

CPT/Inf (2002) 19

**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 24 February 1998**

The Ukrainian Government has agreed to the publication of this report and of its responses. The Government's responses are set out in document CPT/Inf (2002) 20.

A Ukrainian translation of the visit report, provided by the Ukrainian authorities, is also available on the CPT's website ([www.cpt.coe.int](http://www.cpt.coe.int)).

Strasbourg, 9 October 2002



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**CONTENTS**

Page

<b>Copy of the letter transmitting the CPT's report.....</b>	<b>7</b>
<b>Preface .....</b>	<b>9</b>
<b>I. INTRODUCTION.....</b>	<b>11</b>
<b>A. Dates of the visit and composition of the delegation.....</b>	<b>11</b>
<b>B. Establishments visited .....</b>	<b>12</b>
<b>C. Consultations held by the delegation and co-operation encountered .....</b>	<b>13</b>
<b>D. Context of the visit .....</b>	<b>15</b>
<b>E. Action taken upon immediate observations under Article 8, paragraph 5, of the Convention.....</b>	<b>16</b>
<b>II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED .....</b>	<b>17</b>
<b>A. Militia establishments.....</b>	<b>17</b>
1. Preliminary remarks .....	17
2. Torture and other forms of physical ill-treatment .....	19
3. Safeguards against the ill-treatment of persons deprived of their liberty.....	25
a. introduction .....	25
b. notification of custody .....	26
c. access to a lawyer.....	27
d. access to a doctor .....	28
e. information on rights.....	29
f. conduct of interviews .....	29
g. custody registers.....	30
h. independent inspections .....	30

4.	Conditions of detention .....	31
a.	introduction .....	31
b.	District Commands of Internal Affairs .....	31
c.	Militia central holding facilities (ITT) .....	35
d.	centre for the reception and allocation of minors in Kyiv .....	40
e.	other Militia detention facilities .....	42
i.	<i>detention facilities of the Transport Militia in Kyiv</i> .....	42
ii.	<i>centre for the reception and allocation of vagrants in Dnipropetrovsk</i> .....	43
iii.	<i>centre for administrative detention in Dnipropetrovsk</i> .....	44
<b>B.</b>	<b>Establishments under the authority of the State Department for the Execution of Sentences .....</b>	<b>45</b>
1.	Preliminary remarks .....	45
2.	Ill-treatment .....	47
3.	Pre-trial Prison (SIZO) No. 313/203 in Kharkiv .....	48
a.	introduction .....	48
b.	conditions of detention for the general prison population .....	48
i.	<i>material conditions</i> .....	48
ii.	<i>activities</i> .....	50
c.	prisoners sentenced to death .....	53
4.	Health-care services .....	56
a.	introduction .....	56
b.	staff and facilities .....	57
c.	medical screening on admission .....	59
d.	transmissible diseases .....	60
e.	food .....	63
5.	Other issues of relevance to the CPT's mandate .....	64
a.	prison staff .....	64
b.	discipline and isolation .....	65
c.	contact with the outside world .....	66
d.	complaints and inspection procedures .....	67
e.	reception/transit facilities and waiting cubicles .....	68

<b>C.</b>	<b>Establishments under the authority of the State Security Service of Ukraine.....</b>	<b>69</b>
<b>D.</b>	<b>Psychiatric establishments .....</b>	<b>73</b>
1.	Preliminary remarks .....	73
2.	Ill-treatment .....	74
3.	National High Security Psychiatric Hospital in Dnipropetrovsk .....	75
a.	patients' living conditions .....	76
b.	treatment .....	78
c.	staff .....	79
4.	Kyiv City Centre for forensic psychiatric assessment.....	80
5.	Means of restraint .....	82
6.	Safeguards in the context of involuntary hospitalisation .....	83
<b>E.</b>	<b>Other establishments .....</b>	<b>86</b>
1.	Detention facilities of the State Committee for the Protection of National Borders .....	86
2.	Dnipropetrovsk Treatment and Labour Detention Centre for the compulsory treatment of alcoholics.....	87
3.	Secure ward at Kyiv Emergency Hospital.....	88
<b>III.</b>	<b>RECAPITULATION AND CONCLUSIONS.....</b>	<b>91</b>
<b>APPENDIX I :</b>		
	<b>SUMMARY OF THE CPT'S RECOMMENDATIONS, COMMENTS AND REQUESTS FOR INFORMATION .....</b>	<b>99</b>
<b>APPENDIX II :</b>		
	<b>LIST OF THE NATIONAL AUTHORITIES AND NON-GOVERNMENTAL ORGANISATIONS WITH WHICH THE CPT'S DELEGATION HELD CONSULTATIONS.....</b>	<b>119</b>



Copy of the letter transmitting the CPT's report

Strasbourg, 27 November 1998

Dear Ambassador,

In pursuance of Article 10, paragraph 1, of the European Convention for the prevention of torture and inhuman or degrading treatment or punishment, I have the honour to enclose herewith the report to the Government of Ukraine drawn up by the European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) after its visit to Ukraine from 8 to 24 February 1998. The report was adopted by the CPT at its thirty-seventh meeting, held from 3 to 6 November 1998.

I would draw your attention in particular to paragraph 271 of the report, in which the CPT requests the Ukrainian authorities to provide an interim and a follow-up report on action taken upon its report. The CPT would be grateful if it were possible, in the event of the reports forwarded being in Ukrainian, for them to be accompanied by an English or French translation. It would also be most helpful if the Ukrainian authorities could provide a copy of those reports in a computer-readable form.

More generally, the CPT is keen to establish an ongoing dialogue with the Ukrainian authorities on matters of mutual interest, in the spirit of the principle of co-operation set out in Article 3 of the Convention. Consequently, any other communication that the Ukrainian authorities might wish to make would also be most welcome.

I am at your entire disposal if you have any questions concerning either the CPT's report or the future procedure.

Finally, I would be grateful if you would acknowledge receipt of this letter.

Yours faithfully,

Ivan ZAKINE  
President of the European Committee for  
the prevention of torture and inhuman  
or degrading treatment or punishment

**Mr Olexandre KUPCHYSHYN**  
**Ambassador**  
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## **Preface**

As the European Committee for the prevention of torture and inhuman or degrading treatment or punishment is a comparatively new institution, knowledge of its mandate and functions is inevitably limited. The CPT has therefore deemed it appropriate to begin the first of its reports to each Party by setting out some of the Committee's salient features. This should prove particularly helpful in differentiating the basis and aims of the CPT from those of another Council of Europe supervisory body within the field of human rights: the European Court of Human Rights.

Unlike the Court, the CPT is not a judicial body empowered to settle legal disputes concerning alleged violations of treaty obligations (i.e. to determine claims *ex post facto*).

The CPT is first and foremost a mechanism designed to **prevent ill-treatment from occurring**, although it may also in special cases intervene after the event.

Consequently, whereas the Court's activities aim at "conflict solution" on the legal level, the CPT's activities aim at "conflict avoidance" on the practical level.

This being so, the guiding maxim for the CPT when performing its obligations must be to "extend the widest possible protection against abuses, whