of independent experts and commissioned by the OSCE Project Coordinator in Ukraine at the request of Ukraine's Ministry for Family, Youth and Sports, neither the Criminal nor the Criminal Procedure Code currently contain provisions that would guarantee immunity to victims of human trafficking for their forced involvement in illegal activities. Because of this, victims of human trafficking are reluctant to share their stories with the authorities[147]. Since 2008, the year this study was conducted, the situation has not changed.

Thus, the victims are left with the regular mechanisms for avoiding punishment offered by Ukrainian law, which provides four procedures for the release of convicts. Parole and substitution of the remaining part of the sentence are incentives granted for good behaviour. These measures are only possible after the convict has already served a part of the sentence. Neither option takes into account the vulnerable status of victims of human trafficking and the fact that were forced into criminal activities. Amnesty, as per the current text of the relevant law, may not be applied to victims of human trafficking due to a direct prohibition in the law, since these persons were involved in drug-related crimes. Pardon is an extraordinary procedure that is applied in special cases and under special circumstances.

As a result of this situation, victims of human trafficking have no effective remedy for returning to the legal status they used to enjoy before the offence. In other words, Ukrainian law has no provisions that would establish a clear and predictable procedure which victims of human trafficking could use in order to be released from prison, as required by the CoE Convention on Action against Trafficking in Human Beings.

Question 23. *With reference to the Committee's previous concluding observations (para. 13), please indicate whether the State party has established a system of juvenile justice that promotes alternative measures to deprivation of liberty whenever possible.*

ANSWER TO QUESTION No. 23

The new juvenile justice system is limited to the creation of an Inter-Agency Coordination Council on Juvenile Justice (hereinafter referred to as "Inter-Agency Council") in 2017. The 2017–2018 Inter-Agency Council Activity Report does not give any reason to believe that a real justice system has been established, one that takes into account the best interests of the child in the administration of justice by promoting, wherever possible, alternatives to deprivation of liberty.

The Inter-Agency Council's main goals were determined based on the provisions of the National Human Rights Strategy 2020. However, despite clearly defined goals, none of those have been achieved.

In particular, the option of mediation as a form of restorative justice has not been introduced at the legislative level, specifically: no amendments have been made to the CPC and relevant legislative acts of Ukraine, and Draft Law of Ukraine "On Mediation" has not been submitted to the CMU for consideration.

According to the MoJ's official website, as of November 2017, the MoJ, together with experts brought in as part of the Inter-Agency Council's working group, prepared a draft concept of the Law of Ukraine "On Justice for the Child". However, as the Government notes in its Report, the document is still at the draft stage and is yet to be considered by the Parliament.

Moreover, no action has been taken to improve the justice system for juveniles by expanding the options of punishment with those that do not involve isolation from society. The State refers to the existence of special restraining measures for juveniles, yet these measures already existed in the previous CPC. The current CPC shows no changes in the provisions on criminal proceedings involving minors.

According to an exclusive interview given by former Ukraine's Deputy Minister of Justice Denys Chernyshov in September 2017, when a juvenile commits a minor crime, instead of imprisonment they can undergo probation programs and, in a year or two at maximum, get re-socialized without ever being imprisoned. Probation programs are very important, because once a minor gets into the system, they return to crime in almost 100% of cases[148].

[147] Andrea Sülkner. Study "Needs assessment of the national referral mechanism for victims of trafficking in human beings in Ukraine". OSCE, 2008 — p. 81: https://www.osce.org/uk/secretariat/37381?download=true

[148] https://www.5.ua/suspilstvo/pidlitkova-zlochynnist-shcho-take-iuvenalna-probatsiia-ta-iakyi-vidsotok-retsydyvu-155062.html

At the same time, according to the State, as of 2017 there were 1,276 minors registered with probation authorities, with the total number of probation subjects being 68 thousand persons. Thus, even with as many as 13 juvenile probation centres operating in Ukraine as of 2018, they are physically unable to service even half of the probation subjects.

In addition, CMU Order no. 654-r of September 13, 2017 approved the Concept for Reforming (Developing) the Penitentiary System of Ukraine, which has no provisions on the need to develop new models of penal institutions for women and minors.

ARTICLE 3

Question 24. *With reference to the Committee's previous concluding observations (para. 17), please provide updated information on:*

a) Steps taken to ensure that all asylum seekers have access to fair and efficient refugee status determination procedures and are effectively protected against refoulement, including through the creation of a formalized border monitoring mechanism in cooperation with UNHCR and civil society organizations;

b) Whether asylum applicants have access to legal aid and interpreters and are allowed more than five days to file appeals against negative asylum decisions;

c) Measures taken to ensure that internally displaced persons are effectively protected from being returned to a risk of torture or ill-treatment.

ANSWER TO QUESTION No. 24

On the exercise of the right to be granted the status of refugee or person in need of additional protection

According to statistics[149], between 2014 and first three months of 2021 the SMS reached the following decisions concerning asylum seekers:

Decision		2014	2015	2016	2017	2018	2019	2020	Q1 2021
recognised as refugees	persons	124	49	20	21	24	41	39	26
recognised as persons in need of additional protection	persons	204	118	48	74	75	52	84	11
denied protection	persons	257	599	416	228	284	352	396	74
revoked status of refugee or person in need of additional protection	persons	2	4	9	4	2	5	4	1
deprived of status of refugee or person in need of additional protection	persons	1	7	7	3	5	2	3	1
Total number of persons recognised as refugees	persons	2534	2487	2429	2382	1799	1276	1273	1281
Total number of persons recognised as persons in need of additional protection	persons	479	598	649	709	768	820	887	904

SMS statistics lack vital official information for assessing the current situation with asylum requests in Ukraine, particularly information on the number of SMS decisions for denied requests and the number of refusals to issue documents required to resolve the issue of recognition as refugee or person in need of additional protection (including when re-applying in new circumstances). After rejection, a request's consideration is terminated and information about it is not included in the data from the table above.

Despite the SMS's attempts to manipulate data, we can see that in 2016, 2017 and 2018 the number of persons granted refugee status decreased by a factor of 6 and the number of persons granted additional protection — by a factor of 3. This is a clearly negative trend for the SMS. In 2019 and 2020, the situation changed somewhat in a positive direction, due to the provision of protection to former combatants (persons who defended the independence of Ukraine), but it does not live up to 2014–2015, ie this situational increase in protection of certain categories of persons is not a trend in the changes in asylum policy.

[149] https://dmsu.gov.ua/diyalnist/statistichni-dani/statistika-z-osnovnoj-diyalnosti.html

According to the information provided by the SMS to Radio Liberty, in the first half of 2018 they received 352 applications from people seeking refugee status or those in need of additional protection; in 2017 — 771 applications; in 2016 — 656; in 2015 — 1,433; and in 2014 — 1,173[150]. At the same time, in para. 115 of the Report the Government states that in 2015–2018 775 applications for secondary FLA were received in connection with complaints against SMS refusals to grant refugee status, so legal aid was provided to about 20% of the applicants, and given the fact that in the FLA system every instance of provided legal aid is counted as a new case — this figure becomes a mere 10%.

According to SMS regulations, interpreters are provided to asylum seeker only during interviews, while it is necessary to provide them with interpretation during every appeal to the authorities, especially during the first one. In addition, an interpreter is needed when reviewing the case file, as all documents are written in the state language and the asylum seeker is, in fact, acquainted only with his own interview, while the conclusions of the specialists in the case file are the main documents. On the basis of which the decision is made. Phrases often taken out of the context of the interview play against the asylum seeker, but he learns about it only when filing a lawsuit for a negative decision.

The courts often neglect to ask the persons being expelled whether they were informed, in a language that they understand, of the procedure for applying for the status of refugee or person in need of additional protection in Ukraine, whether they were provided with an interpreter, whether they were given a copy of the court application on their expulsion in a language they understand, whether they were informed that they could make use of free legal services, and whether they know to which country they are being expelled.

There are no interpreters present during court hearings either; in the best case scenario this role is played by a citizen of the person's country of origin that happens to know Russian. Court decisions are not translated into the person's native language. Foreign nationals and stateless persons have only 5 days to appeal against SMS rejections, which, coupled with the absence of legal assistance, makes it virtually impossible for them to succeed.

Problems with obtaining refugee status or additional protection:

- Highly bureaucratic procedure for applying (short deadlines, rigid form of the application, a chance that it will be returned without consideration due to procedural errors).
- The system for providing asylum seekers with interpreters[151] and lawyers does not work properly during the consideration of their applications and in courts.
- The SMS does not take into account reports of international governmental and non-governmental organizations on the situation in the asylum seekers' country of origin.
- Applications take a long time to be considered (over a year).
- Decisions to reject an application do not provide the reasons for it and are written in Ukrainian without translation.
- Short term for appealing in court against SMS rejections (5 days).
- Lengthy court proceedings that examine complaints against SMS rejections (over a year).
- Court decisions and other documents are not translated into the asylum seekers' language.
- Court decisions on the cancellation of SMS decisions require the SMS to re-examine the application, which often results in another rejection and forces asylum seekers to go to court several times, making the whole process last over 5 years.
- Persons applying for protection are unable to exercise their right to temporary employment guaranteed by law[152].
- Those applying for protection are not eligible for any free medical services, including emergency medical care and primary medical care examinations.
- Asylum seekers who are in custody are deprived of the right to receive professional legal assistance in drafting documents, to enjoy full protection from a lawyer and to substantiate their appeal.
- Excessive and unjustified detention of asylum seekers in case of extradition arrest.

[150] https://www.radiosvoboda.org/a/svoboda-v-detalyah/29511350.html

[151] https://zakon2.rada.gov.ua/laws/show/z0801-13

[152] https://zakon.rada.gov.ua/laws/show/3671-17 ч. 1 ст. 13.

- There is a widespread system of fines for asylum seekers, which is gaining momentum. The certificate of the person who applied for protection (the main document) overdue for 1 day is a basis for bringing to justice and imposing of the penalty for the sum ranging between UAH 1700 and 5100 (approximately USD 60–200).
- The central office of the migration service practically does not satisfy complaints against negative decisions of territorial subdivisions on refusal to accept an application or refusal to draw up documents to resolve the issue of granting protection, as the support of subordinates in making their decisions is absolute.
- After being granted refugee status, aside from a one-time financial aid of UAH 17, refugees receive no benefits or help with their integration into society, such as free language classes, employment, social benefits, housing, etc.
- They are granted additional protection for a period of 5 years and are not entitled to naturalization.

While their applications are being considered, asylum seekers may be placed in Temporary Holding Centres for Refugees (THCRs) located in Odesa and Zakarpatska regions[153]. The THCR in Kyiv Region is not working at full capacity due to protests among the local community. The procedure for placement in a THCR is lengthy and overly bureaucratic. THCRs can accommodate nor more than 350 people and are in need of renovations.

Measures taken to ensure effective protection for IDPs from recurrence of torture or ill-treatment

According to the Ministry of Social Policy, since the outset of the occupation of the ARC and the beginning of the armed conflict in eastern Ukraine, about 1,600,000 IDPs have been registered in Ukraine[154].

In 2014, the Government adopted a resolution on the provision of social aid to IDPs to help them pay utility bills and rent[155]. According to this resolution, an able-bodied person is entitled to a fixed amount of UAH 442 per month to cover the costs of rent and utilities, even though this was not enough to cover these costs even at the time of the resolution's adoption. This amount has remained unchanged since 2014 to this day, while the cost of utilities almost tripled compared to 2014. Subsistence minimum wage for the able-bodied population, on the other hand, was raised every year. Due to the lacking assistance from the state which has failed to provide IDPs with housing, funds to cover the cost of rent, and jobs, some of the IDPs were forced to return to non-government-controlled territory, risking death, injury, torture or ill-treatment.

We would also like to point out that about one third of IDPs are pensioners registered with Ukraine's Pension Fund (PF) and receiving their pensions from it. In order to control the payment of pensions to IDPs, the Government has adopted a number of regulations that not only introduced special rules for receiving pensions, but also imposed various restrictions on IDPs, in contradiction of existing legislation. Mandatory ID checks and inspections at the pensioners' place of residence by employees of social protection bodies were introduced. These measures forced IDP pensioners to remain at their rented residence without going outside their respective administrative division unit for fear of losing their pension should they be absent during an inspection.

In 2018, the Government once again tightened control over pensions for IDPs. Thus, in accordance with Resolution No. 335[156], IDP pensioners are not be able to get pension debt (pension funds accumulated over the duration of pension suspension) when applying for resumption of pension payments. These funds are instead accumulated on the PF's account and paid under a separate procedure, to be determined by the CMU. KHPG would like to point out that the CMU has yet to establish this procedure.

Faced with suspended pensions and unpaid pension debts, retired IDPs are forced to protect their rights in court. However, court proceedings take a long time, and even when the verdicts are in favour of IDP pensioners, the State Executive Service of Ukraine is in no hurry to enforce them. The existence of problems with pension suspension is evidenced by the ruling of the SCU Grand Chamber of September 4, 2018 in the administrative case no. 805/402/18[157].

[153] https://dmsu.gov.ua/pro-dms/struktura-ta-kontakti/punkti-timchasovogo-rozmishhennya-bizhencziv.html

[154] Information letter from the Ministry of Social Policy of Ukraine no. 64/0/108-19/22 of July 23, 2019

[155] https://zakon.rada.gov.ua/laws/show/505–2014-п/ed20180908

[156] https://zakon.rada.gov.ua/laws/show/335–2018-%D0%BF

[157] http://reyestr.court.gov.ua/Review/76945461

As for the pension debt for IDPs, the Government is still avoiding paying it. Based on PF's budget, available on its official website[158], only UAH 50,000 was allocated for 2018 for settling pension debts following court decisions, with the same amount allocated for 2019 as well. This leads us to believe that the Government has no intention to comply with court decisions on the payment of pension debts.

As for the Government's arguments on providing IDPs with affordable housing, based on the information KHPG received from the State Specialized Financial Institution "State Fund for Assistance with Housing for Youth" (hereinafter — the Fund)[159], IDPs are entitled to preferential long-term loans for construction (renovation) and purchase of housing in accordance with the procedure established by CMU Resolution no. 584[160]. In accordance with this Resolution, IDPs entitled to improvement of their living conditions must reside and be registered in the territory of their local council. An IDP certificate cannot be used to confirm one's place of residence. This causes problems when trying to obtain the preferential loans mentioned by the Government. The Fund also told us that the Law of Ukraine "On the State Budget for 2019" does not provide for funds for preferential loans for construction (renovation) and purchase of housing.

Since 2014, there has been a problem with the recognition of birth and death certificates issued by "institutions" of the so-called "LPR" and "DPR" as well as by the authorities that are in effective control of Crimea. In accordance with Ukrainian law, these documents are not recognised by Ukrainian authorities. A court decision is required for the legal recognition of documents issued in non-government-controlled territory, which is a lengthy and complicated process. Meanwhile, the absence of birth certificates and certain other documents limits IDPs' access to social benefits, education and healthcare, and without death certificates they find it difficult to exercise their right to dispose of, inherit and recover lost property.

ARTICLES 5 AND 7–8

Question 25. *Since the State party's previous report was considered by the Committee, please provide information on whether the State party has rejected, for any reason, the request of a State for the extradition of an individual suspected of having committed torture and whether it has started prosecution proceedings against such an individual as a result. If so, please provide information on the status and outcome of such proceedings.*

ANSWER TO THE QUESTION No. 25

On the basis of the information provided by the Prosecutor General's Office of Ukraine, the Government replied to the Committee that there had been no cases of requests from the competent law enforcement agencies of foreign states for the extradition of persons suspected of torture.

Our request to the Prosecutor General's Office concerning the provision of information about the cases of refusal to extradite to a foreign country the persons suspected or accused by competent bodies of the foreign state of torture in 2014–2020, as well as on the causes of refusal to extradite, the status of criminal prosecution of such persons by Ukrainian authorities and the composition of the countries that requested the extradition, was also without results[161]. The Prosecutor General's Office responded that the Office maintains only general statistics on applications (requests) from other states for legal assistance in the field of international cooperation and without separating data on extradition, without counting separate refusals to satisfy requests[162].

It is obvious, that without keeping separate statistics concerning the extradition of the persons suspected of torture, it is only possible to answer the Committee's question on the number of refusals to extradite, when there were no refusals to extradite to the foreign countries, regardless of the type of a crime.

[158] https://www.pfu.gov.ua/1543626-byudzhet-potochnogo-roku/

[159] Information letter from the State Specialized Financial Institution "State Fund for Assistance with Housing for Youth" no. 1200/05.3 of July 24, 2019.

[160] https://zakon.rada.gov.ua/laws/show/335–2018-%D0%BF

[161] Request for the public information of 26.03.2021

[162] Letter of the Prosecutor General's Office of Ukraine of 27/3_1221вих-21 of 02.04.2021

On the fact that the state does not keep statistics on the extradition of persons suspected of committing the crime of torture (despite the fact that special provisions of the Convention against Torture deal with the transfer of such persons), as in other sections of this Commentary, it can be concluded that in reality the problem of torture is not considered by law enforcement agencies in Ukraine as requiring special attention.

ARTICLE 10

Question 26. *With reference to the Committee's previous concluding observations (para. 18), please provide information on:*

a) Any training programmes developed to ensure that all public officials, including law enforcement, prison and immigration officers and judges, are aware of the provisions of the Convention, in particular in the context of the ongoing reform of law enforcement in the State party;

b) Measures taken to ensure that law enforcement officials are trained in and comply with the Code of Conduct for Law Enforcement Officials and with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;

c) Whether officials, members of the security services and military personnel in the State party have received training on the provisions of the Convention, human rights law and international humanitarian law, including those deployed to areas in the Donetsk and Luhansk regions;

d) Whether training on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) has been provided to medical personnel and other officials dealing with detainees and asylum seekers in the investigation and documentation of cases of torture;

e) Whether methodologies have been developed to assess the effectiveness and impact of the training programmes on the prevention and absolute prohibition of torture and ill-treatment.

ANSWER TO THE QUESTION No. 26

The education plans on the issue of observing the human rights are provided for each law-enforcement body of Ukraine.

Regarding the National Police, according to the Plan of main measures of the National Police of Ukraine for 2020,[163] the issue of increasing the awareness level in the field of observing human rights in general, as well as in the field of counteracting the tortures, was not defined as either one of the strategic aims, or a priority, or one of the tasks. Thus, according to the report on the execution of the plan,[164] there are no referrals to holding the trainings in the field of observing the human rights and counteracting tortures.

For 2021 the National Police also developed and approved the relevant plan of main events[165], however, that plan also did not provide for separate trainings or other measures in the field of observing the human rights, as well as the field of counteracting tortures. It can be concluded from the above that ensuring respect for human rights, including in the field of combating torture, is not important enough in the activities of the National Police to be included in the main action plan.

On the other hand, on the basis of higher education institutions with specific training conditions that train police officers, advanced training is organized annually for all categories of police officers according to standard curricula. These trainings are not narrowly specialized in the field of counteracting torture; however, this subject is included in the training program. From the statistical point of view, according to

[163] https://www.npu.gov.ua/assets/userfiles/files/pdf/plan-osnovnih-zahodiv-npu-na–2020-rik__.pdf

[164] https://www.npu.gov.ua/assets/userfiles/files/plan/ZVIT_plan_2020.pdf

[165] https://www.npu.gov.ua/assets/userfiles/files/plan/2021/Plan_NPU_na_2021.pdf

the letters of the National police of Ukraine on providing the information[166] [167], the following trainings have been held:

Year	Training received, persons	Staff number of police officers (as of 01.01 of each year), thousand people	The percentage of the persons who received training, %
2017	13602	127,1	10,7%
2018	14103	126,5	11,15%
2019	14780	127,7	11,57%
2020	9692	127,2	7,62%
2021 (until 31.03)	3418	127,3	2,68%

According to the above statistical information, each year no more than 12% of police officers undergo this training (on average for full years — 10.26%), and therefore, in our opinion, this training in quantitative terms cannot be considered effective, because even for a period of 4 years and 3 months, these trainings did not cover even half of the total number of police officers. And given the lack of specialized training in the field of combating torture, we believe that these exercises cannot be considered effective enough.

It should be noted separately, that given the lack of the centralized statistics[168] in this field, as well as the fact that one of the requests received a separate reply of the training centre of MDNP in Khmelnitsky region[169], it could be concluded that at each MDNP there is a separate training centre, therefore the information concerning the trainings is fragmented. On the example of the MDNP training centre in Khmelnytsky region, it can be concluded that a number of human rights trainings are conducted, but these trainings were most likely conducted in the field of general provisions in the field of combating torture and the effectiveness of further investigation of existing facts.

However, for the entire period of functioning of the National Police, including MDNP in Khmelnitsky region, not a single training was held in the field of compliance with the provisions of the Code of Conduct for Law Enforcement Officials, adopted by the resolution 34/169 of the UN General Assembly of 17 December 1979, and the provisions of the Basic Principles on the Use of Force and Firearms by Law Enforcement Agents, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Havana, Cuba, between 27 August and 7 September 1990. In our opinion, those international acts are crucial in the forming of an efficient preventive mechanism of prevention of torture in the law-enforcement bodies, however, acquaintance, research and professional training on the provisions of these regulations was not conducted in this MDNP.

The Training Centre of the Prosecutors of Ukraine is functioning in the prosecution bodies, it offers on-line and off-line training. Among 6 on-line courses[170] located on the site of that Centre, only one concerns the work in the field of observance of human rights in its scope, namely, the training "The use of practice of EctHR". Thus, under the programme of that training[171], it lasts for 3 hours, it was only planned three times and concerned the general provisions of application of case-law of the European Court of Human Rights, therefore, in our opinion, it can't be stated that within the trainings under that programme there was a thorough training in the field of combating torture and protection of human rights in this area.

Among the off-line courses there is a training course "Effective public prosecution in criminal proceedings for torture"[172], which was held 2 times in Kyiv city and lasted 3 days. According to the training programme, the training in the field of effective investigation of torture took place. However, it should be noted that only 2 such trainings were held, and given the quarantine restrictions that were active in Kyiv since 05.04.2021[173], the number of participants of that training had to be limited. In our opinion, to ensure

[166] The reply of the National Police of Ukraine No. 7зі/1055/37/1/02–2021 of 29.04.2021

[167] The reply of the National Police of Ukraine No. 182зі/12/4/03–2021 of 04.06.2021

[168] The reply of the National Police of Ukraine No. 7зі/1055/37/1/02–2021 of 29.04.2021

[169] The reply of MDNP in Khmelnitsky region No. 87/121/37/04–2021 of 28.04.2021

[170] https://ptcu.gp.gov.ua/uk/prokuroram/onlajn-navchannya/

[171] https://ptcu.gp.gov.ua/uk/prokuroram/onlajn-navchannya/trening-zastosuvannya-praktyky-yespl/

[172] https://ptcu.gp.gov.ua/uk/prokuroram/oflajn-navchannya/treningovyj-kurs-efektyvne-publichne-obvynuvachennya-u-kryminalnyh-provadzhennyah-shhodo-katuvannya/

[173] https://www.ukrinform.ua/rubric-kyiv/3218939-kiiv-posilue-karantin-infografika.html

effective training in this area under quarantine, it would be worthwhile to transfer these trainings to the on-line format and conduct additional training sessions.

Also, among the available off-line courses there is a training course on «Application of international humanitarian law in the implementation of the procedural powers of the prosecutor concerning criminal offences committed in armed conflict»[174]. That training lasted for 3 days, was conducted in Kyiv and included training in the field of application of international humanitarian law in the conditions of the armed conflict. However, it should be noted that that training was only conducted once (between 02.03 and 04.03) and, on the moment of this submission, there is no information about the subsequent planned dates of the training on this topic. In our opinion, given the persistence of the nature of the armed conflict and the complexity of the application of international humanitarian law, one-time face-to-face training on this topic is insufficient to effectively ensure the involvement of prosecutors in this activity. To remedy this situation, we recommend conducting similar trainings in an on-line course with the involvement of prosecutors who actually carry out the procedural guidance of the pre-trial investigation, which is related to criminal offences in the territory of the armed conflict.

In addition, among the available off-line courses there is a training course on "Sentencing and execution, protection of human rights in places of detention, probation"[175]. However, in our opinion, that training only has a formal relation to the protection of human rights in the field of execution of sentences, since only one lecture from the 3-day course (day 2) concerned the prosecutor's control over the detention in the places of non-liberty, and given the complex nature of that issue, full-time training and only two scheduled seminars, we believe that training in this area is not effective enough and needs further expansion and detail.

The State Bureau of Investigations is functioning since 27.11.2018[176]. According to the statistics provided by SBI[177], in the period between 27.11.2018 and 31.03.2021 the following types of trainings in the fields of human rights and investigation of torture were conducted:

Year	Type of education	Number of employees
2018	Seminar-training on the organization of work of SBI investigators	159
	Seminar-training on the organization of work of SBI investigators	159
2019	Training	34
	Training	9
2020	Distance learning course of HELP programme	27
	Seminar	24
	Training	84
	Training	40
	Training	37
	Training	30
	Special professional (certification) qualification-raising program	59
	Special professional (certification) qualification-raising program	59
	On-line consultations	35
2021	General short-term qualification-raising program	6

Regarding the content of the trainings, in accordance with the topics of the training activities, the main emphasis was placed on compliance with human rights standards within the Convention mechanism of the Council of Europe, in particular the use of the European Convention on Human Rights and the case law of the European Court of Human Rights. as well as the investigation of torture and abuse of power by

[174] https://ptcu.gp.gov.ua/uk/prokuroram/oflajn-navchannya/treningovyj-kurs-zastosuvannya-norm-mizhnarodnogo-gumanitarnogo-prava-pid-chas-realizacziyi-proczesualnyh-povnovazhen-prokurora-shhodo-kryminalnyh-pravoporushen-vchynenyh-v-umovah-zbrojnogo-kon/

[175] https://ptcu.gp.gov.ua/uk/prokuroram/oflajn-navchannya/treningovyj-kurs-pryznachennya-ta-vykonannya-pokaran-zahyst-prav-lyudyny-u-misczyah-nesvobody-probacziya/

[176] https://ukurier.gov.ua/media/newspaper/adv/2018-11-22/221_6337-r.pdf

[177] Reply of the State Bureau of Investigations No. 365ПІ/10-16-06-383/21 of 29.04.2021

law enforcement officials[178]. We believe that, provided that the content of the exercises corresponded to the stated topics, such trainings as a whole can be considered quite extensive within the research areas.

However, with regard to the number of employees who participated, it can be concluded that in 2018 two general trainings were conducted, which were aimed at improving the qualification of SBI investigators, and after that the trainings were more fragmented in terms of the number of employees participation, as between 6 and 84 people took part in the given trainings. Therefore, in our opinion, in order to ensure uniform application of norms in the field of human rights protection and to increase the general level of qualification of employees, it is expedient to conduct a general training or a set of trainings in the future.

As for the State Migration Service of Ukraine, it should first be noted that according to the reply of the SMS, "training in the field of compliance by SMS officials with the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is not planned" , as "there are no penitentiaries or pre-trial detention centres in the structure of the SMS"[179].

In our opinion, the lack of training in the field of compliance with the provisions of the Convention by the SMS staff, due to the lack of penitentiary institutions and pre-trial detention centres, is incorrect, as the provisions of the Convention apply to any public officials. Furthermore, the officials of SMS in their activity interact directly with such vulnerable groups of persons as, in particular, refugees and persons in need of additional or temporary protection[180]. Therefore, we believe that the lack of any training for SMS staff in the field of compliance with the Convention is extremely incorrect, as the provisions of the Convention apply to the activities of SMS staff, and therefore requires further adjustment and correction.

It should be noted that according to the response of the SMS, training of SMS staff in the field of human rights is conducted as part of general professional training programs[181]. In our opinion, given the vast scale of the field of human rights and the direct interaction of the SMS staff with the representatives of the vulnerable groups, such an approach to training in the field under study is not effective and cannot provide an adequate level of training for the practical application of the provisions of key international instruments, including the Convention, and therefore needs to be reformed.

As for the to the State Border Guard Service of Ukraine, according to the response of the State Border Guard Administration, the information on the number of trainings for traffic police officers "is not recorded and is not processed"[182]. In our opinion, in this case the lack of proper accounting can indicate the lack of systematic trainings in the field of human rights.

Given the fact that the State Border Guard Service is a law enforcement body of special purpose, and respect and observance of human and civil rights and freedoms are recognized as the basic principles of the State Border Guard Service[183], we believe that the training of the SBS staff in the field of human rights is crucial to ensure real respect for human and civil rights and freedoms.

Concerning the Security Service of Ukraine, according to the latter's response, the information on the number of trainings conducted for SBU officers was "recognized as official information and classified as restricted information".[184] Accordingly, this information was not provided upon request and is therefore not possible to analyse.

Given the above, we can conclude that: (1) There is no common system for ensuring training in the field of human rights, investigation of torture and compliance with basic international treaties in this area among law enforcement and other bodies, and therefore the conduct, quality and quantity of training depends solely on the specific body that conducts it; (2) In general, the number and content of the trainings conducted were fragmented and did not cover the full range of legal relations in the field of human rights, investigation of torture and compliance with international treaties in this area.; (3) Some bodies, in our opinion, do not pay enough attention to training in the research area, and therefore the general situation of ongoing training is not effective enough.

[178] Reply of the State Bureau of Investigations No. 365ПІ/10-16-06-383/21 of 29.04.2021

[179] Reply of the State Migration Service of Ukraine No. 3ПІ-ОРГ-150-21/10.3/127-21 of 30.04.2021

[180] zakon.rada.gov.ua/laws/show/3671-17#Text

[181] Reply of the State Migration Service of Ukraine No. 3ПІ-ОРГ-150-21/10.3/127-21 of 30.04.2021

[182] Reply of the Administration of the State Border Guard Service of Ukraine No. 121/3ПІ-794-794 of 27.04.2021

[183] https://zakon.rada.gov.ua/laws/show/661-15#Text

[184] Reply of the Security Service of Ukraine No. 6/Д-131-п/16 of 28.04.2021

ARTICLE 11 OF THE CONVENTION

Question 17. *With reference to the Committee's previous concluding observations (para. 19) expressing concern about serious overcrowding, inter-prisoner violence, high mortality rates and poor conditions in a number of prisons, please provide updated information on:*

a) Measures taken to reduce overcrowding in places of detention, including through greater resort to alternatives to incarceration;

b) Measures taken to reduce inter-prisoner violence, including by improving prison management and reducing the prisoner/staff ratio and ensuring that the internal regulations of penal institutions explicitly prohibit prison staff from designating prisoners with the power to manage other prisoners; and data on the number of investigations undertaken into the instigation by prison staff of inter-prisoner violence, and any resulting prosecutions and convictions;

c) Measures taken to improve material conditions of detention in conformity with the Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), including ensuring that international standards for living space are universally respected;

d) Measures taken to improve the conditions in which detained persons are transported to penitentiary facilities, particularly by rail, and to ensure that persons are not transported in conditions amounting to ill-treatment;

e) Data on the number of investigations into deaths in custody carried out during the reporting period and the number of resulting prosecutions for torture and ill treatment and their outcomes;

f) Whether independent forensic examinations have been allowed in connection with all cases of deaths in custody and whether the results of independent autopsies have been accepted by courts as evidence in criminal or civil cases; (g) Training provided to prison staff and medical personnel on communication with and the managing of inmates and on detecting signs of vulnerability.

ANSWER TO QUESTION No. 27

Overcrowding of prisons, violence in Pis, material conditions of detention and transfer of prisoners

Amendments to part 5, Art. 72 CC made it so one day of pre-trial detention counts as two days of imprisonment. Over the year and a half after the adoption of this provision, over ten thousand convicts have been released. Thus, the number of convicts has decreased sharply, leading to a reduction in the number of convicts in each PI. To illustrate: at the beginning of 2017, there were 60,399 convicted prisoners in Ukraine, by the end of 2018 — 55,121. There are 131 convicts per 100,000 of the population in Ukraine. This is based on the population of Ukraine as of November 1, 2018, which, according to State Statistics Service, was 42,029 million.

In this regard, in 2018 the CMU passed a decree "On the Procedure for Optimizing the Activities of Pre-Trial Detention Facilities, Penitentiary Institutions and Enterprises of Penitentiary Institutions". The activities of 17 Pis in total were suspended in accordance with this regulation. The selection of specific institutions for optimization was based on the number of inmates, even though the criterion here should have been material conditions of the premises.

Shostkivska PI no. 66 was among those to be suspended. The institution was designed for 14 blocks, all of which had already been renovated shortly before the suspension. It should be noted that there are plenty Pis in Ukraine with much worse conditions of detention; information about them will be given below. Said Pis are still working while all inmates of the Shostkivska PI had been relocated, leaving the institution empty[185]. Over the past two years, a number of Pis with satisfactory or good conditions of detention have been suspended while many institutions where conditions of detention are not in line with international standards have been ignored[186].

[185] http://khpg.org/index.php?id=1537528588

[186] https://zakon.rada.gov.ua/laws/show/396–2017-%D0%BF

In 2020 the Ministry of Justice reported the sale of the suspended complexes of penal colonies in the nearest future[187]. Such statements of the state authorities contradict the former plans to temporarily suspend the Pis that would resume functioning if necessary. Given that the suspended penitentiaries were far from being the worst in terms of detention conditions, the wish of the Ministry of Justice to sell them raises a reasonable concern. In general, it is planned to close and sell up to a third of the penal colonies.[188] The Minister of Justice also stressed the plans to move the pre-trial detention Centres outside of the cities and sell the building complexes of the pre-trial detention Centres that are often located on the central streets.

According to the information provided by the MoJ, the funds required for improving living conditions for convicts at SCES facilities in 2015 amounted to UAH 274 million (including UAH 239.2 million of capital costs and UAH 34.8 million of current costs), in 2016 — UAH 470.6 million (including UAH 451.8 million of capital costs and UAH 18.8 million of current costs). The amount of capital and current costs used for these purposes in 2015 was UAH 26.4 million (UAH 6.1 million of capital costs and UAH 20.3 million of current costs), in 2016 — UAH 31.3 million (UAH 3.4 million of capital costs and UAH 27.9 million of current costs)[189]. Thus, the budget provided only 2.5% of the funds required for capital expenditures in 2015 and 0.7% in 2016.

In some Pis inmates do not have enough beds, which forces them to take turns sleeping. This practice is still widespread at PTDCs. People held at PTDCs complain about tiny cells (Kharkiv PTDC no. 27), poor lighting, lack of fresh air (Vinnytsia PI no. 1). In some cases, the cells do not have enough tables or even places to sit. Particularly problematic in this regard are the so-called transit cells, where convicts transported between Pis are kept. Constant violations of their rights are often forcing convicts to go on hunger strikes, harm themselves, etc. (Zamkova PI no. 58, Chernihiv PI no. 61). In 2018, courts ordered to force-feed no fewer than five convicts.

Conditions of detention in most Pis are unsatisfactory due to such factors as lack of living space, poor sanitary and material conditions, basement-like cells, poor temperature control and lighting, restricted access to fresh air and drinking water, etc. Proper conditions of detention are generally available only to convicts doing maintenance work, minors and women, as well as privileged persons. Due to extremely limited state funding, Pis are forced to save money on utilities as much as possible, making tap water available for limited amounts of time, purchasing a bare minimum of fuel and stocking up on firewood themselves, as well as keeping industrial areas without heating.

On April 27, 2020 the Minister of Justice of Ukraine, Denis Maliuska, announced the creation of special paid cells with improved conditions of detention in pre-trial detention Centres of Ukraine. He noted that he hoped for a prompt implementation of the relevant resolution. According to the Minister, such step is necessary, since the pre-trial detention Centres are in much worse condition than the penitentiaries in which the people are held after they receive their sentences. The Minister of Justice said that the pre-trial detention Centres receive less funds than the penitentiaries of Ukraine. The funding is not even sufficient to buy the bed linen, not to mention repairs and normal nutrition. If the repairs are carried out, they are often performed at the expense of the detained persons. The Minister reported that the paid cells provide for improved living conditions: for example, a cell would contain a refrigerator and a TV set, the freshest repairs, there will be more space for one person etc. A bit later there will be additional, improved nutrition, as budget funding covers only a minimal set of products. He also noted that currently the possibility of introducing several tariffs is considered: for a day, a week or a month[190]. The Minister of Justice also reported the plans to build several new prisons with exemplary conditions of detention, like the prisons in Norway. To that end it is planned to involve additional funding, including the funding from international donor organizations[191].

Such statements of the Minister of Justice are probably connected to the fact that in January 2020 EctHR adopted a pilot judgment in the case "Sukachov vs Ukraine", in which it stressed the existence of

[187] https://ua.interfax.com.ua/news/general/656562.html

[188] https://www.radiosvoboda.org/a/news-maluska-pro-tiurmy/30211378.html

[189] http://www.ombudsman.gov.ua/files/Dopovidi/spec_dopov_npm_2016_n.pdf

[190] https://minjust.gov.ua/news/ministry/denis-malyuska-platni-kameri-zyavlyatsya-vje-nayblijchim-chasom

[191] https://www.radiosvoboda.org/a/news-maluska-pro-tiurmy/30211378.html

a structural problem concerning the inadequate detention conditions in the penitentiaries of Ukraine. The Court noted that that case concerned the repeated issue underlying the frequent violations of Art. 3 of the Convention by Ukraine. In particular, since the adoption of its first judgment concerning the detention conditions in Ukraine[192], EctHR delivered 55 judgments (some of the cases had multiple applicants) in which it found the violations of Article 3 related to the poor conditions of detention in pre-trial detention Centres. In a number of those decisions EctHR also reached a conclusion that there were violations of Article 13 of the Convention because of the lack of effective domestic remedies for complaints under Article 3.

Most of the cases against Ukraine in which EctHR found the violations of Article 3 of the Convention concerned the issues of overcrowding and other repeated problems related to the material conditions of the detention: inadequate sanitary and hygiene conditions, improper lighting and ventilation, the presence of insects and mould in the cells, limited access to shower, limited daily walks, the lack of privacy for the use of toilet, poor food quality etc. The violations were found in a great number of institutions in various regions of Ukraine. So it really seems that the violations were not the results of an isolated accident or specific actions in each separate case. They were the consequences of a widespread structural problem which was a result of the bad functioning of ther penitentiary system of Ukraine and insufficient guarantees against the treatment in breach of Article 3.

Despite these findings expressed by EctHR concerning Ukraine almost yearly since 2005, the structural problem still remains unsolved on the domestic level. Indeed, according to the database of EctHR case management, around 120 prima facie winning applications against Ukraine connected to the complaints about the conditions of detention are currently pending in EctHR. This number taken alone indicates the existence of a repeated structural problem.

The Committee of Ministers also found the structural nature of the problem of detention conditions in Ukraine. It controlled the implementation of the Court judgments concerning the detention conditions since 2005. In December 2018 it adopted an interim Resolution in which it again stressed the structural nature of this problem. It observed that in the previous decisions it has already called for state authorities of Ukraine to take decisive measures in order to create preventive and compensation remedies in order to resolve that issue. Although some steps were taken, no concrete progress has been made, which also imposed an unnecessary burden on Convention system. Therefore the Committee of the Ministers stressed the urgent need of authorities to continue working on adoption of a long-term complex strategy capable of solving these structural problems, with clear and binding terms for the relevant measures and provision of the required resources.

Taking into account the current considerations and the current problem which existed for many years, a significant number of people affected or which can be affected by that problem and the urgent need to provide them with the necessary and appropriate redress on the domestic level, EctHR applied the procedure of pilot decision in that case and obliged Ukraine, supervised by the Committee of Ministers, to take a number of actions directed at decreasing the overcrowding of the cells in the penitentiary institutions and at improvement of the detention conditions, as well as at development of the efficient remedies for the potential applicants[193].

Nutrition standards for convicts adopted by the CMU Resolution no. 336 of June 16, 1992 (hereinafter — Nutrition Standards) do not meet the standards set by the MoH, as required by the European Prison Rules. Nutrition Standards also do not provide for different rations depending on religion, culture or nature of a convict's work (except for those engaged in hard labour). There are also no special norms for people with AIDS, HIV, leprosy, gout, circulatory diseases and other serious illnesses. Para. 2 of the Procedure for the Application of Nutrition Standards for Convicts states that persons with gastrointestinal disorders, on doctor's orders, are to be provided with food based on dietary norms during outpatient treatment. However, no more than 3% of a PI's population get dietary nutrition.

In most Pis, the food has bad organoleptic properties; cooked meals don't have enough meat; food supplies get spoiled because of poor storage conditions yet are still used in cooking. In addition, problems occur with food deliveries to Pis. Thus, at the Dnipro PI no. 4, rations have had no meat for a month now, and there are no potatoes in stock. At the Chornomorska PI no. 79, female convicts had to eat nothing but fish

[192] Nevmerzhitsky v. Ukraine, № 54825/00, ECHR 2005-II

[193] Sukachov v. Ukraine, № 14057/17, ECHR, 2020-I

for every meal for almost a month, as there were no meat deliveries, while neighbouring Pis from the very same city (Odesa) did have a supply of meat. In some cases, Pis were getting food of poor quality (Voznesenska Correctional Colony no. 72).

The CPT in its September 6, 2018 report to the Government of Ukraine prepared based on its visit to Ukraine from 8 to 21 December 2017, also brought up the issue of terrible prison food[194]. According to the CPT, a large number of convicts, including those undergoing medical treatment (paras. 119 and 120), complain about poor quality of food, lack of its variety as well as food shortages (para. 70). The 2015, 2016 and 2017 US Embassy reports also state that the issue of poor nutrition in Ukrainian prisons remains unresolved[195]. The Ukrainian Parliament Commissioner for Human Rights also mentions poor food in Pis in the 2017 annual report (paras. 196, 227–229). According to the report, the Nutrition Standards require vegetables, such as cabbage, beets, carrots, onions and cucumbers, to be provided to convicts daily, yet in many Pis inmates get no fresh vegetables at all. The Commissioner also emphasizes the issue of improper application of food substitution provisions, particularly the unjustified and unauthorized change of food products. This food substitution, which by law should only be used in the event of temporary shortages of certain food products, is treated as a general rule, which has resulted in a virtual absence of natural food products on PI menus, particularly protein-rich food, vegetables and fruits. As a result, some convicts essentially rely on the food that they receive from their families in order to survive. Some of them, particularly those held at PTDCs, do not touch the food prepared at these institutions at all.

When brought to court hearings on their cases in courts located in regional centres, people get no dry food rations and are therefore forced to go hungry on these days.

On December 27, 2018, the Government adopted new Nutrition Standards, which are taking effect on January 1, 2020. The new norms do not contain a calculation of the energy value of prison food products. In addition, they state that food substitution is done in order to diversify the prisoners' menu, to comply with doctors' advice or in the absence of other food products in stock. This could open the door to all sorts of abuses by PI administrations, allowing them to change the convicts' menu constantly. In addition, funding for prison nutrition under new standards is done based on what's left in the budget, which is bound to have an adverse effect on the availability and quality of food at Pis. Later the introduction of new Norms of nutrition was postponed by a year.

Despite the significant changes in Internal Labour Regulations of the penitentiary institutions concerning the permissions for the convicts to use microwave ovens, which could potentially improve the quality of food, a number of problems remains unsolved. In particular, the convicts express the wish to organize their nutrition on their own, if the state cannot provide them with food. However, since the cereals, vegetables and other products, subject to heat treatment, were included in the list of the items that are prohibited to be kept by the convicts, they in fact cannot arrange their food. The convicts are also prohibited to use multicookers which are more comfortable for the preparation of food in the conditions of a correctional colony. The above-mentioned prohibitions do not have any legal basis, in particular, they are not directed at ensuring safety in PI or at correcting the convicts (they even contradict the latter). After our requests the state authorities were not able to provide the motives for such decision

Besides, the quality of food in Pis is deteriorating because of abuse by the state authorities. In late 2019 SBI reported that two Deputy Heads of the state institution of the South-Eastern Interregional Department on the Execution of Criminal Punishments and Probation, located in Kharkiv region, were detained during the sale of food purchased for the convicts.

According to preliminary information: the officials wrote off the food for the convicts purchased by the Ministry of Justice, and sold it in bulk from the territory of Kharkiv prisons. The detained persons were given notice of suspicion of abuse of power or position which caused severe consequences (pt. 2 of Art. 364 of the Criminal Code of Ukraine). In two months of illegal activity there was documented theft and sale of food by the officials in the amount of 500 thousand hryvnias. About three tons of frozen fish and meat were seized during the attempt of two minivans with food to leave the territory of one of the prisons[196].

[194] https://rm.coe.int/16808d2c2a

[195] https://photos.state.gov/libraries/ukraine/895/pdf/2015%20HUMAN%20RIGHTS%20REPORT_Ukr.pdf, https://ua.usembassy.gov/wp-content/uploads/sites/151/2017/04/Final-UKRAINE–2016-HRR_Official_Ukr.pdf, https://ua.usembassy.gov/wp-content/uploads/sites/151/HHR_2017_Ukr.pdf

[196] https://dbr.gov.ua/news/dbr-zatrimalo-dvokh-kerivnikiv-vipravnikh-koloniy-yaki-prodavali-produkti-kharchuvannya

After amendments were made to the CPC that allowed everyone to visit Pis, including members of public oversight councils operating within regional departments of the penitentiary service as well as assistants of Ukrainian MPs who can bring along members of the press and doctors, our organization has been sending monitors to various Pis since late 2014, revealing numerous violations of convicts' rights. These visits became a source of invaluable first-hand information on the actual state of observance of prisoners' rights. Each visit's details are available to the public on the KHPG website Human Rights in Ukraine: http://khpg.org.

A typical example here is the situation with conditions of detention at the Zhovtovodska PI no. 26. None of its blocks meet the required standards. Almost all cells in the residential area are in unsanitary, neglected condition. Dampness is everywhere. Lighting in living quarters is either very poor or non-existent. To get to the residential area, it is necessary to walk down a pitch black corridor and stairs. According to the inmates, lights are usually turned on before dark until bedtime. The residential area has densely packed iron beds with thin mattresses, which are causing inmates back pains. Moreover, the cells are overcrowded.

The walls of some living quarters in the residential area are covered with fungus and mould, as well as traces of moisture leaks. All premises have a strong smell of dampness, making it difficult to breathe, and the inmates have to sleep, eat and do exercises in these dangerous conditions. There were also complaints that the premises are infested with fleas and cockroaches. Only one block had boiled drinking water, others only had tap water. The quality of such water is very low; a cup of it leaves a residue of rust after 24 hours and could even have white worms in summer.

According to the inmates, the temperature in living quarters at night drops to 8–10 °C, or 3–5 °C during winter. This is despite the fact that the PI has its own boiler room for heating. The inmates have to sleep fully clothed and covered with several blankets. Water pipes are all rusty as well as leaking in places, which causes occasional floods.

Bathrooms at the PI are in a terrible state. The faucets don't work properly and the walls are stripped of tiles. The toilet rooms have an unbearable smell. Each block has 4 to 6 toilet cabins, so the inmates have to wait in line to relieve themselves. There are no doors in the toilets and partitions in some blocks are no more than 50 centimetres in height. Plumbing is in disrepair.

According to the prisoners, even cold tap water is provided only for 2 hours a day. As a result, they are forced to collect water in tanks and make do with that. The stench in the toilets is made even worth by the lack of water in the flushing tanks. There is mould on the ceiling and window sills of the mess hall; the mess hall itself has a damp smell. There is no dietary menu, even though the PI has inmates with diabetes and gastrointestinal disorders[197].

One month after April 23, 2019, a bill was registered in the Parliament with a proposal to revoke the right of certain parties to visit Pis for oversight and inspection at any time without explicit permission (accreditation), including assistants to Ukrainian MPs as well as members of public oversight councils of the SCES and its territorial units (interregional departments)[198]. However, this bill was not adopted before the dissolution of the previous Parliament.

Question 18. *With reference to the Committee's previous concluding observations (para. 16) please describe measures taken during the reporting period to ensure that sufficient staffing and financial resources, including from the State budget, have been provided to ensure the full and effective operation of the national preventive mechanism, in compliance with the Optional Protocol to the Convention. Please indicate how the State party will ensure that the national preventive mechanism is able to undertake preventive visits outside the framework of the investigative work carried out by the Ombudsman's office. Please also provide data on the number of visits to places of detention undertaken by the national preventive mechanism during the reporting period, and provide information on how the resulting recommendations have been implemented.*

Question 28. *Please indicate whether the Parliamentary Commissioner is able to monitor and visit regularly all places of deprivation of liberty and is able to carry out unannounced visits, and provide data on the number of visits carried out by the Parliamentary Commissioner to places of detention during the reporting period.*

[197] http://khpg.org/index.php?id=1552909974

[198] http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=65843

ANSWER TO QUESTIONS Nos. 18, 28

The Government mentions in its Report (para. 101) positive changes after the Ombudsman's visits to places of detention, which were noted by the Ombudsman after follow-up visits. However, the Ombudsman's official website has information about horrific conditions at the Khmelnytskyi PTDC, which remained unchanged from 2013 to 2017. Thus, most cells there have no adequate lighting, there is an excessive number of grates on the windows, the bathrooms are in poor technical condition, and the walls in some cells are damp and covered with fungus. These premises are also not equipped with tanks with boiled drinking water, or supply and exhaust ventilation. Most cells require renovation. Electricity in the facility is used in violation of fire safety rules. People are forced to sleep on the floor[199].

In 2017, representatives of the Ombudsman visited the Zhovtovodska PI no. 26, where they discovered unsatisfactory detention conditions and provided appropriate recommendations to the colony's administration[200].

In March 2019, representatives of the KHPG conducted a monitoring visit to this facility and found detainees living in conditions that not only failed to meet proper standards but were clearly incompatible with human dignity[201]. 10 days after KHPG's visit to the colony, the date of a joint visit of the Ombudsman and the KHPG there was agreed on, and even though representatives of the Ombudsman's office arrived at the facility and entered it separately from KHPG members, they later confirmed in their report the shortcomings discovered by the KHPG earlier[202].

On February 28, 2019, representatives of the Ombudsman encountered resistance from the administration of the PI no. 110 in Lviv Region[203].

We can observe the ineffectiveness of the Ombudsman's office in the context of its monitoring visits (the work of the National Preventive Mechanism — NPM), and it manifests in the failure to provide coverage of shortcomings in the observance of the rights of convicts and persons in custody, including coverage in the Ombudsman's reports on the results of monitoring visits, as well as in the reluctance to work together with civil society organizations. For instance, when a former member of the ATO was raped in Berdyansk PI no. 77, civil society activists addressed the Ombudsman in regard to the systematic practice of the Berdyansk PI's administration of torturing inmates in order to extort money from them, yet we were told that nothing of the sort was going on at that facility[204].

In 2018, the Kharkiv Institute of Social Research studied NPM's activities, drawing the following conclusions: "Statistics on visits conducted within the framework of the National Preventive Mechanism show that since its creation, the number of visited places of detention remains critically low and does not exceed 5% of the total. Moreover, some of these visits were repeated visits"[205].

"The weak model of the Ombudsman implemented in Ukraine lacks any serious leverage against perpetrators, aside from public condemnation and open discussion of the issues ... Systemic problems in places of detention are poorly communicated in the public sphere. The Ombudsman has presented virtually no reports before the Verkhovna Rada of Ukraine since 2014 and has been presenting too few reports in the media"[206].

In their report[207], the researchers note that they found no evidence of communication between Ukraine's NPM and the SPT, or any examples of cooperation between them. The study also mentions that "there is a constant shortage of funding for visits to places of detention"[208].

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[199] http://www.ombudsman.gov.ua/ua/all-news/all-activity/u-xmelnitskomu-slidchomu-izolyatori-vyazni-splyat-na-pidlozi/

[200] http://www.ombudsman.gov.ua/ua/all-news/all-activity/7617-bz-pid-chas-monitoringovogo-vizitu-do-zhovtovodskoii-vipravnoii-koloniii/

[201] http://khpg.org/index.php?id=1552909974

[202] http://www.ombudsman.gov.ua/ua/all-news/pr/26319-qe-u-zhovtovodskij-vipravnij-koloniii-na-dnipropetrovschini-uvyaznenix-tr/

[203] http://www.ombudsman.gov.ua/ua/all-news/pr/predstavnikiv-ofisu-ombudsmana-ne-dopustili-do-vipravnoii-koloniii-na-lvivschini/

[204] https://www.ukrinform.ua/rubric-regions/2656806-u-berdanskij-kolonii-gvaltuut-ta-katuut-zasudzennih-aktivist.html

[205] A. Chernousov and others, National Preventive Mechanism against Torture and Ill-Treatment (NPM) in Ukraine. Evaluation of activities. Kharkiv Institute of Social Research, 2018, https://khisr.kharkov.ua/wp-content/uploads/2019/10/Natsional-nyy-preventyvnyy-mekhanizm-proty-katuvan-ta-zhorstokoho-povodzhennia-v-Ukraini-otsinka-diial-nosti–2018.pdf6, p. 6.

[206] ibid, p. 7.

[207] ibid, p. 21.

[208] ibid, p. 30.

At the beginning of January 2020, the representatives of the Office of the Commissioner once again demonstrated the inefficiency of their activities, when after the KhPG employees reported torture in Oleksiyivka Correctional Colony No. 25[209], they conducted a monitoring visit to that colony, and as a result, the Ombudsman's website published information about the failure of the Oleksiyivka Correctional Colony No. 25 staff to provide the Commissioner with some documents and about the delays[210].

Question 29. *Please provide updated information on the activities of the mobile units that inspect penitentiary institutions described in the State party's follow-up report (paras. 68 and 69). In particular, please provide information concerning any allegations of torture or ill-treatment received during these inspections and provide information on remedial steps and/or investigations opened in response to such allegations.*

ANSWER TO QUESTION NO. 29

In paras. 68–69 of Ukraine's follow-up report and paras. 163-187 of the Report, the Government provides brief information on the activities of mobile groups tasked with the inspection of Pis, which does not contain essential details of the violations discovered in the course of these inspections.

In addition to the information provided in the Report, we would like to point out the following.

According to the MoJ's official reply, the Ministry's order on the creation of mobile groups for the inspection of Pis became invalid on December 4, 2018. Although the Government claims that members of the public were actively involved in the activities of the mobile groups, this participation was largely in name only, since there was almost no coverage of the selection of members of the public, or of the inspections carried out with their involvement, aside from mentions in official communications.

According to the MoJ, the Directorate of Penitentiary Inspections was established within its structure in 2017 as a unit for internal inspections of SCES bodies and institutions. As of April 2021, 118 prisons were inspected: in 2017 — 25, in 2018 — 32, in 2019 — 39, in 2020 — 18, in January-March 2021 — 4. According to the information provided in the follow-up report and the Report, no complaints were received from the inmates and detainees regarding torture or ill-treatment by prison staff during these inspections. Although obtaining information on the observance of human rights in Pis is only one of the tasks of said mobile groups, they should definitely pay more attention to the issue of the rights of convicts when inspecting these institutions.

The PG is also responsible for inspecting Pis[211].

According to the PG's reply, their representatives carry out monthly checks in places of detention, including PTDCs, arrest houses, correctional centres, penal colonies and juvenile detention centres.

PG's statistics for 2014-Q1 2021 on inspections of the observance of law in pre-trial detention centres and penitentiary institutions are given in the following table:

	Year	Documents examined on responses of the prosecuting authorities to violations of the law	Persons subjected to disciplinary, administrative or material liability	Criminal proceedings initiated
Pre–trial investigation centres	2014	440	429	14
	2015	338	453	–
	2016	361	429	–
	2017	434	458	–
	2018	460	481	–
	Q1 2019	134	138	–

[209] http://khpg.org/1578702070

[210] https://www.ombudsman.gov.ua/ua/all-news/pr/predstavnik-upovnovazhenogo-u-sx%D1%96dnix-oblastyax-v%D1%96dv%D1%96dav-oleks%D1%96%D1%97vsku-vipravnu-kolon%D1%96yu,-de-zaprovadzheno-osoblivij-rezhim/

[211] Order of the Prosecutor General of Ukraine No. 161 of 20 April 2016 "On Organizing the Activities of Prosecutors on Supervising the Observance of Law in the Execution of Court Judgements in Criminal Cases, as well as in the Application of Other Compulsory Measures Involving Restrictions to Citizens' Liberty", < https://zakon.rada.gov.ua/rada/show/v0161900-16>.

	Year	Documents examined on responses of the prosecuting authorities to violations of the law	Persons subjected to disciplinary, administrative or material liability	Criminal proceedings initiated
Arrest houses	2014	18	10	–
	2015	15	7	–
	2016	16	17	–
	2017	19	12	–
	2018	16	10	–
	Q1 2019	1	–	–
Correctional centres	2014	288	335	8
	2015	218	303	–
	2016	186	282	–
	2017	227	320	–
	2018	170	260	–
	Q1 2019	49	58	–
Penal colonies	2014	1,804	2,116	39
	2015	1,527	1,887	–
	2016	1,393	1,746	–
	2017	1,532	1,714	–
	2018	1,328	1,605	–
	Q1 2019	414	552	–
Juvenile detention centres	2014	57	86	–
	2015	38	48	–
	2016	22	30	–
	2017	30	47	–
	2018	17	23	–
	Q1 2019	8	13	–

Concerning 2019–2020 the Prosecutor General's Office provided the data without division by the PI:

2019	4454	3041	–
2020	4050	3015	–
January–March 2021	1206	935	63

Data on the consideration of complaints about unauthorized measures of influence applied by the PI administration:

Year	Complaints resolved	Complaints satisfied
2014	342	8
2015	168	5
2016	141	2
2017	102	1
2018	58	1
2019	40	1
2020	37	–
January–March 2021	2	–

PG (Prosecutor General's Office) has noted in its response to the draft commentary of KHPG that in 2016–2019 there were 31 thousand issued documents of reaction to the found violations, on the results of which 21 thousand people were brought to responsibility.[212] However, this information is undifferentiated and it is impossible to identify for which violations those persons were brought to responsibility.

This information also does not correspond to the previous data submitted by the PG. The differences in the data concerning the people brought to responsibility in 2014-first quarter of 2019, submitted by PG in May 2019 and the data submitted in February 2020 is 7131 persons (in the period of 2016–2019). Anyway, it

[212] The reply of the Prosecutor General of 11.02.2020.

is impossible to extract the information from the pubilic statistics of the prosecution bodies concerning the number of complaints about the use of unlawful violence by the law-enforcement officers.

Of vital importance in revealing the flaws in investigations into acts of torture committed by prison staff are CPT visits and the Government's responses to discovered violations. Thus, during the reporting period, the delegation received a large number of credible complaints from detainees (including minors) in the course of the 2014–2018 visits about the ill-treatment they suffered at the hands of police officers, including hitting, slapping, beatings with batons or filled plastic bottles. In some cases, the ill-treatment was severe enough to be considered torture[213]. The delegation also received from detainees a large number of credible statements regarding excessive force used by the police during arrests, instances of ill-treatment, as well as prolonged use of tight handcuffs[214]. The Ombudsman's report states that 63 sets of criminal proceedings were initiated as a result of monitoring visits to the places of deprivation of freedom in 2019 (40 of them — in SBI) , concerning the torture and other degrading treatment[215].

In its acts on responses to these complaints, the Government mentions that criminal proceedings were initiated regarding instances of ill-treatment in Pis. However, not even the Government's reports mention any actual conviction of a government official for these offences. The proceedings were either closed or were never completed[216]. Moreover, the Government states in its Report that no complaints of torture or physical abuse of prisoners were received in the course of the above visits[217].

At the same time the Government, represented by the administration of SPSU again denies the existence of fixed facts of improper treatment of the prisoners. In its response to the commentary given by the representatives of KHPG SPSU states that the representatives of CPT during their visits have not received a single complaint about inadequate treatment of prisoners[218], which directly contradicts the original reports by CPT.

Thus, the State not only fails to comply with the obligation to prevent torture and ill-treatment, but also manipulates information provided in the reports of international organizations.

In August 2020 the representatives of CPT visited several penal colonies (No. 77, 25, 100) with ad hoc visit. The delegates documented numerous statements of the convicts concerning the tortures, in particular, in Oleksiivska PC No. 25, the systematic cases of torture of convicts in which were repeatedly covered by public organizations[219] and by the Commissioner[220].

The CPT report states that "in some cases the alleged ill-treatment was so severe that it could amount to torture (for example, severe beating, infliction of burns on the buttocks, strangling with a plastic bag, etc). In addition, the delegation received statements about the threats of physical violence made by the employees (including the threats of rape with a truncheon)"[221]. The report also expresses concern at the closure of numerous criminal proceedings concerning the facts of torture, in particular in the colony No. 77.

The delegates also received a significant amount of credible allegations from detainees about excessive use of force during detention by the police, ill-treatment, and prolonged use of tight handcuffs..[222]

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[213] «Report to the Ukrainian Government on the visit to Ukraine carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 21 to 30 November 2016», <https://rm.coe.int/pdf/1680727930>.

[214] «Executive summary of the Report to the Ukrainian Government on the visit to Ukraine carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 8 to 21 December 2017», <https://rm.coe.int/16808d2c2a>.

[215] Annual Report of the VRU Commissioner on human rights, 2020, p. 137.

[216] «Response of the Ukrainian Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Ukraine from 8 to 21 December 2017», <https://rm.coe.int/168093ab47>.

[217] «Seventh periodic report submitted by Ukraine under article 19 of the Convention pursuant to the optional reporting procedure, due in 2018», para 170.

[218] Reply of the SCES of 17.02.2020.

[219] «Violation of prisoners' rights in Oleksiyivka colony: human rights activists report that witnesses are being pressured», https://glavcom.ua/country/society/porushennya-prav-vyazniv-v-oleksijivskiy-koloniji-pravozahisniki-povidomili-shcho-nasvidkiv-tisnut-685173.html, «What happened at Oleksiivka colony No. 25 in Kharkiv? (updated)», http://khpg.org/1578702070.

[220] Annual report of the Human Rights Commissioner for 2019, p. 145, <https://dmb.kyivcity.gov.ua/files/2020/4/28/zvit.pdf>.

[221] Report of the Government of Ukraine following the visit of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) to Ukraine, 4 — 13 August 2020, < http://khpg.org/1608364515>.

[222] «Executive summary of Report to the Ukrainian Government on the visit to Ukraine carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)from 8 to 21 December 2017», <https://rm.coe.int/16808d2c2a>.

The Ukrainian Government's response to the CPT's report states that allegations of torture were made by "certain convicts with negative attitude in order to reduce order in the colonies"[223].

As for the so-called "duty prisoners"[224], whose participation in the torture of other convicts was highlighted by the CPT, the Government of Ukraine denied those duty prisoners having any supervision functions and stated that their appointment does not contradict the law[225].

Thus, despite repeated allegations of torture in penitentiary institutions made by representatives of international and national organizations, the Government of Ukraine continues to deny the problem of torture as a systemic phenomenon, to accuse convicted persons of defamation, and to provide only formal responses to complaints of violations.

Question 30. *Please provide data on the number of complaints of torture and ill-treatment received by other independent international and domestic prison monitoring entities during the reporting period, disaggregated by facility, and information on concrete actions taken in response to such complaints. Please indicate if any penitentiary official has been prosecuted for committing reprisals against inmates who complained about their treatment or conditions of detention during the reporting period.*

Question 31. *Please describe the impact of the adoption by the Ministry of Justice of recommendation for improving investigation of allegations of ill-treatment in prisons and pre-trial detention (No. 178/5) as referenced by the State party in its follow-up report (para. 50).*

ANSWER TO QUESTIONS Nos. 30, 31

The issue of acts of violence perpetrated by PI administrations against convicts remains unresolved. According to the MoJ, only one convict complained of torture in 2014, 15 convicts in 2017, 46 in 2018 and 77 in 2019. In 2014–2019, MoJ representatives conducted 68 monitoring visits (inspections) to Pis, in the course of which they received no complaints of ill-treatment from the inmates. Since 2014, no member of prison staff has been prosecuted for torturing inmates. In response to our inquiry, the SCES provided the following information on complaints submitted by convicts in 2014–2018 regarding the use of inappropriate methods of coercion[226]:

	2014	2015	2016	2017	2018
Complaints received	298	168	141	102	58
Complaints satisfied	2	5	2	1	1

Information about similar complaints received by the PG's Office, which is responsible for supervising execution of sentences[227]:

	2014	2015	2016	2017	2018
Complaints received	1,613	1,664	1,350	1,010	855
Complaints satisfied	23	19	7	15	10

However, this information contradicts media reports as well as facts documented by human rights defenders[228]. Thus, according to inmates of the Temnivska PI no. 100, they are effectively barred from filing complaints against the administration out of fear of torture and ill-treatment. This situation is typical for Pis, especially those with stricter security regimes. Inmates that try to complain about the staff's actions and protect their rights are usually put in higher security blocks. Convicts are also frequently beaten by prison staff for violating regulations, including minor ones (such as loud conversations among inmates).

[223] Response of the Government of Ukraine to the Report of the Government of Ukraine on the Results of the Visit to Ukraine of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), para. 52–54.

[224] Convicts who are assigned to assist staff and are given control over other prisoners.

[225] Response of the Government of Ukraine to the Report of the Government of Ukraine on the Results of the Visit to Ukraine of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), para. 73–78.

[226] Information based on SCES's reply to the KHPG.

[227] Information based on SCES's reply to the KHPG.

[228] Information based on SCES's reply to the KHPG.

In 2019, there was a spike in violence, with mass beatings of convicts by special units taking place over a short period of time (several months) in five Pis. At the end of February 2019, instances of mass beatings and degrading of convicts by other inmates — so-called "helpers of the administration" — once again occurred at the Berdyansk PI no. 77. Members of the public and the press visited the Berdyansk PI no. 77 to see the inmates and document torture incidents. The administration helpers there are constantly beating up newcomers among the convicts. Right at the quarantine zone, they are often tied up for several days, beaten several times a day, including on the heels and forced to exercise naked in the cold; they have needles inserted under their fingernails and nails hammered into their feet and hands; there have also been instances of rape. Families of the convicts are forced to pay large sums of "security" money to certain bank accounts to keep their loved ones safe. Recently, in violation of Article 24 CPC, public monitors — assistants of Ukrainian MPs — were not allowed inside the colony on three occasions. A criminal investigation was launched following the complaints of the convicts' families. With a group of convicts recognized as victims and provided with security measures, as they have become targets of retaliation for complaining about the administration. Still, there is little hope that the investigation will be effective (see comments to questions nos. 12 and 34).

A widespread practice in Pis involves having some inmates supervise others or take action to keep others in line. Thus, there are so-called "order enforcement groups" at the Temnivska PI no. 100, which include inmates selected by the staff. The administration delegates to these inmates the responsibility of keeping other convicts in line and supervising their behaviour, participating in general and personal searches, escorting convicts to the officers on duty if they violate regulations, etc. According to the inmates, the members of these groups are authorized by the administration to use physical and mental violence against other inmates.

In March 6, 2019, a general search was conducted at the Zhovtovodska PI no. 26. At about 10 a.m., armed men in black uniforms, with faces hidden by balaclavas, entered the colony. It is unknown what unit they belonged to since all they had in terms of identification were chevrons with the letters "ГШР" (GShR, rapid response team). The punishment block was the first to be searched, then the residential area. At the punishment block, the inmates were simply thrown out of their cells and forced down on the asphalt. Almost every convict was beaten, none of them were even allowed to raise their heads. The assailants used their feet, aiming at various parts of the convicts' bodies, including their heads, which is strictly forbidden. They also put hoods on the frightened convicts' heads, put duct-tape over their eyes and stuffed rags into their mouths to keep them from screaming; then, still not allowing them to stand up, shoved them into a vehicle and took them to the Kryvyi Rig PI no. 3 (PTDC). There the convicts were thrown out of the vehicle and dragged down a corridor to their cells while being constantly beaten and humiliated.

The convicts were not allowed to bring anything with them, so most of them lacked clothing and shoes, which they had lost while being dragged across the asphalt. The eleven transported convicts sustained injuries of varying severity. Thus, one had a tooth knocked out, another had damaged ribs. Most of them say that they had bruises on their heads, torso and other parts of their bodies. Doctors never examined them over the week of their stay at the PTDC, waiting perhaps for their injuries to heal so that they could not prove anything later.

At the residential area, convicts were forced out of their cells and against the walls. They were fearing for their lives while the unknown masked men were breaking and destroying everything around. The rapid response team left behind a carnage of broken cabinets and destroyed property of the convicts. Some of the latter were also beaten with batons. According to the victims, the assailants were aiming for their legs, torso and heads. The injuries were noticeable even a week later. The details of these events can be found here[229]; the horrific conditions of detention at this PI — here[230].

On April 28, 2019, another incident occurred at the Cherkasy PI no. 62. Two convicts, veterans of war, got drunk and started a fight. As a result, 5 inmates were put in the punishment block, which already had other inmates. On May 3, 2019, a state of emergency was declared at the PI and a rapid response team was brought in, which started beating up the convicts. They were beating everyone, dousing them with water and as well as using tasers on the convicts. 15 convicts were beaten before the assault was stopped by the

[229] http://khpg.org/index.php?id=1552665703

[230] http://khpg.org/index.php?id=1552909974

arrival of human rights activists. Information about the two convicts was entered in the Single Register of Pre-Trial Investigations under Art. 392 CC. On May 27, 2019, unidentified masked men once again entered the punishment block and proceeded to beat the convicts there; about 16 of the convicts later cut their veins, some of them also went on hunger strike.

On May 19, 2019, at the Rivne PTDC, the inmates were banging on the doors and asking to provide immediate medical assistance to one of their cellmates. A rapid response team was brought in instead. The most active truth-sayers were taken to PTDC precincts at penal colonies and criminal charges were brought against them under Art. 391 CC.

On May 27, 2019, news broke out about a riot at the Pivdenna PI no. 51 in Odesa. The media were trying to outdo each other with fake news about hostages, casualties and fugitives, even though no one actually escaped or died. A week later, a rapid response team, masked and combat-ready, was brought in in retaliation, as the riot had long been over, brutally beating up six of the main protesters for defying the administration; for this, the convicts were even brought to the headquarters. Some of the convicts, in fear of being beaten, barricaded themselves inside the residential area and set fire to mattresses in the hope that someone outside the PI's walls would notice the smoke. The riot was caused by atrocious food as well as the administration's demands to be paid for allowing convicts to receive parcels from their relatives. In fact, most inmates there mention that everything has a price at this PI. In the evening, the convicts stopped their protest.

On May 22, 2019, a rapid response team entered the Chernihiv PTDC. They searched the cells, causing injuries to several inmates. The injuries were documented and this information was sent to the PG and the police[231].

On January 3, 2020 during the monitoring visits of the representatives of KHPG to Oleksiivska penal colony No. 25 (hereafter — OPC-25) 21 convicts complained about the use of unlawful violence by the colony officers or under to their orders — by the so-called "assistants" of the administration. Some of them provided the information about their torture in such a cruel way (the burning of paper on the victim's body, immobilization with adhesive tape for several days), that it led to a great public resonance[232].

Many more convicts could not achieve a meeting with human rights activists and awaited their next arrival in the first day after the Christmas holidays (January 8). The convicts named the extortion of money for parole, transfer for less strict detention regime, phone calls to the relatives as well as for the guards to not use violence (!!!) etc as reasons for such actions. The convicts also complained about the lack of medical treatment, that they were forced to work much more than the norm etc. In such conditions some of them attempted suicide.

In the night of January 8, 2020 the masked RRG officers dragged the sleeping convicts from their beds, fixed their arms behind their back and dragged them undressed to the administration building. Some of them were forced to lie on the asphalt in the cold for more than an hour. In the administrative building the convicts were forced to crawl (with their hands tied behind their back) on their stomach upstairs, to the upper floors — the second, third and fourth, those who could not do that were beaten violently. After that the convicts were placed on the three floors of the building, lying on the floor. All convicts had abrasions on their elbows, knees and stomachs. They were held in such condition for several hours, those who tried to change their body position were beaten by special forces. Among the people to whom such measures were applied there were all those who complained to human rights activists on January 3, as well as others who expressed dissatisfaction with the interruption of their night sleep. And all convicts who were beaten were forced to write that they were obstructing the search and that they had no complaints about the measures applied to them. After that some of the convicts who were forced to write the explanations werte transferred to other Kharkiv prisons. However, many beaten persons remained in the medical unit of OPC No. 25.

According to the official version of SPSU those actions were called "a general search", that was performed with the aim of prevention of the group illegal actions of the convicts ("a riot").[233] After the RRG fighters entered the OPC-25 it announced the introduction of the "special conditions regime", thus prohibiting the access of the civilian monitors to the convicts. Because of that the lawyers who represented the

[231] http://khpg.org/index.php?id=1559078080

[232] https://2day.kh.ua/zhgut-kostry-na-lyudyakh-v-kharkovskoy-kolonii-no25-primenyali-pytki-k-zaklyuchennym

[233] https://www.facebook.com/adkvsu/posts/512438049379623

convicts who became the victims were not allowed to visit their clients, the assistants of the people's deputies of Ukraine were not allowed to enter, it was impossible to bring the doctors from "outside" to the colony and even the representatives of the Ombudsman's office who did not find any signs of a "riot" in the colony, were obstructed[234]. In such a way the administration of the colony made it impossible for other convicts to complain about the actions of the employees.

There were numerous applications concerning the torture, the obstruction of lawful activity of the lawyers, as well as obstruction of activity of the assistants of people's deputies of Ukraine, sent to the prosecution authorities and SBI, the criminal proceedings were initiated after them. Since the very beginning of the investigation there were signs of its inefficiency, the main one of which was the failure of the authorities to protect the victims who complained about the torture and were left under the full control of the employees who committed the crimes complained of. The victims who complained about the administration were repressed, often with the use of physical measures, as a result a significant part of the victims waived their complaints, including the people who underwent the most cruel torture. Some convicts injured themselves to be transferred from the colony to a hospital. The lawyers' petitions to apply security measures to such convicts were satisfied only in separate cases, with a significant delay.

The questioning of the victims was performed in the first period of the investigation in the facilities of OPC-25, without their lawyers, in the atmosphere of constant psychological pressure on them by the administration of OPC-25 and senior management. In this case there were also organizational shortcomings in the work of SBI, as due to the location of territorial department of SBI in another region the communication (correspondence) during the investigation is greatly slowed down, including the procedural communication between the victims' lawyers and investigators. Also noticeable is the lack of special training of the investigators for the investigation of tortures, which is a direct consequence of the lack of a special methods of investigation of such crimes. The forensic experts examined the convicts in the institution without conducting any instrumental research (except one case of complaint about the cruelest violence), photographing the injuries with the help of mobile phones.

Concerning the requests of lawyers to the President of Ukraine and other representatives of the state authorities of Ukraine to change the situation with the problem of torture in the work of law-enforcement bodies. Concerning this, the administration of SPSU and the Ministry of Justice of Ukraine issued the replies the essence of which is that the use of physical force and special means to the convicts by the officers of special subdivisions was lawful, the violations of the lawyers' rights were not found etc.

At the same time, during the official investigation of the events in OPC-25 it turned out that not a single surveillance camera was functioning in the institution during the use of RRG, and nothing was recorded by portable video recorders of the subdivision fighters, which is a direct violation of the legislative norms. Currently the investigation of the events in OPC-25 still continues, there is no information about the notification of any of the officials from the penitentiary system.

In no case did penitentiary authorities provide video recordings of the use of special forces as a proof of a lawful manner of actions of their officers.

In response to our inquiry, the SCES provided information on criminal investigations into the actions of PI personnel conducted by prosecuting authorities. This information is given in the table below[235]:

	Article 364 CC (abuse of authority or office)			**Article 365 CC (excess of authority or office)**			**Article 367 CC (professional negligence)**			**Article 373 CC (compelling testimony)**		
	Registered	Indictment issued	Court judgement delivered	Registered	Indictment issued	Court judgement delivered	Registered	Indictment issued	Court judgement delivered	Registered	Indictment issued	Court judgement delivered
2017	0	0	0	23	0	0	2	0	0	0	0	0
2018	0	0	0	0	0	0	2	1	1	0	0	0
2019	0	0	0	0	0	0	1	0	0	0	0	0

[234] https://times.kharkiv.ua/2020/01/11/v-alekseevskoj-kolonii-prepyatstvuyut-proverke-ofisa-ombudsmena/

[235] Information based on SCES's reply to the KHPG.

In some cases, acts of torture resulted in deaths among the convicts. Thus, on February 21, 2019, an inmate died after being in custody at the Vilnianska PI no. 11 for only three days; on the fifth day his mutilated body was returned to his mother. It should be noted that according to the official version, the inmate died of heart failure.

In all the above cases, the victims had filed complaints with the appropriate prosecuting authorities or SBI concerning criminal acts committed against them. However, in most of these cases, no pre-trial investigation was conducted. Moreover, state authorities do not keep separate statistics on persons prosecuted for these types of crimes.

According to the SIHC, the statistics on suicides in Pis and PTDCs is as follows: 2014 — 62 cases, 2015 — 49 cases, 2016 — 58 cases, 2017 — 46 cases. In 2018, the largest number of suicides was committed at the Dnipro PI no. 4. In each case, an official inquiry was conducted into the suicides' circumstances[236], yet none of these inquiries implicated members of prison staff.

Question 32. *Please describe measures taken to ensure that independent monitors have full, unannounced access to all Security Service of Ukraine facilities, including at Kharkiv, Kramatorsk, Mariupol and Izyum, and provide data on any resulting visits and their outcomes.*

ANSWER TO QUESTION No. 32

In addition to the information provided by the Government, we received a reply from the SSU to our inquiry, in which they state that there is a specially designated temporary detention facility in Kyiv — SSU's Temporary Holding Facility (THF) — that's always open to representatives of various monitoring organizations and that has been visited by numerous monitoring bodies:

- UN Human Rights Monitoring Mission in Ukraine — 16.06.2017, 29.12.2017, 25.04.2018, 05.06.2018, 15.01.2019;
- CPT — 09.09.2014, 29.11.2016, 10.12.2017;
- ICRC — 11.05.2016, 12.05.2016, 09.03.2017, 21-23.03.2017, 07.03.2018, 20.03.2018, 19–20.04.2018, 03.07.2018, 31.08.2018, 03.09.2018, 03-04.10.2018, 07-08.11.2018, 18-19.12.2018, 04-06.02.2019, 09-10.04.2019, 08.05.2019.
- OSCE Special Monitoring Mission to Ukraine — 30.07.2017.
- European Parliament — 25.04.2018.
- Ukrainian Parliament Commissioner for Human Rights — 03.08.2012, 17.08.2015, 21.09.2015, 06.11.2015, 06.06.2016, 29.07.2016, 04.08.2016, 13.07.2018.
- Secretariat of the Ukrainian Parliament Commissioner for Human Rights — 20.03.2014, 21.01.2016, 29.02.2016, 26.04.2016, 25.02.2017, 11.08.2017, 16.11.2017, 23.11.2017, 15.02.2018, 27.02.2018, 24.03.2018, 04.04.2018, 08.05.2018, 05.06.2018, 26.07.2018, 09.08.2018, 27.12.2018, 18.02.2019, 20.03.2019, 29.03.2019, 25.04.2019.

Contrary to SSU's information, the reports of international human rights organizations and the media suggest that during the reporting period, the SSU was systematically obstructing access to its institutions for monitoring organizations[237]. A number of incidents were reported when international monitoring organizations were denied access to SSU institutions altogether. Thus, SSU's refusal to show the SPT delegation its detention facilities in May 2016 disrupted the visit[238]. Referring to SSU's detention facilities, Malcolm Evans, head of the delegation, said that the observers were denied access to places where, based on numerous reports, people were unlawfully detained as well as tortured and subjected to ill-treatment[239].

"The information gathered by human rights organizations that documented victims' testimonies suggests that the unlawfully detained were in some cases transferred to other premises for the duration of the monitoring visits. It is also an outrage that the SSU has not yet publicly acknowledged the issue of places

[236] Information based on MoJ's reply to the KHPG.

[237] https://www.youtube.com/watch?v=mpvvZM_yycU

[238] OHCHR Report on the human rights situation in Ukraine, 16 August to 15 November 2016.

[239] "You don't exist." Arbitrary detentions, enforced disappearances and torture in the east of Ukraine », <https://www.hrw.org/uk/report/2016/07/21/292289>.

of unlawful detention despite dozens of cases documented by the United Nations Monitoring Mission in Ukraine, Amnesty International and Human Rights Watch."[240] The functioning of the SBU pre-trial detention centre in Kharkiv was confirmed by journalistic investigations based on the testimonies of persons detained and tortured there.[241].

In July 2019 the head of UN Monitoring Mission in Ukraine said that SSU still refuses to admit that it held people in illegal prisons[242]. She also noted that "*...Currently we found 51 such places of detention. Kharkiv SSU is the most well-known place, but there was a number of other places on government-controlled territory"*[243].

UNHCR notes that in November 2019 — February 2020 the representatives of the Mission enjoyed uninterrupted access to the places of the deprivation of freedom. However, the new cases of illegal arrest and detention of persons in non-sanctioned places of the deprivation of freedom continue to be documented by the monitors[244].

In the report on the observance of human rights in Ukraine for 2020 Amnesty International stressed that "justice, truth and reparation have not been achieved for any civilian (both men and women) victims of enforced disappearances, secret detention and torture, as well as other ill-treatment by the Security Service of Ukraine (SBU) between 2014 and 2016".[245] The new head of the SBU, Mr. Bakanov, said in June 2020 that secret SBU prisons were "fantasies of Russian propagandists"[246].

Civil society remains indifferent to the existence of places of illegal detention. On 21 January 2021, an electronic petition to the President of Ukraine was registered to close all places of secret detention[247].

As of March 2021, the SBU leadership continues to assure that it provides full access to the SBU detention facilities and administrative premises. The SBU also assures that since 2018 it will provide the International Committee of the Red Cross in Ukraine with lists of persons detained by the SBU[248].

Question 33. *With reference to the Committee's previous concluding observations (para. 20) expressing grave concern at the serious deterioration of health condition in prisons and the increase in mortality of detainees, please provide information on:*

a) Whether the State party has taken measures to enhance the independence of health-care staff working in penitentiary facilities from prison administrators and to ensure adequate funding for health care in prisons;

b) Measures taken to ensure that inmates are referred for specialist and outside treatment where required and to ensure that unnecessary limitations are not placed on the outside providers from which inmates may receive medical assistance when required;

c) Measures taken to ensure that appropriate medical treatment is available for detainees with HIV/AIDS and tuberculosis in all penitentiary facilities, and data on the number of inmates who have died of tuberculosis and HIV/AIDS during the reporting period, disaggregated by year and facility, and the results of any investigations into those and other deaths in custody.

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[240] Visit of the UN SPT to SSU premises: Subcommittee's report and comments of human rights defenders, <https://humanrights.org.ua/material/vizit_pidkomitetu_oon_do_primishhen_sbu_zvit_vidomstva_ta_dumki_pravozahisnikiv>.

[241] «The media found the new evidence of existence of a secret SBU prison», <https://www.pravda.com.ua/news/2018/03/ 15/7174752/>.

[242] «Ensuring accountability for human rights violations is a key message of the UN Mission after 5 years in Ukraine», <https://hromadske.ua/posts/zabezpechiti-vidpovidalnist-za-porushennya-prav-lyudini-klyuchovij-mesidzh-misiyi-oon-pislya-5-rokiv-roboti-v-ukrayini>.

[243] Ibid.

[244] «Report on human rights situation in Ukraine on 16 November 2019 — 15 February 2020», p. 12, <https://www.ohchr.org/Documents/Countries/UA/29thReportUkraine_UA.pdf>.

[245] «Human rights in Ukraine in 2020». Amnesty International, <https://www.amnesty.org.ua/wp-content/uploads/2021/04/ukraine-annual-report–2020.pdf>.

[246] «Bakanov assures that the secret prisons of SBU are «fantasies of Russian propagandists», <https://hromadske.ua/posts/bakanov-zapevnyaye-sho-sekretni-tyurmi-sbu-ce-fantaziyi-rosijskih-propagandistiv>.

[247] «UN demands: IMMEDIATELY CLOSE ALL secret (illegal) prisons of SBU and other military formations in Ukraine», <https://petition.president.gov.ua/petition/112370>.

[248] Reply of SBU of 19.03.2021.

ANSWER TO QUESTION NO. 33

Reform of the medical system in penitentiary institutions

Provision of healthcare to convicts is one of the most urgent problems in the penal system. During the monitoring visits to Pis (see comment to question 27), we were able to find out the actual state of penitentiary healthcare, and our findings differ greatly from the information provided by the Government.

In September 2016, KHPG visited an interregional hospital that services the Buchaniv PI no. 85 in Kyiv Region and found a number of violations there, such as serious violations of sanitary requirements, poor nutrition for sick convicts, virtual lack of walks in the open for them, especially for those unable to move around on their own, poor organization of medical care, and most importantly, lack of proper medical treatment, or even medical protocols established by the MoH. Thus, it is the convicts, not medical personnel, that administer medical injections and even intravenous therapy to each other. In one particular case, a convict with obvious signs of a mental disorder had been kept with other convicts and died shortly after our visit. We sent a petition to the MoJ regarding these violations, yet the Ministry essentially chose to ignore it, deeming the above shortcomings to be minor, and refused to conduct a formal inquiry into the matter[249].

Following the reform of penitentiary healthcare in July 2018, our monitors once again visited this hospital, which had been renamed Multidisciplinary Hospital of the SIHC, and found the same problems, only compounded by a catastrophic shortage of doctors and medicines[250].

The penitentiary healthcare reform mentioned by the Government has actually made the situation worse for convicts. There are, of course, objective reasons for this, such as insufficient funding for penitentiary healthcare (50%), medical units requiring renovation (and no funding for it), lack of equipment (only 30% provided), with 70% of what's available being outdated. However, this is not the main problem. Most medical units in Pis, multidisciplinary as well as specialized hospitals of the SIHC, lack specialists. The shortage of medical staff in Pis is not a new problem, yet it remains very urgent to this day. According to the SIHC, as of late September 2018, the shortage of personnel amounted to about one-third, 40% of them doctors. In some institutions, the situation was critical[251]: some of them have only the heads of medical units; at the medical unit of the Dnipro PTDC (no. 4), there was only one paramedic to service 1,700–1,800 convicts, which makes it impossible to even visit the convicts to check up on their health, let alone treat them all. According to the SIHC, as of May 2019, Ukrainian Pis had a staffing list of 2,559, of which 885.25 were doctors. Vacancies constituted 832.25 staff units, with 336.25 of those being for doctors[252]. Currently, according to HC, staffing is around 90%, although in some institutions its lack is significant.

According to the report of the Ombudsman for 2019, for the second year in a row the level of ensuring the right of individuals to health care and medical assistance remained low in most of the places of nonliberty[253]. Due to that situation in the prison health care and increase of mortality among the prisoners, the Prosecutor General, Ruslan Ryaboshapka, numerously addressed the Prime Minister of Ukraine, Oleksiy Gonsharuk, for the urgent intervention in the situation with delaying the reform of criminal executive medicine[254].

Only since April 2019 HC began implementing to obtain the licenses for each branch (medical unit and medical institutions that are part of its structure) separately according to the Licensing conditions to conduct economic activity in medical practice. As of 01 January 2020 19 branches of SI "Health Centre of the State Criminal-Executive Service of Ukraine" obtained rights to conduct economic activity in medical practice, except the branches in Dnipropetrovsk and Donetsk oblasts.

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[249] http://khpg.org/index.php?id=1495012193&w=%D0%B0%D0%BA%D1%82+%D0%BF%D0%BE+%D0%91%D0%92%D0%9A%5C-85

[250] http://khpg.org/index.php?id=1531552900&w

[251] http://khpg.org/index.php?id=1543315523&w

[252] Information based on SCES's reply to the KHPG.

[253] https://ombudsman.gov.ua/ua/page/npm/provisions/reports/.
Спеціальна доповідь Уповноваженого Верховної Ради України з прав людини про стан реалізації національного превентивного механізму у 2019 році, с.32.

[254] https://www.gp.gov.ua/ua/news?_m=publications&_c=view&_t=rec&id=264711. Прес-реліз від 15.01.2020.

But in 2021 the multidisciplinary hospital at Dnipro PC (No. 4) has not performed any surgery[255].

Of course, the removal of medical workers from the list of law enforcement officers at their respective institutions, as well as the fact that they are no longer subordinate to administrations of Pis are positive steps, but in many cases this "independence" is imaginary. SCES healthcare institutions are located on the premises of their respective Pis and are thus required to obey the administrations' rules regarding the regime, monitoring of convicts and security; the heads of these healthcare institutions must be present at meetings held by PI wardens; they must submit requests to the administrations in order to transfer convicts to civilian hospitals or to use vehicles for this, etc. For these reasons, the Government's claims of independence in decision-making concerning the treatment of convicts (see para. 200 of the Report) are an exaggeration.

SIHC's activities was extremely opaque. The web site of the HC was created under the pressure from the public. There are also no lists of regional healthcare facilities that provide medical assistance to convicts. Even now the statistics of the infection is only provided in the summarized form for Ukraine in general.

After penitentiary healthcare had been made the responsibility of an independent state agency, the heads of PTDCs and PCs assumed that they were no longer responsible for the life and health of convicts, although no such changes had been made to legislation, nor could they have been made. In practice, this attitude has resulted in situations when PC or PTDC administrations refuse to consider petitions, complaints and requests for medical assistance submitted by convicts, their families and lawyers. SCES healthcare facilities at Pis do not have their own communication channels, so all communication goes through the management of the appropriate SIHC branch, which significantly complicates and delays the provision of medical care to sick convicts.

The International Expert of the Joint Project of EU and the Council of Europe "European Union and the Council of Europe work together to support the prison reform in Ukraine", Jorg Pont, provided the following recommendations for the improvement of cooperation between HC of SCES and SCES, in particular, the following:

- provide the unrestricted access of not only the medical workers to the convicts/detainees, but also vice versa;
- make a clear division of competencies of medical staff of HC and the employees of SCES, so that each one would only perform their own functions;
- ensure the preservation of medical secrecy regarding the state of health of convicts, including during their medical examinations and storage of medical records;
- arrange the timely (if needed, urgent) transporting of the convicts to the civil hospitals and their stay there;
- introduce the obligation of heads of institutions to consider doctors` opinions on healthy living conditions of convicts, similar to Articles 45.1, 45.2 of the European Prison Rules;
- develop codes of professional ethics for medical workers and staff of SCES;[256]
- develop the standard working procedures and training procedures for both categories of employees;
- resolve the issue of recording complaints about the use of violence;
- introduce a mechanism for reviewing the complaints of convicts about medical care[257].

General issues in multidisciplinary hospitals and medical units

Nowadays the following issues remain unresolved: an adequate level of examination of prisoners for tuberculosis and provision of medical assistance to people with various forms of tuberculosis; continuous treatment with antimycobacterial therapy for prisoners suffering from a contagious form of tuberculosis; continuous treatment with highly active antiretroviral therapy for HIV-positive prisoners; hiding the facts of the convicts or detainees receiving bodily injuries during their stay in the institutions; adequate provision of the medical units with necessary equipment and medicines; failure to conduct or formal medical

[255] https://coz.kvs.gov.ua/?page_id=160

[256] https://www.coe.int/uk/web/kyiv/-/how-to-improve-health-care-in-ukrainian-prisons-recommendations-from-an-expert-of-joint-eu-council-of-europe-project

[257] https://www.coe.int/uk/web/kyiv/-/how-to-improve-health-care-in-ukrainian-prisons-recommendations-from-an-expert-of-joint-eu-council-of-europe-project

examinations of prisoners during the release from the disciplinary premises or the use of special means to them; the absence of organization of medical provision of the prisoners during their staging (the transfer of the prisoners with contagious diseases (tuberculosis), is carried out in the general staging procedure, without providing the necessary isolation and personal protective equipment, which contributes to the increase of epidemiological situation related to tuberculosis)[258].

After the introduction of legislative authorization for substitution maintenance therapy (SMT) in PI in January 2021 such therapy was only provided in two institutions, it was received by 53 convicts[259], constituting a small percentage of the total need for SMT.

Even with all these objective factors, the main problem still lies in the attitude of prison doctors toward the health of convicts. Based on our monitoring visits, low quality of healthcare, or even its absence in some places, are the main things that the convicts complain about in almost every PI. Patients have to wait for weeks to be examined by a doctor, let alone for their treatment; moreover, they are told to buy medicines at their own expense — those needed for medical operations as well as those for general use[260]. Convicts are often forced to put bandages on themselves[261]. Our monitoring shows that a year and a half after the launch of the penitentiary healthcare reform the state of healthcare in prisons is catastrophic, and in some institutions healthcare is simply non-existent. The provision of medical care to convicts suffering from serious illnesses is also poor. Thus, no help was provided to a patient with hepatitis C (Dnipro PI no. 4), cancer patient (Dnipro PI no. 4), tuberculosis patient (Chernihiv PTDC)[262]. Some SCES healthcare institutions still have no medical license, so there is no guarantee that their activities meet licensing standards (Lviv PI no. 19). A similar situation can be observed at the Zakarpatska PI no. 9, Chortkiv PI no. 26, Kropyvnytskyi PTDC, Pyatykhatska PI no. 122 and other institutions)[263].

In February 2019, during the visit of our monitors to the Zhovtovodsk PI no. 26 in Dnipropetrovsk Region, it was discovered that the medical unit there lacked the most essential medicines; one of the convicts complained that they did not even have bandages. Diabetes patients there are not receiving insulin and convicts with fractured bones get no splints. Although the PC has a medical laboratory specialist, the laboratory itself has neither the reagents nor the equipment for on-site tests. In order to examine a convict, specialized examinations or dental care included, they must be taken outside the colony, but this is only done for those who can afford the cost of gasoline. There has been no fluorography specialist for over a year at the colony, so the convicts have not been undergoing fluorography, while it was later discovered that a person released from the institution had an open form of tuberculosis[264]. According to the institution's therapist, not all medicines are provided free of charge under state programs. As a result, those convicts who can afford their own medication are prescribed more expensive drugs, which are not available at the medical unit, while those who can't are treated with whatever is available[265].

In August 2019, our monitors visited the Dnipro Multidisciplinary Hospital no. 4 located on the premises of the Dnipro PI no. 4. During the visit, we discovered that no treatment was being provided to sick convicts, including those who had survived myocardial infarction. According to the doctors, they do not even have enough basic medicines, let alone specialized ones. If a convict has relatives, they are often the ones to buy the medicines. The institution's doctors do not monitor their patients' health, they do not perform daily rounds and do not even visit convicts when called. It is a difficult task for the convict to get examined by a doctor, the logs of preliminary registration for outpatient care are not available to the prisoners and their complaints to the administration are useless. If a convict requires additional tests that cannot be performed at the institution, this is either not done at all or done after a considerable delay. One of the patients who had been brought a long way to be treated there was forced to forgo treatment under threat of physical violence. According to the convicts, this way the hospital makes room for those who pay for their

[258] https://ombudsman.gov.ua/files/marina/zvit2_web.pdf

[259] Response of HC of SCES of 12.03.2021.

[260] http://khpg.org/index.php?id=1472626296&w=%E2%84%96

[261] http://khpg.org/index.php?id=1543315523&w

[262] KHPG Database of Applications for Legal Aid.

[263] http://www.ombudsman.gov.ua/files/Dopovidi/spec_dopov_npm_2016_n.pdf

[264] http://khpg.org/index.php?id=1531552900&w

[265] http://khpg.org/index.php?id=1553780490&w

stay and remain there for months even when they have no need for treatment[266]. According to a lawyer who provides legal assistance to two seriously ill convicts held at this facility, both of these convicts are kept in regular cells and are not getting any medical help. One of the inmates, disabled since childhood, had his spleen removed as a child and suffers from hepatitis C as well as liver cirrhosis; 1.80 m tall, he cannot eat and weighs 50–55 kg. In spite of this, he is still unable to get a place at the prison hospital. Another inmate, with a temporary orthopedic plate inside his tibia, has developed a purulent process that could result in abscess and loss of limb or even death. Our organization has appealed to the MoJ, PG and the Ombudsman regarding this, but to no avail.

Complaints lodged with investigating judges under Article 206 CPC by persons held in pre-trial detention facilities that are not being provided with medical care despite requiring it, are not particularly effective either, since prison doctors and administrations in the vast majority of cases fail to comply with court orders requiring them to provide such care, or, at the very least, delay its provision indefinitely.

In para. 204 of the Report, the Government mentions that Article 116 CPC allows convicts to receive medical advice and treatment at civilian healthcare facilities, which is in line with every person's right to choose their doctor. At the same time, receiving medical services in civilian healthcare institutions, except for specific ones determined for each Ukrainian region, is only done at the expense of the convicts themselves or their relatives. Given the extreme shortage of medical personnel and, what's even more important, medical equipment, as well as the poor selection of medicines, the need for treatment outside SCES institutions or for "civilian" medical examinations arises quite often, since the penitentiary healthcare system is often incapable of carrying out examinations and treatment of inmates. Thus, this approach to treatment is discriminatory toward low-income convicts who cannot afford paid medical services. Moreover, given the limited capacity of Ukrainian penitentiary healthcare to provide treatment to convicts, depriving them of an opportunity to receive treatment in civilian hospitals in many cases means depriving them of their only chance to survive. Only a small number of inmates, such as VIPs like the former Prime Minister of Ukraine Yulia Tymoshenko (EctHR judgement of 30/04/2013)[267] or famous businessman and leader of the political party "UKROP" G. Korban (EctHR judgement of 04/07/2019)[268] can take advantage of these opportunities.

In paras. 204, 205 of the Report, the Government claims that PI medical units are provided with medicines for the treatment of convicts suffering from tuberculosis and HIV/AIDS. However, we are regularly contacted by convicts and their families who complain about poor medical treatment for HIV-positive inmates. In some cases, no treatment is provided at all, or it is inappropriate for the patient's HIV type, or the ART therapy conflicts with anti-tuberculosis therapy, which forces patients to stop taking ART medication. Some convicts have a CD4 cell count of 50–100 or even lower than 20. Given below is the information from the reports we have received in 2019 regarding the absence of treatment for HIV-positive convicts.

At the Kamyansk PI no. 101, the administration failed to comply with a court order to conduct a medical examination of a patient with IV clinical stage HIV in order to determine his CD4 cell count. At the Oleksiyivska PI no. 25, a convict with IV clinical stage HIV was forced to perform manual labour and was not provided with any treatment, which made him contact us for legal aid. At the Dnipro Multidisciplinary Hospital no. 4, a convict was discovered who has IV clinical stage HIV as well as hepatitis B and C and is not getting the treatment he needs[269].

In 2020 the National Preventive Mechanism detected the facts of interruption of treatment with substitution maintenance therapy for the convicts, namely, during the monitoring visits to Vinnitsia PI No. 1, Dnipropetrovsk PI No. 4 etc, it found out that the prisoners are not brought from the institutions to health care institutions to obtain the substitution maintenance therapy, because of that the treatment is interrupted. Such persons are only detoxified in the institution[270].

Also concerning is a low level of diagnosing of the infectious diseases. In particular, in Zhovtovodsk PC No. 26 the fluorography to diagnose pulmonary tuberculosis is not performed for over a year already.

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[266] http://khpg.org/index.php?id=1565960227

[267] https://hudoc.echr.coe.int/eng#{%22appno%22:[%2249872/11%22],%22documentcollectionid2%22: [%22JUDGMENTS%22],%22itemid%22:[%22001-119382%22]}

[268] https://hudoc.echr.coe.int/eng#{%22appno%22:[%2226744/16%22],%22documentcollectionid2%22: [%22JUDGMENTS%22],%22itemid%22:[%22001-194188%22]}

[269] http://khpg.org/index.php?id=1565960227

[270] https://ombudsman.gov.ua/files/marina/zvit2_web.pdf

This can lead to an epidemic of the disease among the convicts. No pre-trial detention Centre or PI with the function of pre-trial detention Centre can provide the full isolation of persons with active form of tuberculosis. In some institutions the medical unit has not receive license for the medical practice, and therefore does not have guarantees that it meets licensing standards on technical and qualification grounds (Lviv PI No. 19). The similar situation is in Zakarpatska PI No. 9, Chortkiv PI No. 26, Kropyvnytskiy pre-trial detention Centre, Pyatykhatka PC No. 122 and other institutions)[271].

Due to the lack of permission to carry out activities in the field of nuclear energy, the work with ionizing radiation sources was suspended, namely X-ray rooms in all medical institutions of the State Institution "Health Centre of the State Penitentiary Service of Ukraine", it affected the quality of medical assistance in pre-trial detention centres (for example, SI "Kyiv SIZO" that holds around 2 000 persons, and others), penitentiary institutions, and, in particular, the specialized tuberculosis hospitals (Holapristanska, Kherson, Snigurivska, Dnipropetrovsk, Zbarazka and others) and non-compliance with infection control in penitentiary and medical institutions.

The anti-epidemic and prophylactic measures in the institutions require additional attention by the medical institutions of SI SCES of Ukraine. Many institutions lack the commissions for the infection control of tuberculosis, the sputum collection takes place in unsuitable premises, due to the lack of such collection points, there are no infection isolator wards. The organization of medical supervision over the HIV-infected also required attention. Thus, the institutions did not have the designated medical workers responsible for the measures to counteract the HIV/AIDS. Dispensary surveillance cards for HIV-infected persons were not maintained. As a result, there is an increased risk of TB infection for other persons. The above-mentioned was detected in Izyaslav PC No.31, Petrivka PC No. 49, Zhovtovodsk PC No. 26, Cherkasy PC No. 62, Kherson SIZO, Kyiv SIZO, Kryvyi Rih PC No. 80 etc.

Due to the lack of the special stationary vehicles, designed for staging the patients to the specialized tuberculosis hospitals for the examination, diagnosis or exclusion of diagnosis, the people with diagnosed tuberculosis are staged without taking into account the resistance profile and in some cases with other prisoners who do not suffer from this disease, which does not meet the requirements of infection control for tuberculosis.

In early 2018, there was a measles outbreak in Ukraine that also reached Pis, particularly the Vilnianska PI no. 11, Khmelnytskyi PTDC and Dnipro PI no. 4. Despite this, no measures were taken to prevent its spread among inmates (such as vaccinations or tests to determine immunity levels), and the very fact of the outbreak had been denied by the SCES for a long time. Due to the risk of an epidemic and given the Pis' low capacity to deliver a proper diagnosis, as well as poor detention conditions and nutrition there, our organization in March 2019 appealed to the MoJ and the Ombudsman to take action to prevent a measles epidemic. In May 2019, a group of convicts got infected at the Starobabanivska PI no. 92 in Cherkasy Region. However, the Main Interregional Directorate of the SCES replied to our petition sent on Facebook with a joke: "...thing is, people do tend to get sick sometimes"[272].

Specific cases of inadequate treatment of prisoners

Given below are specific cases of poor healthcare in Pis over the 2014–2021 period, which illustrates the general state of penitentiary healthcare in Ukraine.

1. A woman, sentenced for selling drugs, who suffers from IV clinical stage HIV and cancer, was not provided with timely cancer treatment in 2014–2015 at the Zbarazh Correctional Colony no. 63 in Ternopil Region or at the penitentiary service hospitals. In addition, according to the EctHR, Ukraine failed to comply with the Court-ordered interim measures, namely to carry out an immediate examination of the woman and provide the required treatment[273].

2. A man with viral hepatitis C, held at the Kirovograd PTDC no. 14 for selling drugs, was not provided with proper systematic medical supervision or a treatment plan for his hepatitis. In this case, Ukraine also failed to comply with the EctHR's order to provide treatment to the patient[274].

[271] http://www.ombudsman.gov.ua/files/Dopovidi/spec_dopov_npm_2016_n.pdf

[272] http://khpg.org/index.php?id=1559041136

[273] http://hudoc.echr.coe.int/eng?i=001-167128

[274] http://hudoc.echr.coe.int/eng?i=001-166965

3. A man, sentenced to 14 years in prison for premeditated murder, developed Buerger's disease while serving his sentence, which resulted in eventual amputation of two lower and two upper extremities. In addition, the convict was suffering from hypertension, coronary heart disease and other conditions, as well as had survived a heart attack. Naturally, he could not take care of himself, while his transportation to and from the hospital, given his inability to sit on his own, was done in a way that not only constitutes inhuman and degrading treatment, but is also shocking in its cruelty — he was tied to a toilet. Since June 2015, for two years, the courts had been unwilling to release the convict on the grounds of a serious illness, although doctors warned that his treatment could not be effective in prison and that further detention could kill him. Finally, after an application for interim measures had been submitted to the EctHR requesting to provide proper treatment and care for the convict, a district court ordered his release in July 2017. The man died three weeks later.

4. A 53-year-old man had been held at the Chernihiv PTDC since July 2016. In September 2016 he had a myocardial infarction and was diagnosed with a number of cardiovascular conditions, including class II heart failure. In February 2017, doctors at a civilian hospital found that the man's health was at risk and that he had to take a cardiac ventriculography test, which had to be done in Kyiv and cost 4,000 UAH. Over the course of his detention, an ambulance had to be called for him 12 times, including, in April 2017, during a court hearing, after which the man's lawyer sent an application for interim measures to the EctHR with a request to force the Government to provide proper medical treatment to his client. The EctHR had to repeat its instruction after the Government had ignored the first one. In October 2017, the restraining measure for the applicant was changed and he was able to take the necessary tests in Kyiv[275].

5. In 2017, a woman with two children, a 1.5-month-old and a 5-year-old, was arrested at her home by the police on suspicion of fraud, taken away from her children and brought straight to the investigating judge, who chose detention as her pre-trial restraining measure. The woman has a history of mental problems and after several months at the Zhytomyr PTDC she was diagnosed with a psychiatric disorder that was progressing rapidly. The lawyer's request for the court to change the restraining measure was denied. As a result, the patient's condition became so severe that she became incapable of communication, displayed aggressive behaviour and lost all self-control. She was transferred to a psychiatric hospital for inpatient treatment; on her way there, she was brutally beaten by escorting officers for disobeying commands. After her restraining measure had expired, the woman was discharged from the hospital, but she still has not fully recovered and periodically undergoes inpatient treatment in a psychiatric hospital.

6. A man with stage IV HIV as well as urolithiasis has been serving his sentence since March 2017 at the Sofia PI no. 45 in Dnipropetrovsk Region. Experiencing terrible pain and unable to move, he was recommended immediate surgery by doctors. In summer 2018, the patient was taken to a multidisciplinary hospital but was not operated on, which by November 2018 made his condition life-threatening. The lawyer filed an application for interim measures with the EctHR. After the EctHR ordered the Government to provide the necessary treatment to the patient in accordance with medical recommendations, the man finally underwent surgery.

7. In the summer of 2017, a 19-year-old girl, HIV-positive since childbirth and disabled since childhood, who also suffers from tuberculosis of peripheral lymph nodes, was placed in a PTDC on the orders of the investigating judge. On admission to the PTDC she underwent a tomography scan, which revealed lymphadenopathy (enlarged lymph nodes), which required further examination in a hospital, including a biopsy. Nothing of the sort was done though and the girl had been treated for pulmonary tuberculosis over the course of six months, even though she had tested negative for it. Finally, the required examination at an oncology clinic in January 2018 revealed a lymphoma, which had already progressed to stage II-B. However, even after the cancer diagnosis, she had been deprived of treatment for three more months, among other things, because of lack of means to take her to the oncology clinic. When the girl started chemotherapy at the end of April 2018, instead of the four drugs that she had been prescribed by doctors she was given only one. In August 2018, she underwent therapy involving two drugs. From September 2018 to January 2019, the treatment was once again halted, among other things, due to signs of toxic hepatitis in the patient after chemotherapy sessions, as she was not provided in time with hepatoprotection drugs and other medicines at the PTDC required for post-chemotherapy recovery[276].

[275] http://hudoc.echr.coe.int/eng?i=001-189592

[276] http://hudoc.echr.coe.int/eng?i=001-194008

8. A 27 year old man serving his sentence at the Starobabanivska PI no. 92 in Cherkasy Region was diagnosed with nodular goitre class III-IV in September 2018 at a multidisciplinary hospital located on the premises of the Lviv PI no. 19, and was recommended immediate surgery. The tumour was impeding his breathing, he felt constant dizziness and a burning sensation in the heart area, yet he was brought back to the penal colony instead of undergoing the operation there and then. He was told to undergo additional examinations at civilian healthcare facilities at his own expense before surgery. In the end, the convict's mother found a civilian hospital that removed the tumour in January 2019.

9. A person accused of thefts was held in Odesa SIZO for two and a half years. In June 2020 he lost the possibility to move due to paralysis of unknown etiology, however, he was not transferred to the medical unit, and instead was left in the general cell. Accordingly, his cellmates took care of him. The court did not change his preventive measure, the patient was brought to the court hearings on a stretcher, and during court hearings he constantly lies on the dock. Despite the numerous complaints of the lawyers to all possible instances, the necessary medical examinations did not took place.

11. The convict is serving his sentence in Odesa PC No. 14. He has a number of diseases, including stage 4 HIV with concomitant chronic infectious diseases. The medical commission refused to conduct a medical-consultative assessment of his condition, and the lawyer asked the court to release the convict due to illness and oblige the colony administration to hold a commission, but the court refused to open proceedings. Following the lawyer's appeal, the local court's decision was quashed and the case remanded. None of the scheduled meetings have taken place for more than eight months.

12. The convict is serving her sentence in Kamyanka PC No. 34, she suffers from diseases of the female genital organs, which in 2018–2019 were accompanied by constant pain and bleeding. The treatment in prison hospitals did not help, and in spring of 2021 her condition worsened. However, there were no examinations aimed at establishing the diagnosis and possible treatment regime, despite repeated appeals to the relevant authorities, but she was offered to pay for it. The lawyer's request to have the patient examined and treated was denied, relying on the assurances of prison doctors about the adequacy of the patient's treatment, and the appellate court upheld the decision.

13. The convict, who is serving his sentence in Vinnytsia PC No. 86, had a stroke in 2019, which led to paralysis of part of his body and loss of ability to move. The lawyer prepared a petition to the court to release the convict due to illness, but under pressure from the administration of the institution, he refused the lawyer, as it seemed that the administration would do it itself. In November 2020, it became clear that the patient had not been released, he was lying, chained to a bed, and he was forbidden to communicate with the outside world.. The lawyer filed a lawsuit to release the convict due to illness, after which he was taken to various prison hospitals several times, allegedly for examination, but even after receiving the opinion of the medical advisory commission, no court hearings have been held for more than six months. It happened once as a result of an injury of the patient when he fell on the stairs between the floors from a sheet on which he was carried to the colony premises to participate in a court hearing by videoconference.

14. The convict who in spring of 2021 was suspected of lung cancer is serving his sentence in Kharkiv PC No. 43. The lawyer appealed to the court to ensure the examination and treatment of the patient, but the court refused, without even notifying the lawyer of the scheduled meeting and the decision. After that, the patient was taken to a civilian hospital, where a computer tomography scan was performed, but he was not informed about the results of the examination.

With healthcare like this, the quality of medical records cannot be much better. Indeed, when no medical care is provided at all, such records (falsified) only appear in patients' medical records when legal proceedings are initiated concerning the negligence of prison doctors, such as proceedings at the EctHR. Thus, the poor quality of medical records was mentioned in EctHR judgements in the cases *Sergiy Smirnov v. Ukraine*[277] *and Beketov v. Ukraine*[278].

Reaction of the penitentiary system of Ukraine to the COVID-19 pandemic

In 2020 the world was hit by coronavirus pandemic (COVID-19). In March 2020, the Joint Order of the Ministry of Justice, State Institution of HC "On approval of the Plan of anti-epidemic actions to prevent

[277] http://hudoc.echr.coe.int/eng?i=001-188382

[278] http://hudoc.echr.coe.int/eng?i=001-190025

the introduction and spread of acute respiratory disease caused by the new coronavirus in the penitentiary institutions and pre-trial detention Centres of SPS of Ukraine, for 2020" of 12.03.2020 No. 57-ОД/08/ОД–20 (hereafter — the Joint Order). This Order introduced in Pis a special regime of anti-epidemic protection which included the restrictions of the rights of the convicts and the introduction of prophylactic measures in order to prevent the disease outbreaks. In particular, among others, there were measures of disinfection of the buildings and food facilities of the penitentiaries, provision of access to personal protective equipment for the staff, the provision of daily temperature screening and visual examination of the staff of the institutions, visitors and detainees[279].

Despite the positive anti-epidemic measures introduced by the Joint Order, its text only envisages the provision of personal protective equipment to the employees and visitors of the Pis, but it does not mention the necessity to provide the detainees themselves with such means. At the same time the convicts interviewed by our organization state that in many institutions there were no personal protective equipment. It was only used by some employees of the institution who often discarded such equipment after crossing the checkpoint.[280]

The cases were not infrequent that could be called systemic, connected to non-compliance with the recommended social distance (3 meters between the convicts during the inspections and other mass events). This recommendation was not complied with in the institutions and no measures are taken related to its implementation.

The Joint Order also provided for active identification of the potential diseased, by way of daily visual examination, temperature screening and interviewing of the convicts and detainees. According to the convicts, this direction of activity was not implemented even in the institutions where the management introduced and maintained the quarantine measures.

The Ministry of Justice has also set a task to ensure the readiness of the health care institutions of the HC of SPSU to identify and isolate the persons with acute respiratory disease caused by SARS-CoV-2 coronavirus, in particular, the availability of the required medicines, disinfectants and personal protective equipment, pulse oximeters, ventilators, oxygen concentrators etc. The Ministry pointed out the need to develop the new or to enhance the existing schemes of prospective re-profiling of health care institutions in case of mass flow of the persons with acute respiratory disease caused by SARS-CoV-2 coronavirus, to transfer all health care establishments to strict anti-epidemic regime, create mobile medical teams with the aim to actively detect persons with acute respiratory disease caused by SARS-CoV-2 coronavirus, and determine the insulators for hospitalization of contact persons with the aim of their examination and the implementation of treatment.

Despite the positive anti-epidemic measures introduced by this Joint Order, its text provides only for the provision of personal protective equipment to the employees of the PI and visitors, but does not indicate the need to provide such means to the convicts themselves. At the same time, the convicts interviewed by our organization note that in many institutions there were no personal protective equipment. They were used only by some employees of the institution, who often took off such means when crossing the checkpoint to the prison area.[281]

At the same time the attention should be paid to the fact that according to the statements made by the convicts during the interviewing, the actual implementation of the measures is not uniform. Some convicts sentenced to life imprisonment report that the communication with the outside world is really transferred to the video conference regime, catering is organized in the rooms where the convicts are held, the reception of parcels is carried out with the use of personal hygiene products — gloves and masks. Furthermore, the parcels are left for keeping for a day and only after that they are given to the convicts. The transfers of the convicts to the court and between the institutions is decreased. On the other hand, many requirements that can have decisive meaning are almost not complied with. For example, there are no changes concerning the movement of the prisoners around the territory of the prison, there are no additional sanitary and hygiene restrictions during the convicts' work. The disinfection in the institutions is carried out with excessive use of chlorine which is a toxic substance that can cause poisoning, acting, by the way, through the

[279] http://khpg.org/index.php?id=1585728892

[280] http://khpg.org/index.php?id=1588607936

[281] http://khpg.org/index.php?id=1588607936

human respiratory system. Among the shortcomings the convicts also note the lack of opportunity to exercise which is important in the conditions of decreased immune capability of the organism. The convicts do not always have the opportunity to have a walk in fresh air which also does not contribute to maintaining the good condition of the respiratory organs of the convicts. The possibility to provide the recommended social distance in the places of detention is a great problem, as well as the lack of awareness among the convicts on the issues of desired behavior algorithms in prevention of disease and in case of detection of the symptoms of the disease. Among other problems noted was the lack of disinfectants, continuous temperature screening of convicts (according to the convicts, in one of the institutions the temperature was measured with a malfunctioning thermometer) and the disinfection of the places of common use. The convicts call the non-compliance of the staff with the requirements of avoidance of the spread of disease one of the main shortcomings of anti-epidemic work, in particular it concerns the non-usage of personal protective equipment. It is a matter of simply ignoring the measures that are recommended in institutions.

The general systemic problem is insufficient amount or complete lack of PPE. Only the employees of the institutions and medical workers are provided with them, and not all institutions have them. As our respondents tell, in penitential institutions and SIZO the masks are only given to the persons who are brought to the court hearings. In correctional Centres the prisoners receive them when they leave the premises of the Centres. In correctional colonies the convicts usually do not have protective equipment. There are such institutions in which the staff either does not have any masks or does not use them.

The second general systemic problem is the lack of the medical assistance. There is a catastrophic lack of doctors, there are no medicines. As a result, in many institutions the medical assistance is essentially absent. For example, a respondent from Poltava PI No. 23 reported the following: "The prisoner has a throat pain for almost a week now, there are headaches, dizziness, muscle pains, sometimes the temperature rises, but the doctor has not visited him yet. Only once a junior inspector gave a thermometer. The temperature was 38,8". The convict points out that there are too few doctors in the institution, that is why they do not help. This is what a convict from Stryzhavka colony No. 81 wrote: "Although I am in an interregional hospital, it is very difficult to have a consultation with a doctor. My temperature rises every day, there is vomiting, but the help is not provided. The doctor rarely admits patients, and he only examines the newly arrived ones". A respondent from Dnipropetrovsk PI No. 4 writes "There are very few doctors in the institution, that is why they do not come to help. This is due to impossibility to visit all the convicts in one day. After the doctor is called he comes on the next day at best". Accordingly, the requirement of daily temperature screening is not complied with.

The third common problem is the impossibility to keep the social distance of more than two meters. It is only possible to attempt to decrease the crowding and change the procedures in the penitentiary institutions with the aim of increasing the social distance between the prisoners after unloading the penitentiary institutions.

The situation varies concerning other questions. The situation is mostly better in female colonies than in male ones. The isolation of the diseased persons is performed promptly in eight colonies, slowly in 15 and it is not performed at all in 13 institutions. In some of the institutions there is the opportunity to exercise, other do not provide it. In 4 institutions the prisoners have access to Internet in the specially equipped rooms once a day according to schedule, in 9 — twice a week, in 7 — once a week, in 16 institutions prisoners do not have access to Internet. In 28 institutions there are no explanations about the symptoms of the disease, how to protect oneself from it, the rules of disinfection etc, in 9 institutions some information is provided.

The prisoners serving the sentence in the form of restriction of liberty (in correctional Centres) are most at risk of contracting COVID-19 or transferring this disease outside. Those institutions do not have medical units and the convicts have more contacts with the outside world. Here is a description that is generally typical for all correctional Centres: «I am in the correctional Centre. Around 10% of us work here, others do not do anything, because the institution cannot provide us with work. Only gauze bandages are currently issued in the Centre due to coronavirus, and only for the persons who leave the territory of the institution. The temperature is measured only for the tick. If the coronavirus gets into our Centre, everyone will get sick. Since according to the law, we have to be escorted to shops, drug stores and the clinics, and we constantly contact other citizens. We can easily contract the virus or transmit it to others. The living

conditions in the institution also contribute to contracting the disease. We are constantly in close contact with one another. It is very difficult to be alone».

The correctional institutions could be unloaded due to amnesty and parole. Back in April the Ministry of Justice with the participation of the experts from Kharkiv Human Rights Protection Group developed the relevant bills, they were approved by the Government on 24 April and introduced for the consideration to the Verkhovna Rada on 27 April (registration numbers 3397 and 3396 respectively). However, they were not examined in the committees. It was told that the President is against such measures, because it would adversely affect his political rating.

The adoption of the above-mentioned bills provided for the realization of the right to life and health of persons in custody and are among the most vulnerable to viral infection, as the conditions in which they find themselves are generally not adapted to large-scale epidemics; in particular, other countries faced it during the pandemic. According to the Ministry of Justice of Ukraine, in the event of the adoption of the outlined bills, more than 3,000 people could be fired from the SCES. The Commissioner for Human Rights of the Verkhovna Rada of Ukraine also addressed the Chairman of the Verkhovna Rada of Ukraine, the Chairmen of the Committees of the Verkhovna Rada of Ukraine and parliamentary factions with a proposal to facilitate the inclusion of the above bills in the agenda of the extraordinary session of the Verkhovna Rada of Ukraine and their operative consideration.

The draft laws were considered on 17 June, on the session of the profile Parliament Committee. The draft law on parole (No. 3396) was rejected, the draft law on amnesty (No. 3397) was sent for revision, however, in September it was removed from consideration.

On 1 July the group of 89 deputies introduced a new bill on Amnesty to the Verkhovna Rada, (reg. No. 3765). However, it is not considered either, for the same reasons.

What is the level of COVID-19 infection in penitentiaries?

According to the regularly published data from the Health Centre of the State Criminal Executive Service (SCES), 1126 diagnoses of COVID-19 are confirmed for 31 detainees, 38 convicts, 924 employees of SCES and 133 employees of Health Centre of SCES as of 4 January 2021. Only 2330 PCR tests were performed. The correctional Centres, which do not have medical units of the Health Centre, are not covered by the statistics.

The last such data was published on April 21. 2342 diagnoses of COVID-19 are confirmed for 181 detainees, 356 convicts, 1596 employees of SCES and 209. Employees of Health Centre of SCES. 3867 PCR tests were performed.

The scarce data on patients with COVID-19 in the penitentiary system should not be misleading: we believe that there are many more patients, but it is not detected. The testing of the prisoners is not provided for at all. Some of the prisoners underwent tests before coming to SIZO. The monitoring of the correctional colonies shows that in many of them the medical units are filled with the convicts that are treated for colds and are not tested. The medical units usually lack infectious disease doctors that could diagnose the course of the disease. At the same time, there are many requests for medical assistance, the prisoners often believe they have COVID-19. However, it is impossible to verify their statements. Therefore, the result is: no testing — no COVID-19!

As told by Ombudsman, Lyudmyla Denysova, when COVID-19 is detected during the dissection of the deceases prisoners, it is not documented in the statistics; it is believed that they died due to their main disease — AIDS, tuberculosis etc.

The prisoners are discriminated against comparing to the free people: they cannot undergo tests, and the presence of the personal protective equipment (PPE) fully depends on the wish and ability of the management of the institutions to allocate funds for that purpose. The regulations of the Ministry of Justice and Health Centre of SCES do not provide for the duty to provide the prisoners with PPE.

The introduction of the quarantine worsened the general situation with provision of medical assistance. For example, the persons with tuberculosis that was detected after the introduction of quarantine were left without the treatment, because they could only receive it in the specialized institutions for such prisoners. Since the transfer of the prisoners was prohibited during the quarantine and Ukrzaliznytsia did not work, such patients remained where they were during the introduction of the quarantine. Thus, seven convicts with tuberculosis were in Interregional Hospital at CC No.85 in Bucha and could not get to the

specialized CC No. 27 in Kharkiv region, and in June Ombudsman Lyudmyla Denysova arranged the special stage that would transport such patients. The similar story concerned seven convicts in Voznesensk colony No. 72 and in other institutions with other diseases.

Meanwhile, in April of this year there was an outbreak of COVID-19 in Pyatihatska colony No. 122, in May — in Boryspil colony No. 119.

The position chosen by the state authorities, which consists of expecting that the penitentiary institutions and SIZO would remain free from the disease, is wrong. Those mistakes may cost much. If the leadership of the spate is serious about the fight against the spread of COVID-19, it must carry out the testing for the prisoners and staff in the institutions where there are confirmed diagnoses, at the expense of the state, and urgently consider the draft law No.3765 on amnesty.

Some aspects of violations of the convicts' right to medical care

Summarising status of prison healthcare, we would like to emphasize the following aspects of violations of the convicts' right to medical care.

1. The delay in diagnosis and treatment, inadequate treatment, or its complete absence, as found in numerous EctHR decisions (see the table below). The reasons for this are inadequate funding, insufficient material and technical stock of medical institutions, lack of medicines, as well as dishonesty of the staff of the SCES and the administration of institutions. The situation with medical care for detainees is even worse, as there is still no single regulation that would regulate the organization of medical care for such prisoners, despite the fact that a draft of such a document was developed and issued. For public consideration, suggestions were submitted to it in early 2020[282].

2. Absence, in the overwhelming majority of cases, of dietary nutrition for those that need it, as required by medical protocols, particularly in the case of gastrointestinal diseases, diabetes mellitus or hepatitis.

3. Prisoners in the final stages of a terminal illness are not provided with palliative care.

4. Transportation of convicts, especially those that (under Ukrainian regulations) must be escorted by a medical worker, is done in such poor conditions that it was repeatedly recognised by the EctHR as inhuman or degrading treatment[283]. Furthermore, during transportation, sick convicts are only provided with the most basic medical care since their medical history files are sealed for the duration of the trips and may not be opened before they reach their destination, aside from special cases and only in the presence of a prosecutor.

5. When guarding sick convicts at a civilian hospital, escorting officers chain them to their beds, even those in critical condition, despite their being extremely physically impaired and unable to move on their own. Unjustified or excessive use of restraints on gravely ill convicts has been repeatedly recognized by the EctHR as inhuman or degrading treatment in cases against Ukraine[284]; restraints were even used on a woman giving birth[285]. Nevertheless, such practices still remain in Ukraine's penitentiary system. Also, as our monitors learned from conversations with SCES employees, after changes to the regulatory documents on supervision and security (which are not open to the general public), 7 escorting officers are now required instead of 4 for escorting one convict. This means that now two cars instead of one are necessary to take a convict from a PI to a hospital, which doubles the organizational and financial effort. All these escorts remain at the medical institution, complicating, if not paralysing, the work of certain parts of said institution for the duration of the convict's stay there. These excessive security measures obviously exacerbate the existing difficulties with transporting convicts to civilian medical institutions.

6. Inappropriate conditions of detention for convicts with disabilities, which often reach levels of inhuman treatment. Thus, few rooms in Pis have ramps. Some of these convicts are unable to dress themselves. One of them was put in a punishment cell[286] because he stopped wearing his prison uniform since he couldn't fasten the buttons. Also, it is virtually impossible to get the disabled status for those who have been awaiting their sentence at a pre-trial detention facility, because, in situations like these, legislation

[282] https://rm.coe.int/09000016809f57a4, Communication from Ukraine concerning the case of Nevmerzhitsky v. Ukraine (Application No. 54825/00) and Sukachov v. Ukraine (Application No. 14057/17)

[283] http://hudoc.echr.coe.int/eng?i=001-167128; http://hudoc.echr.coe.int/eng?i=001-141632

[284] http://hudoc.echr.coe.int/eng?i=001-117134; http://hudoc.echr.coe.int/eng?i=001-158963

[285] http://hudoc.echr.coe.int/eng?i=001-161543

[286] http://khpg.org/index.php?id=1543315523&w

only allows for such status to be granted to convicted persons. . The Head of PI "HC of SCES" admitted the existence of the issue of the disabled prisoners who require supervision: "It seems that the issue is bigger than I imagined"[287].

7. The access to psychiatric care [in Ukrainian penitentiaries] is extremely inadequate for prisoners[288]. In its 2017 report, the CPT also noted that some prisons did not provide psychotropic drugs to detainees due to licensing restrictions and that this situation should be remedied immediately[289].

8. The violations of the requirement of confidentiality of medical information about convicts. The presence of guards during the medical examination, as well as the use of handcuffs when visiting a civilian hospital is a common practice. The NPM report for 2018 states that "the medical examination of newly arrived prisoners was carried out through metal bars in the presence of other prisoners and police officers who escorted the latter to the institution, [...] a direct violation of the human right to respect for his dignity and the right to privacy"[290]. During the treatment of prisoners in civilian hospitals, their hands were handcuffed to their beds, regardless of their state of health.[291]. On the other hand, as a general practice, convicts themselves are not provided with written information on their state of health, despite the fact that the amendments to the Procedure for Organizing Medical Care for Prisoners provide for giving them the copies of medical reports.[292]

9. The problem with the supply of medicines, which are now purchased in a centralized manner, requires considerable time and in fact makes it impossible for the medical units to quickly purchase additional drugs, in the event of such a need. In 2018[293] and 2019[294] the authorities registered the widespread practice of keeping the expired medicines, including antiviral drugs and painkillers.

Issues with the release of convicts on the grounds of a serious illness

Release of convicts suffering from a serious illness constitutes yet another problem. There are several aspects to this issue: shortage of special medical commissions in the system that determine whether a convict has an illness that makes him or her eligible for such release; PI administrations' reluctance to refer inmates to these commissions; as well as corruption in the system. However, the biggest issue is with the approach of Ukrainian judges toward such release, since, after receiving the conclusion of a special medical commission on whether a convict has an illness from the appropriate lists, the judges take into account the same circumstances as with release on parole, even though their defendants are either at the final stage of a terminal illness or have lost the ability to survive on their own (such as in the case of full blindness or loss of limbs). Unfortunately, when deciding whether to release a person on the grounds of a serious illness, Ukrainian courts still use the guidelines (amended)[295] of the Plenum of the Supreme Court of Ukraine of 1973, according to which in such cases it is necessary, in addition to the opinion of a medical commission, to consider the gravity of the convict's crimes, his behaviour while serving his sentence, his attitude toward labour, as well as how well he has been reformed, rather than the EctHR's perspective expressed in the judgement to the case *Yermolenko v. Ukraine (para. 51)*[296]:

«*There are three particular elements to be considered in relation to the compatibility of an applicant's health with being in detention: (a) the medical condition of the prisoner, (b) the adequacy of the medical assistance and care provided in detention; and (c) the advisability of maintaining the detention measure in view of the state of health of the applicant (see Mouisel v. France, no. 67263/01, §§40–42, ECHR 2002-IX)*». Also, according to the EctHR, «*In such circumstances, the Court considers that, given the absolute prohibition of torture, inhuman and*

[287] https://www.slidstvo.info/articles/ochilnyk-tyuremnoyi-medytsyny-kerivnyky-kolonij-zvykly-shho-medyk-povynen-buty-rabom/.

[288] CPT/Inf (2018) 41, para. 90).

[289] Ibid.

[290] Special Report of the Ombudsperson, Op. cit. p. 14.

[291] CPT/Inf (2012) 30, §8 and 53.

[292] https://zakon.rada.gov.ua/laws/show/z0990-14#Text

[293] https://inspections.gov.ua/subject/view/inspections?subject_id=250459&tab=2018&page=1

[294] https://inspections.gov.ua/subject/view/inspections?subject_id=250459&tab=2019

[295] https://zakon.rada.gov.ua/laws/show/v0008700-73

[296] http://hudoc.echr.coe.int/eng?i=001-114468

degrading treatment, it is not acceptable that the compatibility of the applicant's state of health with his detention was assessed solely by reference to an exclusive list of diseases and without any appropriate review by national judicial authorities» (ibid., para. 61). In Ukrainian realities, however, a person has no chance of being released if his or her condition is not on the appropriate lists.

As a result of this disregard for the health and life of convicts demonstrated by prison doctors, administrations and, most importantly, judges, most of the sick prisoners die in prison because of the absence of treatment, palliative care in their last days, or any care at all, while those fortunate enough to be released do not live long afterwards.[297]

Mortality rates in Pis

SIHC has a peculiar approach to statistics on mortality rates: convicts that die in civilian hospitals are counted separately. Thus, by transferring terminally ill convicts to a civilian hospital, the penitentiary system artificially lowers mortality rates, using such terminology as "deaths on PI premises". The statistics we received from the SIHC differs greatly from those provided by the Government in the Appendix to para. 198 of its Report:

Statistic/Year	2014	2015	2016	2017	2018
Number of deaths on PI premises	264	166	172	197	209

When a convict is taken to a civilian hospital and dies there, this is not included in the statistics on mortality at Pis. Convicts in the final stages of a terminal illness are taken to civilian hospitals on purpose in order to reduce mortality rates.

Here are some examples of poor healthcare provision to convicts that resulted in their death.

1. At the Kharkiv PTDC, 5 people died between May and mid-August 2016, 4 of them from gastrointestinal disorders. Representatives of the Ombudsman have launched an investigation into this, but so far it has been unsuccessful.

2. In the spring of 2016, in Kyiv, the police arrested a 25-year-old young man suffering from IV stage HIV and tortured him, after which he was taken, on court order, to the Kyiv PTDC. Feverish, slipping in and out of consciousness, he was provided with symptomatic treatment while his health continued to deteriorate. By April 2017 he became too weak to walk or speak. By the summer of 2017, he was unable to eat and remained in a vegetative state, but the court still denied the lawyer's request to change the restraining measure. The young man died in August 2017. The investigation into his death was initiated only after a complaint had been filed with the investigating judge concerning police inaction. However, responsibility for this investigation has been delegated from one body to another and nothing has actually been done about it.

3. In the summer of 2016, three inmates died in the course of 1.5 months at the Kachanivska Female Correctional Colony no. 54; an ambulance was called in all three cases but it was too late to save the women. One of these cases involved some unknown injection administered by a colony nurse. According to other inmates, at least three other women died in the past as a result of inadequate medical care provided by the same nurse. Special proceedings were initiated by the Ombudsman's Office in this regard, as well as a criminal investigation into medical malpractice, yet no one has been held accountable.

4. In May 2017, at the Temnivska PI no. 100 in Kharkiv Region, a Belarusian national died of cancer, with which he had been diagnosed only at the 4th stage of it, 3 weeks before his death.

5. In September 2017, three convicts died at the Specialized Tuberculosis Hospital of the Kherson Correctional Colony no. 61. Earlier each of them had applied for release on the grounds of a serious illness, but none lived long enough to see the outcome.

6. In 2018, at the Dnipro PTDC (PI no. 4), a convict who had a heart condition (thrombus in the heart, lower extremity ischemia with obstructed blood flow) that resulted in gangrene and sepsis was treated for purulent abscesses and phlegmons but did not undergo amputation, which caused his death. A criminal investigation into his death was launched at the lawyer's request, yet nothing is being done in this regard.

7. A man had been serving his sentence at the Dnipro PI no. 89 for robbery since 2014. He had a musculoskeletal disorder as well as tuberculosis. In 2015, he was granted the 2nd degree disability status, in 2016

[297] KHPG Strategic Litigation Database.

— 1st degree disability; he had to use a wheelchair to move around and required constant care. In the spring of 2017, his lawyer filed a petition for the man's release on the grounds of his condition. By that time, the 1.8 m tall convict weighed 53 kg. At the time, special medical commissions that determine whether a person's condition is on the appropriate List[298] were not working due to the ongoing penitentiary healthcare reform. The first instance court, in defiance of the appellate court, denied the application twice. In April 2019 the patient died, 2 weeks before his release.

Convicts with mental issues have also died under circumstances that suggest unsatisfactory provision of healthcare to and generally poor treatment of sick convicts:

In October 2017, after being brought from the Lutsk PTDC in critical condition, a 25-year-old young man who had been sentenced to a 6 months' arrest died of toxic hepatitis. The convict was suffering from drug and alcohol addiction and often had to undergo inpatient psychiatric treatment prior to his detention. During his detention at the PTDC, the young man had an epileptic seizure; an ambulance was called and he was provided with emergency care, but then, despite his mental issues, he was still taken to the PTDC. The convict's health there sharply deteriorated — he was having hallucinations, having conflicts with his cellmates, speaking something unintelligible, shouting, throwing himself at the walls and doors as well as exhibiting aggressive behaviour — he was having delirium tremens. The young man was then put in a 1.5 square meters solitary cell and given neuroleptic and sedative drugs. He died two days later. The criminal proceedings initiated after his death were closed by the investigator due to the absence of signs of a crime, against which the lawyer subsequently filed a complaint with the investigating judge;

In August 2018, one convict killed another at the Lukyanivskyi PTDC's medical unit in Kyiv, in a ward for people with mental disorders.

In the Appendix to para. 198 of its Report, the Government provides the following statistics on deaths in Pis (including the convicts who died in civilian hospitals), which is quite different from the one given above:

Statistic	2014	2015	2016	2017
Number of deaths in pre-trial detention facilities (number of deaths in civilian hospitals)	127 (58)	103 (44)	126 (53)	164 (80)
Number of deaths in penal colonies (number of deaths in civilian hospitals)	666 (174)	407 (130)	397 (132)	404 (164)
Total number of deaths	**793**	**510**	**523**	**568**

The Government claims that the number of deaths in Pis in 2015–2017 remained almost the same or was 40% lower than in 2014. However, if we take into account the fact that the number of convicts has decreased more than by half since 2014, the mortality rates in 2015–2017 actually increased by almost 40% according to the figures[299] that correspond to those of the Government in absolute terms:

Statistic	2003	2011	2012	2013	2014	2015	2016	2017	2019	2020
Deaths	824	1169	1,021	911	792	510	523	568	517	485
Per 1,000 convicts	4.30	7.59	6.94	7.18	10.79	7.29	8.66	9.95	9,78	9,73

Furthermore, even according to the Government's figures, the number of deaths in PTDCs went up in 2017 compared to 2014, and if we account for the decrease in the number of persons held at PTDCs, the mortality rates in PTDCs at least tripled.

The different SCES statistics on mortality rates can be further explained by the absence of publicly available official statistics on illnesses and deaths among the convicts, which had been available on the agency's official website in the past.

Violations of the right of convicts not to be subjected to torture or cruel, inhuman or degrading treatment found by the EctHR

Almost all types of violations of the right of detainees to healthcare mentioned in this comment have been recognized by the EctHR as violations of Article 3 ECHR in its judgements in cases against Ukraine.

[298] In June 2019, KHPG sent an open petition to the Minister of Justice concerning the absence of special medical commissions.

[299] http://ukrprison.org.ua/articles/1612352140

The number of persons recognized by the EctHR as victims of Ukraine's violation of Article 3 ECHR in the context of inadequate healthcare provision to persons held in penitentiary facilities in 2019 is greater than that for the 5 previous years (2014–2018). The EctHR has started consolidating applications concerning these issues into larger cases and considering them jointly without studying their specific circumstances. Thus, in EctHR's judgement in the case *Korol and Others v. Ukraine (no. 54503/08 and 7 others, judgement of 7 March 2019)*, the EctHR examined 8 applications at the same time[300].

Statistic/Year	2014	2015	2016	2017	2018	2019	2020
Number of judgements in cases against Ukraine where Ukraine was found to be in violation of the right not to be subjected to torture, cruel, inhuman or degrading treatment/number of victims	1/1	6/6	4/4	2/2	4/4	14/21	6/6

The 2019 judgements concern violations that took place in 2016–2017 and 2017–2018, that is, after the penitentiary healthcare reform. It should also be noted that ever since its decision in the case *Nevmerzhitsky v. Ukraine* (decision on admissibility of 30/03/2004, application no. 54825/00), the EctHR has consistently considered complaining of inadequate medical treatment to prosecuting authorities an ineffective domestic remedy[301]. Eventually the EctHR decided that Ukraine lacks any effective mechanisms of protection against violations of the right to healthcare, including judicial ones. This is evidenced by numerous instances when PI administrations do not even comply with court orders to provide convicts with the medical care they require. Thus, an incident like this recently happened at the Kharkiv PTDC, where the medical service once again failed to comply with a court order to provide treatment to a convict with spine problems.

A lawyer once managed to convince an administrative court to declare the negligence of a PI's administration unlawful and to obligate it to provide proper treatment to his client. This, unfortunately, is a rare occurrence, and besides, the convict had already received required treatment by the time the court reached a decision.

In the summer of 2019, the Vilnyanskyi District Court of Zaporizhia Region ordered a medical examination following the request of a convict, who has HIV, hepatitis C and tuberculosis, to be released from the Kamyansk PI no. 101. However, so far the institution has failed to comply with the court order.

ARTICLES 12 AND 13

Question 34. *With reference to the Committee's previous concluding observations (para. 10), please provide updated information on:*

a) Efforts to establish a genuinely independent complaints mechanism to receive allegations of torture and ill-treatment, and to ensure that persons who have complained are protected from reprisal, and data on the number of complaints of torture and ill-treatment received by any such mechanism during the period under review;

b) Whether an independent monitoring and oversight mechanism has been established to ensure that prompt, effective and impartial pretrial criminal investigations are carried out into all allegations of torture and ill-treatment by law enforcement officials;

c) Whether the State party has created a State Bureau of Investigation as planned and, if so, data on the number of cases in which this body has investigated allegations of torture or ill-treatment or complicity in or acquiescence to such conduct by high-ranking officials during the reporting period, as well as information on the outcome of any such investigations;

d) Whether the State party has taken measures to ensure that prosecution authorities are promptly notified about injuries identified on detainees in temporary holding facilities;

e) Whether the State party has carried out investigations into video recordings that have appeared on semi-official websites showing confessions obtained under duress and without access to legal counsel.

[300] http://hudoc.echr.coe.int/eng?i=001-191359

[301] http://hudoc.echr.coe.int/eng?i=001-61685

ANSWER TO QUESTION No. 34

The CPC does provide for the possibility of challenging decisions, actions or inaction of pre-trial investigation bodies or prosecutors during pre-trial investigations, yet the range of such decisions and the types of inaction are very limited, and as for actions, the CPC provides for none here. Other decisions, actions or inaction of the investigators or prosecutors may be challenged during preliminary hearings, yet in criminal proceedings on alleged torture, the likelihood that the case will make it to trial is extremely low (see comment to question no. 12). Furthermore, the court's powers are limited here; thus, when cancelling a decision to deny recognition as a victim, investigating judges cannot have the victim recognised as such themselves, or when cancelling the investigator's refusal to satisfy a request, the investigating judge is unable to order the investigator to perform the appropriate investigative action. This makes challenging unlawful decisions, actions and inaction of the prosecution pointless.

Despite the detailed regulations on the filing of complaints by convicts, in practice filing complaints about prison administrations is quite problematic, and in some Pis, especially those with strict security regimes (such as OPC-25) it is virtually impossible (see answer to questions Nos. 30, 31). New mechanisms are needed for this, such as the use of technical means for recording the convicts' statements.

The newly established SBI has 7 territorial offices, each of those covering several Ukrainian regions making reporting a crime more difficult because only one regional centre had such an office. However, this was recently addressed, with SBI offices accepting citizens' reports opened in every regional centre.

In terms of their structure, SBI units are nominally independent from other law enforcement agencies, but their activities are overseen by prosecuting authorities, which serve as a bridge for informal relations between the SBI and other law enforcement agencies. In any case, reports submitted to the SBI regarding torture or ill-treatment are usually not entered into the Single Register of Pre-Trial Investigations; written replies are sent back to the applicants not on the first try and with considerable delays. Thus, it is up to the investigating judges to enter information about a crime of this nature into the Single Register of Pre-Trial Investigations. This style of initiating investigations into torture complaints clearly does not meet the criteria for effective investigations established by the EctHR.

According to SBI statistics, the SBI handled only 5,794 criminal proceedings in 2019[302], with 22 of them torture-related (Article 127 CC), and 442 concerning excess of power by a law enforcement official (part 2, 3, Article 365 CC). In 510 criminal proceedings indictments were sent to courts.

As for the efficiency of the SBI activity in investigation of the complaints about torture and ill-treatment see responses to the questions Nos. 30, 31 in the part concerning the investigation of events in OPC-25.

Question 35. *With reference to the Committee's previous concluding observations (para. 24), please provide detailed statistical data on cases in which officials have been prosecuted or disciplined for failing to adequately investigate complaints of torture or ill-treatment or for refusing to cooperate in investigating any such complaint.*

ANSWER TO QUESTION No. 35

Disciplinary liability of officials for failure to conduct proper investigation of complaints of torture and ill-treatment, or for refusal to investigate such complaints

During most of the reporting period, investigations into instances of torture and other forms of ill-treatment were conducted by investigators of the prosecutor's office, whose disciplinary liability is regulated by the Law of Ukraine "On the Prosecutor's Office", Article 43 of which states that a prosecutor may face criminal charges, among other things, for failure to perform, or improper performance of, his duties.

Thus, theoretically speaking, investigators of the prosecutor's office that fail to investigate allegations of torture or ill-treatment, or investigate them poorly, may, in theory, face disciplinary action, if it can be demonstrated that they have failed to perform their duties or have performed them inadequately. However, nothing is known about any kind of disciplinary action brought against officials for this, because the PG and the Qualification and Disciplinary Commission of Prosecutors do not keep separate statistics based on this criterion.

[302] https://dbr.gov.ua/report/zvit-pro-diyalnist-derzhavnogo-byuro-rozsliduvan-za–2018-rik

According to the PG, 429 prosecutors faced disciplinary action for failure to perform or improper performance of their duties in 2014, 338 in 2015, 180 in 2017, 86 in 2018, and 1 during the first quarter of 2019.

After the establishment of the SBI, it was tasked with the duty of investigating crimes committed by law enforcement officials and began its work on November 27, 2018, being subject to the Law of Ukraine "On Public Service", which includes the grounds for disciplinary liability. There are no statistics on disciplinary penalties faced by SBI investigators. At present, there is no procedure for bringing to account SBI investigators due to the lack of Model Regulations on SBI Disciplinary Commissions as well as the Disciplinary Commissions themselves, which, in accordance with Article 25 of the Law of Ukraine "On the SBI", are supposed to oversee the issue of bringing disciplinary action against SBI employees.

There are additional difficulties with bringing disciplinary action against officials for failure to investigate or inadequate investigation of torture complaints due to the fact that the vast majority of torture complaints are investigated not under Article 127 CC (on torture) but under Article 365 CC (abuse of authority by a law enforcement official).

Question 36. *Please provide updated information on:*

a) The outcome of investigations by the Office of the Military Prosecutor of the 12 cases of alleged torture committed by members of territorial defence battalions between March 2014 and February 2016, and any additional cases of alleged torture or ill-treatment by members of territorial defence battalions investigated during the reporting period;

b) The outcome of the 1,925 criminal investigations into allegations of torture and ill-treatment by police and penitentiary officials launched in 2015 by the Office of the Prosecutor-General; the result of indictments against 49 police and penitentiary officials for alleged acts of torture and ill-treatment; and the results of any additional investigations of police and penitentiary officials by the Office of the Prosecutor-General during the reporting period;

c) The results of any investigation undertaken into allegations by several individuals previously held in the Mariupol SIZO that they had been ill-treated by Security Service of Ukraine officials and members of the Azov regiment and held in incommunicado detention, that evidence obtained through torture had been used during their trial and that they had been subjected to reprisals by members of the Security Service after they challenged the admissibility of that evidence;

d) The results of the investigation into the killing of Aleksandr Tsukerman by law enforcement officers in Krivoye Ozero village on 23 August 2016.

ANSWER TO QUESTION No. 36

On the results of indictments against police officers and prison staff for alleged acts of torture and ill-treatment

The Prosecutor General's Office provided information on the lack of separation of data on the investigation of criminal offences committed by members of territorial defence battalions[303].

In addition, we would like to bring up the statistics on the number of indictments issued during the reporting period, which we received from the PG:

— in 2015 — 27;
— in 2016 — 47;
— in 2017 — 43;
— in 2018 — 32;
— in 2019 — 8;
— in 2020 — 71[304]
— in January-March 2021 — 20[305].

[303] Reply of PGO of 22.03.2021.

[304] Reply of PGO of 22.03.2021.

[305] Reply of PGO of 05.05.2021.

The PG also acknowledged critical situations in connection with torture in certain Pis and stressed the need for investigating such acts[306].

On June 26, 2017, the Ombudsman submitted to the PG a request to investigate acts of torture, unlawful detention, excess of authority and forced testimony allegedly committed by employees of the Druzhkivskyi police department and of the Military Prosecutor's Office of the Donetsk Garrison. However, the General Military Prosecutor of Ukraine ignored the allegations of torture of P. and K., unlawful detention and forced testimony. Pre-trial investigation was initiated on July 13, 2017 only on charges of excess of authority by a law enforcement officer, under part 1, Article 365 CC[307].

The Ombudsman has repeatedly pointed out PG's ineffectiveness in responding to and investigating acts of torture committed by law enforcement officials. The Commissioner notes that comparing to 2019 the number of violations of human rights in 2020 doubled, and the "number of reports on the facts of torture from the citizens in the places of non-liberty or their relatives increased from 43 in 2019 to 165 in 2020", while 70% of all applications about torture came from the institutions of SCES. The Commissioner describes gross human rights violations identified during visits to places of detention: "receiving injuries of all kinds, excessive use of means of fixation and special means to restrain persons in places of detention, prolonged isolation in unsuitable premises, failure to provide analgesics to severely ill patients, including cancer"[308].

The civil society states that there is a lack of adequate access to information on the progress of investigations into cases of torture, which is a systematic problem in Ukraine[309].

As of 2021 there are still reports of new cases of torture in police stations and penitentiaries, but even high-profile cases cannot be characterized by an effective investigation[310]. In particular, in February 2021, in the town of Horodyshche, during the detention of a man, he was tortured by police officers in order to extract evidence, researchers emphasize the systematic nature of such behaviour in the police[311].

According to the analysis of the activities of SBI in 2020, the cases of unauthorized withdrawal of the servicemen from the military unit were mainly considered. (17 thousand cases, meaning, 40% of the total number of cases), while cases of torture were not properly investigated, on the grounds of, in particular, the lack of sufficient resources. Therefore, what is essential in the investigation of torture crimes (examinations, other investigative actions) is being replaced by formal investigations without bringing those responsible for torture to justice[312].

On the results of investigations into complaints of persons previously held in at the Mariupol PTDC concerning acts of torture committed by SSU personnel and members of the Azov Regiment

Neither the Report nor PG's reply to our inquiry separate information on acts of torture committed by Azov members and SSU personnel.

According to the media and human rights organizations, there were numerous cases of ill-treatment of detainees at the Mariupol PTDC during the reporting period. Moreover, the suspects' family members were also subjected to ill-treatment. During their visits to the Artemivsk and Mariupol PTDCs, representatives of the OHCHR met with a number of detainees whose complaints of torture were not seeing any noticeable progress[313].

Most of the cases of ill-treatment toward detainees in late 2015 and early 2016 involve the SSU. Most of them constitute detention in isolation from the outside world in unofficial detention facilities, where

[306] SCES employee charged with organising torture of prisoners, < https://zaxid.net/odnomu_z_kerivnikiv_penitentsiarnoyi_sluzhbi_ogolosili_pidozru_v_organizatsiyi_katuvannya_uvyaznenih_n1436412>.

[307] Annual report of the Ukrainian Parliament Commissioner for Human Rights 2017, <http://www.ombudsman.gov.ua/ua/page/secretariat/docs/presentations/>.

[308] Annual report of the Human Rights Commissioner for 2020, p.243-251, <www.ombudsman.gov.ua>.

[309] How the SBI conceals information about murders, torture and illegal "wiretapping", https://statewatch.org.ua/publications/yak-dbr-prykhovuie-informatsiiu-pro-vbyvstva-katuvannia-ta-nezakonnu-proslushku/.

[310] "Why do we lose the war on torture in the police", https://www.pravda.com.ua/columns/2020/05/28/7253572/;

[311] "Was hit by a chair and a pipe from fire extinguisher. Why do law enforcement officers torture people and how to prevent it?", <https://www.radiosvoboda.org/a/chomu-pravoohoronsi-katuyut-ludey-tortury/31112055.html>.

[312] "What is really behind the SBI reports?", < https://www.pravda.com.ua/rus/columns/2021/03/22/7287496/ >.

[313] OHCHR Report on the human rights situation in Ukraine, 16 November 2015 to 15 February 2016, <https://www.ohchr.org/Documents/Countries/UA/Ukraine_13th_HRMMU_Report_3March2016_Ukrainian.pdf>.

torture and ill-treatment are practised as the usual methods for obtaining confessions and information, for intimidation, or simply as a form of punishment.[314] In 2014 there were frequent instances of torture and assault perpetrated by members of the volunteer battalions Azov, Aidar, Shakhtarsk (Tornado) and Dnipro-1. In 2017 the numerous media reports concerned the mass torture of people in Mariupol city by the representatives of "Azov"[315].

Thus, on August 8, an Ombudsman's representative met at the Mariupol PTDC with one Mr G., who had been charged with aiding and abetting terrorists under Article 258-3 CC and had hard evidence of torture used on him by SSU officers.

On August 3, 2017, the Prosecutor's Office launched a pre-trial investigation into the use of prohibited methods of investigation by officers of SSU's Donetsk Region branch against Mr. G. After the Ombudsman sent an appropriate response act to the Donetsk Region Prosecutor, on October 23, 2017, Mr. G was recognized as the victim in this criminal proceeding and was interviewed as such. On October 25, 2017, the Ordzhonikidzevskyi District Court of Mariupol acquitted Mr. G[316].

In October 2019, 40 representatives of the Democratic Party in the US Congress appealed to the State Department to include the Azov Regiment in the list of terrorist organizations[317]. This decision was opposed by the deputies of Ukraine[318]. However, the reputation of "Azov" remains negative in the international community.

On the results of the investigation into the murder of Oleksandr Zuckerman by law enforcement officers in the village of Kryve Ozero on August 23, 2016

On August 23, 2016, Oleksandr Zuckerman was killed during arrest by police officers, which caused a massive outrage in Ukrainian society. The state authorities that conducted the pre-trial investigation noted the crime's cynical nature[319].

The pre-trial investigation first named six police officers as suspects; two of them were later declared witnesses[320].

According to media reports, a number of procedural violations were committed during the pre-trial investigation, such as failure to take appropriate measures to collect evidence, despite the fact that Mr. Zuckerman was killed in broad daylight in a public place, in front of numerous witnesses[321].

On January 16, 2017 began the trial of the four ex-policemen who were charged with premeditated murder, but after the judge's dismissal and due to the inability to form a new court, the case was referred to another court[322].

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[314] Violent crimes committed in the course of the conflict in the east of Ukraine in 2014–2018, <http://khpg.org/files/docs/1552984376.pdf>.

[315] «OCG under the surface of "Azov", or Who killed a student in Mariupol», <https://resonance.ua/zu-za-shirmoyu-azova-abo-khto-vbiv-stude/>.

[316] Annual report of the Ukrainian Parliament Commissioner for Human Rights 2017, <http://www.ombudsman.gov.ua/ua/page/secretariat/docs/presentations/>.

[317] „US congressmen suggest that the State Department equate Azov with ISIS", <https://zmina.info/news/amerykanski-kongresmeny-proponuyut-derzhdepu-pryrivnyaty-azov-do-idil/>, „At the level of ISIS: the United States requires the inclusion of the Azov Regiment in the list of terrorist organizations", <https://espreso.tv/news/2019/10/21/na_rivni_z_idil_u_ssha_vymagayut_vnesty_polk_quotazovquot_do_spysku_terorystychnykh_organizaciy>.

[318] «"Sluha Narodu" plans to appeal to Congress for trying to add Azov to the list of terrorists», <https://espreso.tv/news/2019/10/28/quotsluga_naroduquot_planuye_zvernutysya_do_kongresu_cherez_namagannya_vnesty_quotazovquot_u_spysok_terorystiv>.

[319] Murder in Kryve Ozero: prosecution wants maximum punishment for the cops, <https://espreso.tv/news/2016/12/29/vbyvstvo_v_kryvomu_ozeri_prokuratura_prosytyme_maksymalne_pokarannya_dlya_kopiv>.

[320] Murder in Kryve Ozero: the trial of police officers in Mykolayiv Region has begun, <https://ru.tsn.ua/ukrayina/ubiystvo-v-krivom-ozere-na-nikolaevschine-nachali-sudit-policeyskih-802285.html>.

[321] One year after the tragedy in Kryve Ozero: how the cops are prosecuted for killing a person, <https://hromadske.ua/posts/krive-ozero-policeiski-vbili-cholovika>.

[322] Replies from the Vradiyivskyi and Pervomayskyi City District courts of Mykolayiv Region.

The trial in Zuckerman's case is still ongoing. And now only one of the four ex-policemen is facing murder charges.

The other three defendants were released from custody back in August 2017. Thus, although they have been under investigation since 2017, no restraining measure has been applied to them[323]. The fourth accused, one of four accused who were suspected of killing Mr. Zuckerman, was released from custody in December 2019, and was under house arrest[324]. In February 2020, he was released from house arrest.

After two years, from 2019 to 2021, the case is still to be examined on merits. The trial court indicates that the trial is ongoing, the defendants have not been remanded in custody.

All the court was doing during this time is decide on whether to continue keeping the defendant in custody and the formal questions concerning the civilian claim of the victim [325].

In fact, the trial does not take place.

ARTICLE 14

Question 37. *With reference to the Committee's previous concluding observations (para. 21), please provide information on:*

a) Whether the State party has amended its legislation to include explicit provisions on the right of victims of torture and ill-treatment to redress, including fair and adequate compensation and rehabilitation, in accordance with article 14 of the Convention;

b) Whether any resources have been allocated for rehabilitation programmes in the State party, including for victims of torture, families of missing persons and demobilized soldiers;

c) Any specific examples of cases in which victims of torture have received medical or psychosocial rehabilitation and information on rehabilitation programmes available in the State party and the resources made available to them;

d) Information on any redress and compensation measures ordered by courts since the previous periodic report, including the number of requests for compensation made, the number granted and the amounts ordered and actually provided in each case;

e) Data on compensation awards provided during the reporting period to individuals who have received judgments from the European Court of Human Rights against the State party concerning torture and ill-treatment (violations of article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms).

ANSWER TO QUESTION No. 37

Medical or psychological rehabilitation for torture victims at the expense of state budget

Answering question no. 37, the Government failed to provide information on rehabilitation programs available to victims of torture, families of missing persons, and demobilized soldiers. The Government also failed to give specific examples of torture victims being provided with medical or psychological rehabilitation, as well as information about available rehabilitation programs and the resources allocated for them.

It should also be noted that Ukraine currently has no state targeted rehabilitation programs for victims of torture and families of missing persons. Such assistance is provided only by civil society organizations, volunteers. NGOs have undertaken to improve the situation of torture victims, alleviate PTSD symptoms and support the victims' families. Among these organizations are HealthRight International Ukraine, Blakytnyi Ptakh (Blue Bird), Donbas SOS, Vostok SOS, Sertse Voyina (Warrior's Heart), Pobratymy (Brothers In Arms), and International Medical Rehabilitation Centre.

[323] Murder in Kryve Ozero. A year later only one policeman remains in custody, and there's still no court verdict, https://strana.ua/articles/analysis/88255-ubijstvo-v-krivom-ozere-politsejskie-ubivshie-aleksandra-tsukermana-zajavljajut-ovod-sudjam.html

[324] http://reyestr.court.gov.ua/Review/86368525

[325] Single State Register of Court Decisions, < http://reyestr.court.gov.ua/Review/82311094>.

As for the rehabilitation of military personnel, we should mention the State Targeted Program on Physical, Medical and Psychological Rehabilitation as well as Social and Professional Re-adaptation of the Participants of the Anti-Terrorist Operation and Those Who Took Part in the Actions Aimed at Upholding National Security and Defence, Rebuffing and Suppressing the Armed Aggression of the Russian Federation in Donetsk and Luhansk Oblasts, and Ensuring Implementation of These Actions for the Period Until 2022, adopted by CMU Resolution no. 1021 of December 5, 2018. However, according to a report of the Ministry of Economic Development and Trade, the Government has not evaluated the progress of this program's implementation thus far.

Redress for victims of torture and ill-treatment awarded by the EctHR

The Government in its response provided statistics on EctHR judgements in complaints filed against Ukraine under Article 3 ECHR. However, the issue of the actual provision of redress to the victims after they were awarded it by the Court was left unanswered. The Government also provided no details on the measures aimed at providing such redress, including the number of requests for redress, the number of satisfied requests as well as the sums that were awarded and actually paid in each case.

It should also be noted that the Government has not completely fulfilled its obligations under the ECHR on the payment of just satisfaction. According to the Department on Enforcement of EctHR Judgements, just satisfaction is yet to be paid in 23 cases, the final judgements in which had been delivered in 2014–2018 (see the list below for details).

Case	Application no.	Date of final judgement
SHCHERBAK v. Ukraine	81646/17	20/12/2018
SERGEY SMIRNOV v. Ukraine	36853/09	18/12/2018
LAVRINYUK v. Ukraine	1858/08	04/12/2018
GRABOVSKIY v. Ukraine	4442/07	29/11/2018
BURLYA AND OTHERS v. Ukraine	3289/10	06/11/2018
BAKCHIZHOV v. Ukraine	24874/08	30/10/2018
SHCHERBAKOV v. Ukraine	39708/13	20/09/2018
MAYSTRENKO v. Ukraine	45811/16	28/06/2018
YEREMENKO AND KOCHETOV v. Ukraine	68183/10	14/06/2018
TKACHEV v. Ukraine	11773/08	19/04/2018
LADA v. Ukraine	32392/07	06/02/2018
URZHANOV v. Ukraine	24392/06	14/12/2017
D.S. v. Ukraine	24107/13	09/11/2017
BILOZOR AND OTHERS v. Ukraine	9207/09	20/07/2017
KRYAT v. Ukraine	21533/07	15/12/2016
PELESHOK v. Ukraine	10025/06	08/12/2016
KONOVALCHUK v. Ukraine	31928/15	13/10/2016
YAROVENKO v. Ukraine	24710/06	06/10/2016
TRUTEN v. Ukraine	18041/08	23/06/2016
ZAKSHEVSKIY v. Ukraine	7193/04	17/03/2016
SERGEY ANTONOV v. Ukraine	40512/13	22/10/2015
SAVINOV v. Ukraine	5212/13	22/10/2015
ANDREY YAKOVENKO v. Ukraine	63727/11	13/03/2014

Also, according to the Ministry of Finance and the Law of Ukraine no. 266/94-VR "On the Procedure for Providing Compensation for Damage Caused to a Citizen by Illegal Actions of Investigative Bodies, Prosecuting Authorities and Courts" of December 1, 1994:

Year	2014	2015	2016	2017	2018
Number of court decisions	179	214	190	241	198
Total amount of paid damages, thousand UAH	17,785.6	18,094.7	18,094.7	27,694.7	33,651.9

To put the above figures in perspective, it should be borne in mind that acquittals constituted only 0.3% of the total number of judgements passed during the indicated period. Thus, from 2014 to 2018, judgements involving 546,621 people were passed and only 1,688 of those were acquittals[326].

Such a small number of paid damages, along with the small number of acquittals, indicate a repressive nature of the prosecution process and a low likelihood that a person whose confession was obtained through torture will be acquitted. The possibility of receiving redress for violations of Article 3 ECHR is directly dependent on the acquittal of the torture victim or conviction of the offender. As this is rare for Ukraine, its mechanism for awarding damages cannot be considered effective.

ARTICLE 15

Question 38. *With reference to the Committee's previous concluding observations (para. 22), please provide information on:*

a) Measures taken by the State party during the period under review to ensure in practice that confessions obtained as a result of torture or ill-treatment are not admissible in court;

b) Information concerning cases in which courts have deemed confessions or other evidence inadmissible because they were obtained under duress;

c) Data on any cases during the reporting period in which private citizens have been prosecuted for illegally detaining and torturing persons living in the vicinity of the conflict zone in order to extract confessions that they assisted armed groups, and the outcomes.

ANSWER TO QUESTION No. 38

On the measures taken by the State to make evidence obtained through the use of torture and ill-treatment inadmissible in court

Despite the provision in the CPC that evidence obtained as a result of grave violations of human rights and freedoms should not be admissible in court, the use of such evidence is still a common practice. Two cases can serve as an example of this in which confessions obtained through torture were used in further investigations and the courts ignored the defendants' complaints.

Citizen E. was arrested on suspicion of setting fire to someone else's property (arson of an abandoned building owned by a museum). The suspect was taken to the police station where he was interrogated without the presence of his lawyer. The police officers got him to write a confession by exploiting his poor mental state and drug intoxication. Once his mental state improved and he realized his situation, citizen E. renounced his confession and said that he was innocent.

After that, the detainee was forced to make another confession under torture: his hands were handcuffed and stretched between two radiators as he was beaten with a filled plastic bottle on the head and shocked through his clothes with a taser. This confession was then used to justify the charges and the decision to keep the suspect in custody. Moreover, the prosecutor tricked the suspect into waiving his right to a state-appointed lawyer by promising that he would arrange for house arrest as his restraining measure. During the pre-trial investigation, not a single investigating judge took into account the circumstances under which the suspect had confessed.

Due to the lack of a lawyer as well as his fearful and vulnerable state, the detainee was unable to document the torture. There was no medical examination when he was brought to the PTDC. By the time a lawyer from a human rights organization took the case, any chance of proving the torture had been lost. The anti-torture mechanism provided for in criminal law proved to be ineffective.

The second case involved the detention of citizen A. who was charged with robbery with the use of poison. When two male police officers arrived at the scene, they apprehended citizen A., searched her, confiscated her belongings and took her to the police station. Over the next six hours police officers took turns

[326] https://court.gov.ua/inshe/sudova_statystyka/

interrogating her. The girl was humiliated, insulted and threatened with physical violence. Some of the police officers were hitting her, pushing her around and pulling her by the hair. The police officers did this to get a confession and information on her collusion with other persons who had escaped with the stolen belongings of the victims.

In order to conceal the fact that the girl had been searched by a male officer, the arrest and search protocol was drawn up as if written by another investigator, a woman, whose name was also used to summon a lawyer for the girl. However, when the lawyer arrived at the police station, the figurehead investigator was nowhere to be found. The lawyer was not permitted to see the detainee. In court, the investigators found another lawyer for citizen A., allegedly a public defender. This lawyer did not act in the best interests of the defendant, trying instead to convince her to plead guilty and confess while ignoring all violations of the law. The defendant subsequently sent a complaint to the regional FLA Centre and was surprised to find out that they never appointed that lawyer and had no idea where he came from.

These examples show that the practice of compelling confessions and testimony remains widespread in Ukraine. Although the CPC provisions aimed at preventing the use of torture have reduced the number of such cases, they have proved unable to uproot the practice completely. The investigating judges play the role of extras in criminal proceedings instead of properly analysing the actions of the prosecution.

Cases in which evidence obtained under duress was declared inadmissible

When replying to the Committee's question regarding examples of court decisions in which the courts declared inadmissible the confessions and other evidence obtained under duress, the Government cited four examples from the SCU's case-law. However, although these cases do contain examples requested by the Committee, they should be considered with the following considerations in mind. First, all of these examples are from 2015. Secondly, the court decisions were only adopted by the Second Chamber of the Criminal Court of Cassation (hereinafter referred to as "CCC") within the SCU, while there are three chambers within the CCC, each consisting of four panels. Third, with the exception of the first example, all of the above decisions indicate that the first instance and appellate courts had failed to apply procedural law correctly when examining evidence. The errors made by these courts had to be corrected by the SCU. Thus, the above examples are limited to a narrow time frame as well as to the activities of a single chamber of the SCU. This is not enough to evaluate the quality of assessment by Ukrainian courts of confessions and evidence obtained under duress.

It also does not appear possible to evaluate separately the number of cases where first instance courts would declare evidence inadmissible before the end of the proceedings. This court power is provided for in Article 89 CPC but, in accordance with the rules of the judiciary, does not require a separate court decision and is formalized as a so-called "protocol decision", i.e. is verbally announced by a judge.

At the same time, the Single State Register of Court Decisions contains only 87 case in which a court of first instance rejected evidence as inadmissible under part 2, Article 89 CPC. Thus, the number of cases in which a court excludes evidence from examination as inadmissible before the conclusion of the case is insignificant and indicates a lack of consistent practice.

Information on cases in which private citizens were prosecuted for unlawful detention and torture of persons in the conflict zone

The question concerns court cases in which private citizens were prosecuted for unlawful detention and torture of people living in the conflict zone in order to make them confess to assisting illegal armed groups. When answering this question in para. 243 of its Report, the Government refers the reader to its reply to question 9. After studying it, we have come to the conclusion that the Government failed to answer the Committee's question. The statistics provided by the Government have no relation to the category of cases identified by the Committee and only generally illustrate the state of investigations into crimes involving terrorist activities.

At the same time, the Single State Register of Court Decisions does have an example of criminal prosecution of private citizens under Articles 127 (torture) and 146 (unlawful deprivation of liberty or abduction of a person) CC. Thus, on May 30, 2014, seven people were convicted for kidnapping by the Kyiv District Court of Donetsk. However, this crime was committed for money, not to make a person confess to assisting illegal armed groups.

In addition, there were cases when members of the Armed Forces of Ukraine (hereinafter referred to as "AFU") were prosecuted for the above crimes.

On March 18, 2015, a serviceman of the AFU was convicted by the Kostyantynivskyi City District Court of Donetsk Region for unlawful detention of a local resident. Acting together with other servicemen, the perpetrator abducted the victim to intimidate him and obtain information about his possible ties to illegal armed groups. Threatening the victim with weapons, the criminals took possession of the victim's property and forced him to give up his money. After that they forced the victim inside a car. During the trip they were demanding more money from the victim. Only after the victim agreed to the criminals' demands was he returned home and left alone. The perpetrator was sentenced to 4 years in prison but was released on probation.

On March 3, 2016, the Kostyantynivskyi City District Court of Donetsk Region sentenced for the above-mentioned crime another serviceman of the AFU, who acted together with the others, to two years in a penal battalion.

On April 28, 2017, two other servicemen of the AFU, who acted in concert with the others, were convicted by the Kostyantynivskyi City District Court of Donetsk Region: one, for the totality of his crimes, to 10 years in prison with confiscation of all his property and deprivation of military rank, the other one — to three years in prison.

On November 7, 2016, three servicemen of the AFU were convicted by the Illichivskyi District Court of Mariupol in Donetsk Region for unlawful detention and abduction of a local resident, whom the soldiers suspected of assisting illegal armed groups. Working together, the criminals captured the victim at his residence. Threatened with assault rifles, the victim had a bag put on his head and then taken away in a car. On the same day, the criminals seized a motorcycle driver who looked suspicious to them and forced him inside the trunk of their car. Soon after the second victim was let out of the trunk only to be beaten with a bat. They blindfolded the man with a black sweater and tied his hands with a rubber cord from a first aid kit, after which the victim was once again forced inside the trunk and, together with the first victim, taken to another location. When they arrived at the destination, the first victim was forced out of the car and taken inside a building. There, threatened weapons, the victim was forced to write down a list of residents of the village of Sartana, who, in the victim's opinion, had dealings with illegal armed groups. The second victim was taken to another room where he was interrogated with the use of force. Both victims were subsequently released. Two of the perpetrators were sentenced to 3 years in prison and another was sentenced to two years' imprisonment but released on probation.

On May 28, 2019, the Donetsk Court of Appeals extended the sentence of one of the perpetrators in the above case to five years in prison.

On April 27, 2017, the Artemivskyi City District Court of Donetsk Region convicted a serviceman of the AFU who abducted a resident of Donetsk Region to "check him for separatism". Acting together with three other servicemen, the perpetrator came to the victim's home at night and abducted him with the use of force. The perpetrators tied the victim's hands and put a bag on his head, after which they took him to the location of their military unit against his will. There the victim was beaten on the feet with a wooden stick with the purpose of finding out what he knew about the AFU. Days later the victim's body, whose hands were still tied, was found on a road. The court sentenced the perpetrator to 5 years in prison but released him on probation.

On February 27, 2018, the Kreminskyi District Court of Luhansk Region convicted a serviceman of the AFU who abducted a local resident, acting together with other servicemen on the orders of their commanding officer. Suspecting the victim of involvement in the activities of illegal armed groups, the perpetrator, together with the other servicemen, detained the victim at a checkpoint and handed him over to officers of the Military Police. Soon after the victim was brought to a military base with his hands tied and an opaque bag on his head. The victim was taken to a half-destroyed building on the territory of the base, forced to sit on a concrete slab, and interrogated. To make the victim talk, the perpetrator stabbed his leg with a knife. The victim was also beaten and interrogated by other soldiers. As a result of the torture, the victim died. His body was buried in a wooded area to hide the crime. The perpetrator was sentenced for torture and abduction to 5 years in prison but released on probation.

The Single State Register of Court Decisions also contains examples of convictions for abductions perpetrated by members of the terrorist organizations "Donetsk People's Republic" and "Luhansk People's Republic".

On April 8, 2015, the Bilokurakynskyi District Court of Luhansk Region convicted a former police officer and a member of an armed group operating in the city of Luhansk and in Luhansk Region. Together with accomplices, the perpetrator forced a local resident into their car and made her give them the keys to her apartment. The attackers subsequently broke into the victim's apartment. Threatening the victim's husband with weapons, they handcuffed and abducted him, after which both of the victims were taken to the administrative building of the Luhansk Region State Administration, where they were held against their will in one of the so-called detention rooms. After that the victims were taken to the city of Krasnodon, Luhansk Region, where they were held in a private apartment of a nine-storey building. The court sentenced the perpetrator to 5 years in prison.

On September 28, 2015, the Lysychanskyi City Court of Luhansk Region convicted a member of an illegal armed group operating in the territory of Luhansk Region for abducting a person. To get information about the victim's work and family members, the perpetrator, acting together with accomplices, abducted a local resident and transported him to the premises of the Lysychansk District Oil Pipeline Administration located in the city of Lysychansk, Luhansk Region. There the victim was beaten and interrogated and later taken to another place to confirm his information. The perpetrator was sentenced to 6 years in prison.

On November 23, 2017, the Starobilsk District Court of Luhansk Region convicted a member of the illegal armed group "Platov's Cossack National Guard of the Great Don Army" for abducting a local resident. Together with other individuals, the perpetrator tricked the victim into the building of the Antratsit District State Administration, Luhansk Region, which was under the control of the illegal armed group. Acting with accomplices, the perpetrator hit the victim in the back and put plastic restraints on his hands and feet as well as a bag on his head. The victim was taken to another location where he was released by members of another illegal armed group the following day. During the unlawful detention, the victim was stripped of his personal belongings, money and valuables.

On December 15, 2017, two persons involved in the activities of the terrorist organization "Donetsk People's Republic" were convicted for abduction by the Zhovtnevyi District Court of Mariupol in Donetsk Region. The perpetrators came to the victim's home in the evening and abducted him for forbidding his daughter to date one of the perpetrators. Threatening the victim with an assault rifle, the attackers forced him outside and took him to the location of their military unit. After an identity check by the leadership of the terrorist base, the victim was released.

ARTICLE 16

Question 39. *Please describe measures taken by the State party to protect human rights defenders, including lawyers, journalists and other media workers, from reprisals, including intimidation, harassment and violent attacks motivated by their work, and to investigate all cases of reprisals and ensure accountability for the perpetrators. In particular, please provide information on measures taken in the following cases:*

a) The killing of journalist Pavel Sheremet in Kyiv on July 20, 2016;

b) The killing of defence lawyer Yuriy Grabovskiy in March 2016;

c) Numerous threats made against human rights monitors and journalists in the wake of the publication of their personal information by the pro-government website "Myrotvorets".

ANSWER TO QUESTION NO. 39

Protection of journalists

In its Report, the Government provides statistics only for the first 9 months of 2018 rather than for the entire reporting period. Also, the Government provides statistics on registered reports of crimes involving interference with the work of the press, yet it fails to mention that most of these proceedings get closed, that few notices of suspicion are served in these proceedings and that very few of these cases make it to trial.

According to the data provided by PG, we have the following statistics of registered criminal offences related to interference in the professional activities of journalists, and the results of their pre-trial inves-

tigations between 2014 and March 2021: 963 registered criminal proceedings, 131 notices of suspicion, 89 bills of indictment were sent to trial, which is only 9,25 % of the total number of registered criminal offences, and 600 terminated proceedings, which is 62,3 % of the total number of registered criminal offences.

PG's statistics on registered CPs concerning interference with the press and the results of their pre-trial investigations under Articles 171 CC (interference with the work of journalists), 345-1 CC (threat or commission of violence against journalists), 347-1 CC (deliberate damage to or destruction of journalists' property), 348-1 CC (attempted murder of a journalist) since 2014, including first quarter of 2021.

2014 Article of the CC	CPs registered	CPs with notice of suspicion served	CPs with indictment sent to court	Proceedings closed
171	80	13	7	72
345-1	introduced in Ukraine's CC on May 14, 2015			
347-1	introduced in Ukraine's CC on May 14, 2015			
348-1	introduced in Ukraine's CC on May 14, 2015			
Total	**80**	**13**	**7**	**72**

2015 Article of the CC	CPs registered	CPs with notice of suspicion served	CPs with indictment sent to court	Proceedings closed
171	72	13	5	48
345-1	9	2	2	2
347-1	4	1	0	0
348-1	0	0	0	0
Total	**85**	**16**	**7**	**50**

2016 Article of the CC	CPs registered	CPs with notice of suspicion served	CPs with indictment sent to court	Proceedings closed
171	102	12	6	74
345-1	35	7	6	6
347-1	4	0	0	0
348-1	0	0	0	1
Total	**141**	**19**	**12**	**81**

2017 Article of the CC	CPs registered	CPs with notice of suspicion served	CPs with indictment sent to court	Proceedings closed
171	129	8	5	90
345-1	35	3	2	20
347-1	9	0	0	0
348-1	1	0	0	0
Total	**174**	**11**	**7**	**110**

2018 Article of the CC	CPs registered	CPs with notice of suspicion served	CPs with indictment sent to court	Proceedings closed
171	106	11	8	89
345-1	63	15	15	19
347-1	6	1	0	0
348-1	2	1	0	0
Total	**177**	**28**	**23**	**108**

2019 Article of the CC	CPs registered	CPs with notice of suspicion served	CPs with indictment sent to court	Proceedings closed
171	106	10	6	4
345-1	43	9	7	13
347-1	6	1	1	6
348-1	2	0	0	1
Total	**157**	**20**	**14**	**24**

2020 Article of CC	CPs registered	CPs with notice of suspicion served	CPs with indictment sent to court	Proceedings closed
171	64	12	10	128
345-1	37	5	5	17
347-1	3	1	1	0
348-1	0	0	0	0
Total	**104**	**18**	**16**	**145**

First quarter of 2021 Article of CC	CPs registered	CPs with notice of suspicion served	CPs with indictment sent to court	Proceedings closed
171	36	3	2	0
345-1	9	3	1	0
347-1	0	0	0	0
348-1	0	0	0	0
Total	**45**	**6**	**3**	**0**

Case of the murder of Oles Buzina

The murder of journalist Oles Buzyna on April 16, 2015 is one of the few such cases where the investigation has already been completed but the trial is being deliberately delayed, with the court failing to determine a restraining measure for the defendants for six years now[327]. Despite the fact that the MIA announced that the crime had been solved and that there was hard evidence against the suspects on June 18, 2015[328], an indictment was sent to the Shevchenkinvskyi District Court of Kyiv only on November 28, 2017[329], and only on February 9, 2019 did the court start examining the case[330].

On May 6, 2019, a judge in the jury trial in Buzyna's murder case recused himself, citing prejudice toward some participants of the trial because they were abusing their procedural rights and dragging out the proceedings[331].

On 11 July 2019 the court satisfied the petition of the accused on the dismissal of another judge in this case on the grounds that during the hearing of HCJ, on which the question of her dismissal was considered, the judge reported that her dismissal is related to the consideration of that case[332]. In 2019–2021 the defendants' lawyers delay the trial, raising on every court hearing the groundless petitions for the dismissal of judges, jurors and prosecutors[333].

[327] http://reyestr.court.gov.ua/Review/56794279, http://reyestr.court.gov.ua/Review/57879550

[328] https://www.facebook.com/arsen.avakov.1/posts/857798260976948

[329] https://www.kyiv.gp.gov.ua/ua/news.html?_m=publications&_c=view&_t=rec&id=219853

[330] http://www.vru.gov.ua/video/497

[331] http://reyestr.court.gov.ua/Review/81543025

[332] https://reyestr.court.gov.ua/Review/82966411

[333] https://reyestr.court.gov.ua/Review/82966411; https://reyestr.court.gov.ua/Review/82988031 https://reyestr.court.gov.ua/Review/84001847; https://reyestr.court.gov.ua/Review/83918866 https://reyestr.court.gov.ua/Review/89179508; https://reyestr.court.gov.ua/Review/89179510 https://reyestr.court.gov.ua/Review/89531319; https://reyestr.court.gov.ua/Review/89531318

The trial almost does not progress, and two defendants, for whom the preventive measure is not chosen for six years, take part in the procession in honor of the Nazi SS division "Galychyna" using the forbidden symbols of Nazi Germany[334].

Two days prior to the murder, Oles Buzyna's personal information was published on the Myrotvorets website by a user named "404". After the murder of the writer and journalist, the following words appeared on the website: "Agent 404 did well. For successful performance of his mission he is granted a short leave."[335]

Case of the murder of Pavlo Sheremet

The murder of journalist Pavlo Sheremet on July 20, 2016 still has not been solved. The investigation has failed to produce a suspect. The PG has repeatedly acknowledged errors in the investigation and its ineffectiveness[336].

On December 12, 2019 the National Police detained three persons suspected of murder of a famous journalist, Pavel Sheremet, and accused them of murder[337]. These proceedings drew the attention of media and public, because two of the suspects are former military officers and one is a well-known volunteer who supported Ukrainian Armed Forces.

On 14 December 2019 Pechersky District Court of Kyiv has chosen preventive measures for suspects in the case of Sheremet's murder. Two suspects were remanded in custody. One person received a preventive measure in the form of round-the-clock house arrest[338].

On 22 May 2020 the prosecutor's office transferred the case with the bill of indictment to Shevchenkivsky district court of Kyiv city[339].

On 4 March 2020 the jury began considering that case.

On 9 December 2020 the court decided to perform the trial in private, restricting the access of the persons who are not the participants of the proceedings, except the representatives of the media due to aggravation of epidemiological situation and the aggressive behavior of the accused's supporters towards the judges[340].

On 26 March 2021 the court reported the intervention in the activity of the jurors. The court stated that each hearing in this case is accompanied by mass protest actions near the courthouse, which violate the public order, there are fights, damage to the property etc. Furthermore, the supporters of the defendants acutely discuss in the social media, in particular in Facebook, the course of consideration of the case. Publications and comments make ambiguous statements against judges and jurors, which have the nature of threats and calls for reprisals, in order to persuade the court to make the decision required by a particular group of persons. In addition, there are statements from the defence that show signs of pressure[341].

The consideration is ongoing, the court constantly extends the preventive measures concerning the defendants.

It should be noted that during the court hearing on December 24, 2019 on a choice of a preventive measure for one of the suspects, three journalists[342], including two women, were attacked and threatened by far-right groups and related persons in the court room and near the court building. The male journalist was beaten and doused with unidentified liquid, and the women were shoved and threatened. During both incidents the law-enforcement officers who were present during the events did not react properly.[343]

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[334] https://news24ua.com/na-marsh-v-chest-divizii-ss-galichina-prishli-obvinyaemye-v-ubiystve-olesya-buziny-medvedko-i

[335] https://strana.ua/news/196356-oles-buzina-chetyre-hoda-so-dnja-ubijstva-zhurnalista-i-pisatelja.html

[336] https://www.youtube.com/watch?v=YV1kToRgldo, https://www.youtube.com/watch?v=Ar1bXoxnwZA

[337] https://mvs.gov.ua/ua/news/26795_slidchi_npu_zatrimali_pidozryuvanih_u_vbivstvi_pavla_sheremeta.htm

[338] https://suspilne.media/4573-sud-obirae-zapobiznij-zahid-figurantam-spravi-vbivstva-seremeta/

[339] https://reyestr.court.gov.ua/Review/91235935

[340] https://reyestr.court.gov.ua/Review/93577538

[341] https://sh.ki.court.gov.ua/sud2610/pres-centr/news/1094997/

[342] https://www.rbc.ua/rus/styler/vremya-suda-delu-sheremeta-napali-zhurnalistov-1577194653.html

[343] https://www.facebook.com/UA.KyivPolice/photos/a.410279982361112/2645737185482036/?type=3&theater

PROTECTION OF LAWYERS AND HUMAN RIGHTS DEFENDERS

In its report, the Government mentions the Law of Ukraine "On the Bar and Advocacy", which makes protection and observance of the rights of lawyers the responsibility of lawyer self-regulation bodies. However, lawyer self-regulation bodies can only protect the rights of lawyers within the scope of their authority, submitting complaints on violated rights to the appropriate authorities, so that these authorities could launch investigations into the facts laid out in the complaints.

The Ukrainian National Bar Association (UNBA) has made numerous statements about systematic attacks on lawyers in high-profile cases as well as on lawyer self-government bodies, most of which were perpetrated by representatives of the S-14 organization, which receives funding from the Ministry of Youth and Sports. According to the UNBA, these attacks are not being investigated[344].

According to the data provided by PG we have the following statistics of the registered criminal offences and the results of their pre-trial investigations related to the interference in the professional activity of the lawyers between 2014 and March 2021: 1069 registered criminal proceedings, 26 notices of suspicion, 17 bills of indictment were sent to court, which is only 1,59 % of the total number of registered criminal proceedings, and 746 closed proceedings, which is 69,7 % of the total number of registered criminal proceedings.

PG statistics on registered CPs and the results of their pre-trial investigations related to the interference in the professional activity of the lawyers between 2014 and March 2020 under Articles 397 of CC of Ukraine (Interference with activity of a defence attorney or legal agent), 398 of CC of Ukraine (Threats or violence against a defence attorney or legal agent), 399 of CC of Ukraine (Willful destruction or impairment of property owned by a defence attorney or legal agent), 400 of CC of Ukraine (Trespass against life of a defence attorney or legal agent in connection with their activity related to the administration of justice).

Article of the CC	CPs registered	CPs with notice of suspicion served	CPs with indictment sent to court	Proceedings closed
Art. 397	775	3	1	589
Art. 398	254	21	15	135
Art. 399	34	1	1	19
Art. 400	6	1	0	3
Total	**1069**	**26**	**17 (1,6%)**	**746 (69,7%)**

Given these statistics of investigations into complaints and reports of violent crimes against journalists and lawyers, we can conclude that there is no legal protection for these categories of persons in Ukraine.

In regard to the protection of human rights defenders, the Parliamentary Assembly of the CoE in para. 1.3 of its Recommendation no. 2085 (2016) "Strengthening the protection and role of human rights defenders in Council of Europe member States" recommends that member states create a platform for the protection of human right defenders, similar to that for the protection of journalists. In Ukraine, crimes against journalists are subject to special criminal liability under a number of articles of Ukraine's CC. During the reporting period, no draft law on special criminal liability for crimes against human rights defenders was proposed.

In regard to the murder of lawyer Yuriy Grabovskyi, suspects were arrested on March 25, 2016[345]. In August 2016, the Military Prosecutor's Office completed its investigation into Yuriy Grabovskyi's murder and sent the indictment to court[346]. Nothing is known about the trial's progress, since the case is being examined by the Shevchenkivskyi District Court of Kyiv behind closed doors, on the grounds that the

[344] http://unba.org.ua/news/3455-sistematichni-napadi-na-advokativ-u-rezonansnih-spravah-ta-organi-advokats-kogo-samovryaduvannya-vimagayut-negajnoi-reakcii-pravoohoronnih-organiv-ta–kerivnictva-derzhavi.html,
http://unba.org.ua/news/4049-kil-kist-porushen-prav-advokativ-zrostae-pri-vidsutnosti-nalezhnoi-reakcii-pravo-ohoronciv-ganna-boryak.html,
http://unba.org.ua/news/3616-naau-zaklikae-prezidenta-stvoriti-koordradu-iz-zahistu-prav-lyudini.html,
http://unba.org.ua/publications/3553-hto-nastupnij.html

[345] https://www.gp.gov.ua/ua/news.html?_m=publications&_t=rec&id=171332&fp=3671

[346] https://ru.tsn.ua/ukrayina/prokuratura-zavershila-rassledovanie-ubiystva-advokata-grabovskogo-694065.html

evidence to be provided by the parties to the proceedings may contain information about the defendant's personal life and circumstances that could be humiliating to him[347].

On May 7, 2019, one of the suspects, Artem Yakovenko, admitted in an interview that he had been working for security services, and that his task was to lure Grabovskyi to Odesa, where security services seized Grabovskyi[348].

INVESTIGATION OF THE DISCLOSURE OF PERSONAL INFORMATION OF JOURNALISTS, LAWYERS AND HUMAN RIGHTS DEFENDERS ON THE MYROTVORETS WEBSITE

As for the investigation into the activities of the pro-government website Myrotvorets, which in 2016–2017 was publishing personal information of journalists that were working in non-government-controlled territories, the Government has failed to take any real steps to conduct a proper investigation. Certain high officials even voiced their public support for the actions of the website's administrators[349].

On May 16, 2016, Anton Gerashchenko, adviser to Interior Minister, addressed the Minister of Internal Affairs, the PG and the head of the SSU "demanding to close the case" against the volunteers of the Myrotvorets website[350].

After the "Uspishna Varta" (Successful Watch) organization published results of its investigation of the Myrotvorets website, the website entered into its database information about Uspishna Varta's head of the board Nataliya Natalyna and coordinator Tetiana Galonze[351].

On 10 October 2019 the President of Ukraine, Volodymyr Zelensky, stated that he did not plan to have the "Peacekeeper" site closed[352].

On 3 February 2021 the European Parliament adopted a Resolution that requires Ukraine to close the "Peacekeeper" site for the incitement of social tension and unlawful use of personal data of hundreds of people, including the journalists, politicians and members of minority groups[353].

As of May 2021, the website is still working, the pre-trial investigation is ongoing, and no suspects have been named.

Question 40. *With reference to the Committee's previous concluding observations (para. 23), please provide information on:*

a) The number of non-combat deaths in the Ukrainian armed forces during the period under review, and the number of such deaths attributed to hazing ("dedovshchina");

b) Investigations undertaken during the period under review into cases of suspected hazing in the military, information on whether military prosecutors or the national police have undertaken these investigations and whether any have resulted in prosecutions and the conviction of those responsible;

c) Whether redress and rehabilitation, including medical and psychological assistance, has been provided to victims of hazing in the military during the period under review.

ANSWER TO QUESTION No. 40

Relations between members of the AFU that violate regulations ("hazing") remain an issue to this day. Such actions are punishable under the CC. Thus, according to the State Judicial Administration of Ukraine, at least 130 servicemen were prosecuted for this offence in 2014–2018. The number of prosecutions is not

[347] http://reyestr.court.gov.ua/Review/63729003

[348] https://vesti-ukr.com/strana/335479-obvinjaemyj-v-ubijstve-hrabovskoho-ja-ne-vinoven-advokata-ubrali-sbu-i-matios

[349] https://www.hrw.org/ru/world-report/2018/country-chapters/313660

[350] https://www.unian.net/politics/1346295-skandal-s-mirotvortsem-v-mvd-potrebovali-zakryit-delo-protiv-volonterov-dokument.html

[351] https://uspishna-varta.com/ru/novyny/pravozashitnikov-uspishna-varta-vnesli-na-sajt-mirotvorec-posle-rassledovaniya-o-ego-deyatelnosti

[352] https://www.pravda.com.ua/news/2019/10/10/7228712/

[353] https://news.obozrevatel.com/ukr/politics/evroparlament-zaklikav-zaboroniti-mirotvorets-tvortsi-bazi-nagadali-schoukraina-schit-evropi.htm

exact because, when a person commits several offences, the Judicial Administration records that person under the strictest article of the CC brought against them. Based on this, we can conclude that the number of servicemen prosecuted for violating regulations is actually higher. In para. 391, the Government states that over 2014–2018 only 63 servicemen were prosecuted, but this is not true. Moreover, when interviewed by a national outlet, Major-General Oleg Gruntkovskyi, Head of the Department of Moral and Psychological Support of the General Staff of the AFU, said that the issue of psychological, moral or physical abuse of subordinates or peers still exists in the army. One of the reasons for this phenomenon is the poor training of commanding officers in the AFU[354].

In the same interview, Major-General Oleg Gruntkovskyi stated that as of 2018, the AFU had only 55% of positions for specialists on moral and psychological support filled. KHPG is unable to provide this information for 2019 since the Ministry of Defence failed to respond to our inquiries.

The issue of "hazing" or violations of regulations by military personnel are not the only serious problems in the AFU. Suicides among military personnel, classified as non-combat casualties, are becoming more frequent. According to the Ministry of Defence, suicides among servicemen constitute 22% of the number of servicemen killed in non-combat situations (which, respectively, is 56% of the total number of casualties)[355]. According to official PGO statistics, in 2020 the prosecutors established 39 cases of suicide[356].

The Deputy Prosecutor General said in an interview that "among the solved crimes are the facts when the murders were disguised as suicides. And there was even an attempt to disguise a murder as a desertion. The serviceman was beaten to death, and then the body was taken out of the military unit and it was told that he was trying to escape by climbing over a fence. But the investigators and prosecutors were able to find out what really happened"[357].

In 2020–2021 the cases of suicides among the servicemen of AFU were numerously covered in media[358].

The statistics of investigated criminal proceedings, bills of indictment sent to court[359] concerning Art.406 of the CCU (violation of statutory relations between servicemen in the absence of relations of subordination) for 2014 — January-February 2021:

Year	Investigated	Bills of indictment sent
2014	49	26
2015	116	44
2016	110	44
2017	77	29
2018	68	19
2019	84	29
2020	87	26
2021	19	5

On average, data show that 30% of cases investigated are sent to trial.

[354] Mariya Tsaturian, Oleg Grishchak, "Major-General of the Armed Forces of Ukraine Oleg Gruntovskyi: "About 30% of suicides in the army take place in the ATO", RBK — Ukraine, March 2, 2018, (online) https://daily.rbc.ua/rus/show/general-mayor-vsu-oleg-gruntkovskiy-okolo-1519946455.html

[355] Reply of the Ministry of Defence of 22.03.2021

[356] "Appeal of the Prosecutor General Iryna Venediktova on the work of special prosecutor's offices in the military and defence spheres (VIDEO)", https://vpzhr.gp.gov.ua/ua/news.html?_m=publications&_t=rec&id=283742&fp=30.

[357] „Deputy Prosecutor General Maksym Yakubovsky: «We do not have a law enforcement agency that works directly in military formations»", < https://armyinform.com.ua/2021/02/zastupnyk-genprokurora-maksym-yakubovskyj-u-nas-nemaye-pravoohoronnogo-organu-yakyj-bezposeredno-praczyuye-u-vijskovyh-formuvannyah/>.

[358] «95th brigade of AFU reported the suicide of its serviceman», https://gordonua.com/ukr/news/localnews/-95-ja-brigada-vsu-povidomila-pro-samogubstvo-svogo-vijskovosluzhbovtsja-1507939.html, „An officer of the AFU committed suicide in Zhytomyr Region", < https://ua.news/ua/v-zhytomyrskoj-oblasty-sovershyl-samoubyjstvo-ofytser-vsu/>, «A 33-year-old captain of the AFU committed suicide in Kropyvnytskyi", < https://prm.ua/u-kropivnitskomu-vchiniv-samogubstvo-33-richniy-kapitan-zsu/>, „In the Chernihiv region, a AFU contractor committed suicide", <https://ukraine.segodnya.ua/ua/ukraine/v-chernigovskoy-oblasti-kontraktnik-vsu-sovershil-suicid-1516767.html>; «A wave of suicides swept through the Armed Forces — three soldiers died over the weekend», https://racurs.ua/ua/n152764-hvylya-samogubstv-prokotylasya-v-zsu-troie-voyiniv-pishly-z-jyttya-za-vyhidni.html, „A soldier of the Armed Forces shot himself in the company of colleagues (VIDEO 18+)", < https://www.dsnews.ua/ukr/society/soldat-zsu-zastrelivsya-v-kompaniji-tovarishiv-po-sluzhbi-video-18-02042021-420862>.

[359] Reply of the Prosecutor General's Office of 22.03.2021.

According to the World Health Organization statistics for Ukraine, about 500 suicide attempts are made daily here, which result in about 35 deaths. This problem exists in the ranks of the AFU as well.

From the beginning of 2014 to 2015, the MoD provided information about 171 suicides among soldiers[360]. After that, the MoD stopped giving out such information.

On November 27, 2018, Main Military Prosecutor of Ukraine Anatoliy Matios presented a report dedicated to the World Mental Health Day, stating that based on the information of the Military Prosecutor's Office, 615 cases of suicide among AFU servicemen were registered between 2014 and 2018, with 282 suicides committed in the JFO zone[361].

If we compare the information provided by the MoD in 2015 with the information presented in 2018 by the Main Military Prosecutor, we can see that the number of suicides has tripled.

When a serviceman is found dead, law enforcement authorities launch a criminal investigation under Article 115 CC ("murder"). In most of these cases, pre-trial investigation authorities subsequently conclude that the death occurred as a result of suicide, after which the criminal investigation is closed due to the absence of a crime.

However, with regard to the investigation of suicides among servicemen, we would like to note that since 2015 KHPG has been getting requests for aid from the families of deceased soldiers whose death was classified as suicide after a criminal investigation under Article 115 CC. When providing legal aid to these people, KHPG lawyers find Ukrainian law enforcement's attitude toward these cases to be superficial and one-sided, biased toward suicide, even when the case files indicate murder rather than suicide. Thus, forensic examinations conducted in suicide cases yield ambivalent conclusions — they neither provide direct evidence of murder nor confirm suicide. Despite this, investigators close almost all criminal investigations on the grounds of the absence of crime, ignoring the fact that forensic examinations were incomplete or inaccurate.

When conducting pre-trial investigations into suicides of servicemen, investigators violate the current CPC by failing to address legitimate requests of the victims (relatives of the deceased) for a full and comprehensive investigation, or, even when addressing these requests, dragging out the investigation.

We would also like to point out the actions of the military command in connection to suicides. Aside from reporting such incidents to law enforcement agencies, the command always conducts its own internal investigations. The findings of these internal investigations are independent of the official ones yet are just as one-sided: the blame for the death of a soldier is placed on the deceased himself. This causes additional suffering to the families of the deceased since, on top of everything else, it forces them to try and prove that their loved one did not commit suicide.

Summarising the above, we can conclude that neither the law enforcement agencies nor the command of the AFU are interested in conducting thorough investigations into the deaths among soldiers and in providing definitive proof of suicide or death due to other circumstances (murder). What they are interested in is in hiding their negligence or unlawful actions.

Question 41. *Please provide information on:*

a) Whether the use of physical restraints on persons with mental disorders and psychosocial disabilities in psychiatric institutions has been regulated to ensure that they are used only as a last resort, to prevent the risk of harm to the individual or others and only when all other reasonable options would fail to satisfactorily contain that risk, and only when expressly ordered by a doctor or immediately brought to the attention of a doctor and applied with clear therapeutic purpose;

b) Whether personnel in psychiatric establishments receive appropriate training on the application of restraint measures;

c) Any investigations undertaken into complaints of violations concerning the use of restraints, and their outcomes;

d) Measures taken to ensure effective legal safeguards for persons subjected to involuntary seclusion in psychiatric institutions, including the right of effective appeal.

[360] ZN,UA, "Defence Ministry discloses non-combat casualties" (online) https://dt.ua/UKRAINE/u-minoboroni-ozvuchili-neboyovi-vtrati-zsu-187023_.html

[361] Alla Kotlyar, "Anatoliy Matios: "We need prevention if we want to prevent non-combat casualties", ZN,UA, (online) https://dt.ua/interview/anatoliy-matios-schob-ne-bulo-neboyovih-vtrat-potribna-prevenciya-292174_.html

ANSWER TO THE QUESTION No. 41

Despite the categorical prohibition on the use of long-sleeved clothing, so-called straitjackets, to people with mental disorders, this practice is still quite common today.[362].

Despite the clear requirement to comply with lawful terms of detention of persons with mental disorders in psychiatric asylums, that requirement is not met. Thus, the non-governmental organization "Ukraine Without Torture" during its visit in 2018 to Poltava Psychiatric Hospital No. 2 "Snityno", discovered that most patients remain there for more than 5 years. One of the patients have been living in the hospital for 46 years. For the last years the hospital did not take any measures to return the patients or to transfer them to board houses, since it is interested in their long-term stay. It is also indicated by the fact that a patient remains in the hospital since 2009 whose caretaker is her doctor and at the same time the chief physician of the institution[363].

According to the report on the results of the monitoring visit of the Human Rights Commissioner (the visit was carried out in September 2019), the practice of use of physical restraint is maintained in the institutions, it is also applied to the children between 6 and 18 years old and the youth, with inadequate means. For example, according to the wards of the Dnipro psychoneurological boarding house of the Kherson regional council, they are punished for violating order and trying to escape by being chained to an iron bracket nailed to the floor. That fact is indicated by the traces on the ankles of the children, which remained after the fixation, and the bracket on the floor.

Monitoring of psychiatric care institutions in the health care system continues to identify cases of harassment of patients, which sometimes leads to ill-treatment. The practice of use of physical restriction and/or isolation without the documentation of this fact is maintained in several of the visited hospitals. Thus, during a visit to the Regional Clinical Psychiatric Hospital of Sloviansk city (the visit took place in February 2019) the delegation discovered a person who was handcuffed to the bed for six days. She was guarded by the police officers who could not explain the reasons for the use of such means and provide a valid court ruling.

During the monitoring visit of the NPM to the municipal institution "Panasivsky geriatric boarding house of the Dnepropetrovsk regional council" on 4 December 2019 the monitoring group detected two rooms on second and third floors, which were equipped with metal stationary bars from within the rooms, which is a violation of para. 2.16 of the fire safety rules in Ukraine (it must be possible to open, spread or remove the bars), approved by the order of the Ministry of Internal Affairs of Ukraine of 30.12.2014 No. 1417. Those rooms were only locked from the outside, there was no possibility to unlock them from the inside, which indicates the unlawful isolation, since those facts are not documented anywhere. Several wards reported that those punished for misconduct were imprisoned in those rooms. During the interview one of the residents said that she "stood up" for the "psychochronic" G. during the insult, and for that she was locked on the second floor for a month[364].

Given the above, it can be argued that there are violations of human rights in the work of public institutions during the provision of medical care to persons with mental disorders.

[362] https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/UKR/INT_CAT_INP_UKR_42469_O.PDF

[363] https://notorture.org.ua/2018/12/26/u-psihiatrichnij-likarni-na-poltavshhini-paciienti-zhivut-rokami/?fbclid=IwAR21Dx2kD7C6fnKS2uwrUoOhC0267IGADw1zC6gRutf6xcCtJfUCqgQKd8M

[364] https://www.ombudsman.gov.ua/files/marina/%D0%97%D0%B2%D1%96%D1%82_%D0%9F%D0%B0%D0%BD%D0%B0%D1%81%D1%96%D0%B2%D1%81%D1%8C%D0%BA%D0%B8%D0%B9%20%D0%93%D0%9F_04.12.19_%D1%81%D0%B0%D0%B9%D1%82%202.pdf

CONCLUSIONS AND RECOMMENDATIONS

DEFINITION OF TORTURE

1. The definition of torture given in Article 127 CC, despite several amendments, still differs enough from that in the Convention that it distorts the very essence of this phenomenon and impedes prosecution of those in power.

Recommendations:

a) bring the definition of torture in the Criminal Code in line with the Convention, covering all elements of this crime contained in its Article 1.

INVESTIGATION INTO ACTS OF TORTURE

2. The majority of investigations into acts of torture in Ukraine are ineffective. In most of these cases, investigations are opened on orders from the investigating judge after the latter receives a complaint against the inaction of investigators, rather than following the initial victim's complaint on torture. The number of indictments that handed in to courts is much lower than the number of opened criminal investigations. Proceedings in such cases are dragged out at the stages of both pre-trial investigation as well as court examination, until the time limit or prosecution expires. As a result, government officers are rarely brought to justice.

3. There is no methodology for investigating acts of torture, and international recommendations concerning these issues are not being implemented.

4. Victims of torture often face retaliation after filing complaints with the authorities, which stops many of them from reporting these incidents in the first place.

5. The state bodies responsible for ensuring the observance of the rights of persons held in places of detention are ineffective; they are rarely able to detect instances of torture and the information they have does not represent the actual situation with crimes of torture in the country.

6. There is no mechanism for bringing disciplinary action against SBI investigators for dereliction of duty when it comes to investigating torture complaints.

7. The territorial departments of the newly established SBI have jurisdiction over 4–5 Ukrainian regions each, which only makes it more difficult to report crimes of torture and open investigations, as well as, for the victims and other stakeholders, to communicate with the persons investigating the crime or supervising this process (investigators, prosecutors, investigating judges), which has adversely affected the situation with investigating crimes of torture as a whole.

Recommendations:

a) ensure independence of judges from prosecuting authorities, specifically by conducting an impartial and thorough investigation into every judge's report on unjustified interference with his or her activities, and by prosecuting those responsible;
b) establish at the legislative level clear criteria for bringing disciplinary action and criminal charges against investigators and prosecutors for improper pre-trial investigation and violation of procedural deadlines; promptly adopt Model Regulations on SBI Disciplinary Commissions and establish the latter;
c) establish at the legislative level liability of judges for violating procedural deadlines;
d) develop and adopt a methodology for investigating crimes of torture, taking into account international recommendations on these issues (Istanbul Protocol). Develop and implement a procedure

for involving civil society representatives in investigations of crimes of torture, as well as for civic oversight in these investigations;

e) obligate investigative and judicial authorities to ensure, as a general rule, the safety of torture victims;
f) supplement the CPC with a provision that requires for interrogations of suspects to be conducted only in specially equipped rooms and with mandatory video recording;
g) open, in order to facilitate communication between torture victims and investigating authorities, offices of appropriate SBI territorial departments in each regional centre, for instance, at the administrative buildings of local prosecutor's offices;
h) take measures to eliminate systematic human rights violations committed by the SSU during the apprehension of persons and their subsequent detention; bring the practices employed by SSU officials when carrying out procedural actions with suspects in line with the law on the observance of their procedural rights; introduce a clear system for documenting the detention of detainees in the SBU premises from the moment of their factual detention (like "Custody Records");
i) conduct a thorough investigation into complaints of persons allegedly held by the SSU units in secret detention facilities during the ATO and JFO.

FUNDAMENTAL LEGAL SAFEGUARDS FOR DETAINEES

8. Constitutional guarantees concerning every individual's right to liberty, as well as judicial review as a safeguard against arbitrary detentions, remain empty claims. The general rule of part 2, Article 29 of the Constitution of Ukraine, which states that no one may be arrested or kept in detention without a justified court order, unless it happens when preventing a crime, stopping an ongoing crime or being in "hot pursuit", is violated in almost every case of arrest.

9. The unlawfulness of detentions in its various manifestations (detentions without a court order or the justification required; unacknowledged detention; delayed registration of detention; failing to inform a detainee on his rights or to ensure their observance; impeding the exercise of these rights; abuse of power) is a widespread occurrence among law enforcement agencies and results in ill-treatment of detainees during the initial stages of detention. Gross violations of human rights are the norm at the SSU, and the Government is unable to stop it.

Recommendations:

a) amend — in order to comply with the fundamental constitutional guarantee against arbitrary deprivation of liberty enshrined in part 2, Article 29 of the Constitution of Ukraine — the prohibition of arrests without a justified court order ("arrest warrant") (Articles 188–190 CPC) — the CPC of Ukraine accordingly, specifically by defining the term "suspect";
b) establish an online single national register of detentions shared by all law enforcement agencies (with information on the exact time, date and place of apprehension from the outset of actual detention), also allowing access to it to courts and FLA centres;
c) elaborate, in order to provide for personal responsibility of relevant officers for the life and health of detainees during the entire period of detention, the CPC provisions on detention of suspects, specifically by developing and making into law a procedure, shared by all pre-trial investigation bodies, for keeping records of all actions related to the apprehension of a person and subsequent temporary detention (with appropriate registration forms), and by ensuring its implementation, namely by:
   — introducing a model detention protocol form;
   — notifying responsible officials at pre-trial investigation bodies by means of technical devices regarding a person's apprehension immediately after said apprehension (part 2, Art. 210 CPC)
   — keeping records of all actions performed with a detainee by the officer responsible for the person's detention (Art. 212 CPC);
d) extend the THF Custody Records information system to all places of temporary detention (all THFs, police departments, premises of the SSU and State Border Guard Service of Ukraine, etc.) and ensure its effective use for guaranteeing the observance of the rights of detainees;

e) develop and implement an effective mechanism for ensuring compliance with quality standards of FLA lawyers that provide legal aid in criminal proceedings;
f) provide for the liability of medical professionals that give the consent for detention of persons in THFs whose condition is life-threatening;
g) ensure the right of detainees that do not speak the language of the court to interpretation, specifically by allocating sufficient funds to allow hiring professional interpreters;
h) make investigations into attempts to impede a detainee's right to legal aid from a chosen or state-appointed lawyer a priority for prosecuting authorities;
i) strengthen judicial control over the observance of procedural safeguards for detainees, including by streamlining case law and organising special training for judges.

EXCESSIVE FORCE AND MURDER

10. In the five years since the events at the Maidan in 2013–2014, the tragedies of May 2, 2014 in Odesa and May 9, 2014 in Mariupol, no Berkut officer responsible for the killings and violent deaths at the Maidan and no one in Odesa and Mariupol has been convicted, which makes the public doubt the Government's sincerity when it comes to prosecuting those responsible for these crimes and getting justice for the victims.

11. The number of Tornado battalion members prosecuted by courts and the severity of their sentences clearly do not march the scale and gravity of the crimes committed by members of the Tornado battalion.

12. Investigations into crimes committed by Aidar members were inconsistent and there is no information as to whether all the necessary steps were taken to investigate these crimes. Even in the only case that was forwarded to trial, where three individuals received their sentences, the latter were later reversed by the court of cassation.

13. The high-profile murder of Pavlo Sheremet remains unsolved, the trial on the murder of Oles Buzyna is being deliberately dragged out, and the case on the murder of Yuriy Grabovskyi is, for reasons unknown, being examined behind closed doors. There were no proper investigations into crimes committed against lawyers and journalists during the reporting period.

The trial on the brutal murder of Mr. Zuckerman by police officers in 2016 still has not begun, and only one of the suspects is in custody.

14. Despite heavy criticism aimed at the Myrotvorets website, it continues to publish people's personal data, which is an obvious crime, yet the investigation into these activities is ineffective and no suspects have been named so far.

Recommendations:

a) conduct an independent and impartial investigation into all crimes committed during the Maidan protests in 2013–2014 as well as other high-profile crimes committed during the reporting period, by:
   — providing expert institutions with the necessary resources for completing all forensic examinations,
   — taking measures to prevent pre-trial investigations and court proceedings from being delayed or dragged out,
   — ensuring public order and safety of all participants of court proceedings;
   — introducing a more flexible and effective procedure for the transfer of investigations from the PG Special Investigations Directorate to the SBI, so that such transfer would not affect the quality of investigations and would not require for the investigations to be reopened;
b) ensure maximum publicity and transparency of court proceedings in high-profile cases in order to keep the public informed.

EXCESSIVE FORCE AND GROSS VIOLATIONS OF THE CONVENTION IN THE CONTEXT OF EVENTS IN EASTERN UKRAINE

15. Investigations into cases of torture, disappearances, including enforced disappearances, injuries and deaths of civilians in eastern of Ukraine are conducted with gross violations of the CPC. The investigat-

ing authorities are passive in their efforts, and when victims attempt to initiate an investigation or request for certain investigative actions to be carried out, the authorities violate procedural deadlines for these actions or even fail to carry them out altogether. As a result, a large amount of evidence has been lost because it was not found in time.

16. Conducting investigative actions in the TOT is objectively impossible for Ukrainian law enforcement agencies due to the lack of access to these territories;

17. The Government has not established a uniform methodology for keeping records of civilian victims of the armed conflict; in fact, no such records exist, which prevents conflict-affected civilians from receiving compensation and rehabilitation from the state.

Recommendations:

a) bring criminal law in line with the definitions of crimes against humanity and war crimes given in the Rome Statute of the International Criminal Court and the Geneva Conventions;
b) step up investigations into all cases of torture or other forms of ill-treatment, including enforced disappearances and deprivation of life committed in any territory within Ukraine's jurisdiction;
c) establish a national register of civilians affected by the armed conflict (killed, injured, gone missing, those who lost their property, etc.);
d) adopt a law on compensation for conflict-affected civilians;
e) establish a National Centre of Information and Documentation on the Issues of Victims of the Armed Conflict in Eastern Ukraine that would combine all existing state registers, with access for public authorities to the registers that they are authorized to maintain, as well as with on-demand information exchange, data processing by all registers and safeguards in place to protect personal data.

JUVENILE JUSTICE

18. Ukraine still has not finished updating its juvenile system. Although there are certain procedural safeguards in criminal proceedings against juveniles, in essence, they are no different from those used for adults. There is also no case law on juvenile crimes established by higher courts.

19. The CPC provisions concerning the grounds for choosing detention as a juvenile's restraining measure (Art. 492 CPC), although worded somewhat differently from the regular rules (Chapter 18 of the CPC), are essentially the same as for adults. What is more, the current CPC, unlike the CPC of 1960, does not contain Clause 13.1 of the UN Standard Minimum Rules for the Administration of Juvenile Justice requiring pre-trial detention for juveniles to be used only as a measure of last resort and for the shortest possible period of time.

Recommendations:

a) complete the reform of the juvenile justice system by:
   — adopting a law on juvenile justice and amending relevant legislation,
   — expanding the use of mediation in the administration of juvenile justice and adding punishment options other than incarceration,
   — increasing the number of probation centres and improving their work,
   — developing and implement new types of PIs for juveniles.

HUMAN TRAFFICKING

20. Over the course of the armed conflict in eastern Ukraine, many Ukrainian citizens have been lured into Russia and forced to engage in drug-related criminal activities, which later resulted in their prosecution and imprisonment.

Recommendations:

a) take legislative action to regulate the issue of assistance for victims of human trafficking in order to help the victims of this crime in Russia:
   — pass an amnesty law for the victims,
   — take real steps to rehabilitate them and compensate them for their suffering.

ASYLUM SEEKERS AND INTERNALLY DISPLACED PERSONS

21. Many asylum seekers are unable to apply for the status of refugee or for judicial protection after being denied by the State Migration Service due to language barriers, lack of easy access to FLA or short time frames for appealing against SMS decisions. FLA lawyers are helping only an insignificant fraction of these people.

22. In many cases, court proceedings are often conducted without an interpreter or legal representative. SMS decisions, court rulings and other documents are not translated into the asylum seeker's language, which renders the guarantee of judicial protection moot. Moreover, court proceedings usually take a long time, and the SMS often just denies applications again, which makes it virtually impossible for a person to obtain refugee status or a person in need of additional protection.

23. Most asylum seekers have no social protection; they are not entitled to any free healthcare services and are unable to exercise the right to temporary employment.

24. The living conditions at the SMS temporary holding centres, where most foreign nationals and stateless persons await expulsion, are not in line with international standards; moreover, due to overcrowding at these centres, some persons are held for long periods of time at temporary holding facilities of the State Border Guard Service, which are not suited for this.

25. The provisions in Ukrainian law on detention of persons for the duration of appeal consideration, as well as detentions at the special premises of the State Border Guard Service, SSU or SMS, even when a first instance court does not authorise such detention, violate the universally recognized principle of international law — prohibition of detention without a court order.

26. The Government of Ukraine does not provide sufficient social protection and support to IDPs, which forces them to return to non-government-controlled territories where human rights violations are taking place to this day. Also, although the Government has adopted certain legislative acts that could improve the situation of IDPs, the insufficient or even non-existent funding make these acts impossible to implement.

Recommendations:

a) open new holding centres for foreigners and stateless persons and/or increase the maximum capacity of existing ones as well as improve conditions there,
b) stop the practice of long-term unlawful detention of persons in places not designed for this;
c) adopt regulations granting UNHCR representatives the right to visit places of detention for asylum seekers;
d) consider restraining measures other than detention during expulsion procedures;
e) abolish provisions that allow asylum seekers' detention in the absence of a court order;
f) make it a legal requirement to ensure the presence of a legal representative and to provide an interpreter in state executive bodies and courts for all asylum seekers during the consideration of matters related to their status,
g) bring payments for IDPs for covering the cost of housing and utilities in line with minimum state social standards;
h) bring CMU regulations on pensions and pension arrears for IDPs in line with the current legislation on mandatory pension insurance and freedom of movement in Ukraine.

CONDITIONS OF DETENTION IN PLACES OF DETENTION AND DEATHS THERE

27. Conditions of detention in many PIs are inconsistent with international standards and constitute inhuman or degrading treatment, as recognized multiple times by the European Court of Human Rights.

A large number of premises in PCs and PTDCs are in need of major repairs. In addition, the situation with prison food remains unsatisfactory, especially in pre-trial detention facilities.

28. The practice of unlawful use of force against convicts by PI personnel and rapid response teams is unacceptable and must be eradicated.

Recommendations:

a) check whether conditions of detention in PIs suspended in accordance with the CMU Resolution "On the Procedure for Optimising the Activities of Pre-Trial Detention Facilities, Penitentiary Institutions and Enterprises of Penitentiary Institutions" comply with international standards, and unsuspend PIs that are up to standard;
b) seek international humanitarian assistance to improve conditions of detention in PIs where said conditions were recognized as inadequate by the European Court of Human Rights;
c) grant representatives of NGOs accredited by the MoJ unimpeded access to PCs and PTDCs at the legislative level, at any time of day and without any additional permission, allowing them to monitor the observance of the rights of convicts and detainees and to communicate with them one-on-one or in the presence of the administrations' representatives;
d) provide for disciplinary liability of PI personnel for gross violations of the rights of prisoners discovered by members of the public;
e) establish in regulations that rapid response teams can only be used on the premises of PIs with the personal authorization of the head of the SCES.

ENSURING OBSERVANCE OF THE RIGHT OF CONVICTS TO HEALTHCARE

29. The reform of the SCES healthcare system failed to improve the quality of prison healthcare, which in most PIs remains unsatisfactory or outright catastrophic due to the shortage of medical personnel, equipment and medicines.

30. With the PC and PTDC administrations no longer responsible for the health of prisoners and due to the complete absence of publicly available information on the activities of the SIHC and its structural units, it is now extremely difficult to challenge the inaction of prison medical personnel. There is also no publicly available public official data on illnesses among prisoners, or statistics on mortality.

31. The option for prisoners to undergo treatment at civilian hospitals provided for by the CEC is an illusion of choice for most of them due to the high cost of such treatment.

32. Prisoners in the final stages of terminal illnesses are neither released form incarceration nor provided with palliative care. Cases when someone is released on the grounds of a serious illness are extremely rare, and this usually happens the very end of the prisoner's life.

Recommendations:

a) make the SIHC subordinate to the MoH and remove its ties to the SCES;
b) conduct a nationwide inspection of the activities of regional branches and separate subdivisions of the SIHC;
c) carry out anti-epidemic measures required by law to prevent the spread of infectious diseases;
d) regulate all organisational aspects of the activities of the prison medical service, including standards on the required number of medical personnel as well as on the sufficient amount of equipment and medicines,
e) increase pay for medical personnel in order to bring more specialists into the prison healthcare system,
f) make all statistics on the activities of the prison healthcare system publicly available,
g) ensure access of prisoners to their health records
h) amend legislation on release of the prisoner's with grave diseases from further serving of a conviction introducing the mandatory release on presence of a disease from the List of the ones approved by the MoH and the MoJ.

RESTITUTIONS, INCLUDING MONETARY COMPENSATION AND REHABILITATION

33. Ukraine has no comprehensive program for the rehabilitation of torture victims and families of missing persons. Medical or psychological rehabilitation as well as other resources are not available to the victims. The Government has also not evaluated the effectiveness of the state rehabilitation program for military personnel.

34. Considering the low number of acquittals and court decisions awarding compensation, as well as the tiny sums that have been awarded, we can conclude that this mechanism in Ukraine is not effective. Moreover, victims of such obvious crimes as torture or unlawful detention still have to prove their suffering. The law-provided minimum amount of compensation is also usually treated as a guideline rather than a starting point.

Recommendations:

a) develop a comprehensive rehabilitation program for victims of torture and families of missing persons,
b) develop measures to monitor the effectiveness of rehabilitation programs for civilians as well as military personnel,
c) involve relevant civil society organizations in the development and control of rehabilitation programs;
d) organize systematic collection of data on compensation for victims of human trafficking awarded by international as well as domestic courts;
e) analyse judgements of the European Court of Human Rights that found Ukraine guilty of violating Article 3 of the Convention, and plan general measures that would prevent new violations;
f) expand national case law aimed at addressing the formalistic and inhumane approach to the issue of compensation for unlawful prosecution;
g) revise the procedure for providing compensation for unlawful prosecution in order to simplify it for the victims.

FORCED CONFESSION

35. Confessions obtained under torture and without access to a lawyer from detainees whose detention was never registered remain a glaring problem in Ukraine. Complaints to prosecuting authorities have proven ineffective in such situations. The CPC-provided judicial review is more a formality than a safeguard against arbitrary detention. The first instance and appellate courts do not reject inadmissible evidence often enough. Judges and investigating judges can easily ignore procedural requirements established by the CPC. The role of investigating judges is just a formality and does nothing to safeguard the rights of suspects.

Recommendations:

a) ensure proper observance of the adversarial principle, equality of arms and continuity of legal proceedings,
b) ensure investigating judges' compliance with the CPC and case law of the European Court of Human Rights when considering motions of litigants;
c) ensure prompt responses of prosecuting authorities and investigating judges to torture reports as well as thorough verification of all information provided by public authorities.

DEDOVSHCHINA (HAZING) AND NON-COMBAT DEATHS IN THE ARMY

36. Hazing between military personnel remain the most widespread problem in the AFU.

37. Almost all non-combat deaths in the AFU are classified as suicides, although in many cases everything points to murder.

Recommendations:

h) increase the number of psychologists to ensure prompt responses to conflicts between soldiers as well as to issues with the soldiers' mental state,

i) improve the effectiveness of pre-trial investigations into the deaths of soldiers,
j) ensure access to investigations for the families of deceased soldiers.

DATA COLLECTION

38. Judicial and PG statistics, while providing data on criminal proceedings and results of trials under Articles 364 (excess of authority) and 365 (abuse of authority) of the Criminal Code, do not keep separate records of complaints of torture and ill-treatment and results of their examination by investigating bodies and courts. Meanwhile, Article 127 CC (on torture) is hardly ever used. Thus, there are no proper records in Ukraine on complaints of torture and ill-treatment and the state's responses to them, and neither does the state keep records of extra-judicial killings and enforced disappearances. As a result, there can be no hard data on compensation and rehabilitation for the victims.

Recommendations:

a) introduce separate records of complaints of torture and ill-treatment in the official statistics of law enforcement agencies and courts, and keep separate records of the results of consideration of these complaints and the appropriate court decisions;
b) introduce separate records of extra-judicial killings, the results of their investigation and the punishments for them;
c) introduce separate records of enforced disappearances, the results of their investigation and the punishments for them;
d) introduce records of compensation awarded to victims of torture, ill-treatment, extra-judicial killings and enforced disappearances, as well as of rehabilitation provided to the victims.

OTHER ISSUES

Certain categories of civilian victims of the armed conflict in eastern Ukraine: persons gone missing and detained in non-government-controlled territories

39. Another unresolved issue concerns the identification and consolidation of records of missing persons, and the Commission on Persons Gone Missing under Special Circumstances is doing nothing to locate these people. The main reason for this is the lack of proper legal regulation of the Commission's activities as well as the lack of cooperation between public authorities and international (non-governmental) organizations when it comes to records of missing persons.

40. Although some progress has been made in the transfer of convicted prisoners from the TOT to government-controlled territory, most of them still remain under the control of illegal armed groups. Furthermore, the legal status of those that have been transferred or those that have already served their sentence in non-government-controlled territory is still uncertain due to the lack of proper legal regulation.

Recommendations:

e) jointly establish a State Register of Missing Persons with the International Committee of the Red Cross;
f) properly regulate the activities of the Commission on Persons Gone Missing under Special Circumstances;
g) task the State Judicial Administration with establishing a separate register of proceedings on recognising persons as persons gone missing in the TOT;
h) introduce a clear mechanism of interaction between state bodies in the transfer of convicted prisoners from the TOT to other regions of Ukraine;
i) adopt a law that will determine the legal status of persons in respect of which charges have been brought under the CC, CPC and CEC in connection with the armed aggression, armed conflict or temporary occupation of parts of Ukrainian territory.

THE TABLE OF CONTENTS

Довідкове видання

СЬОМА ПЕРІОДИЧНА ДОПОВІДЬ УКРАЇНИ ПРО ВИКОНАННЯ ПОЛОЖЕНЬ КОНВЕНЦІЇ ООН ПРОТИ КАТУВАНЬ ТА НЕЛЮДЯНОГО АБО ТАКОГО, ЩО ПРИНИЖУЄ ГІДНІСТЬ, ПОВОДЖЕННЯ ЧИ ПОКАРАННЯ

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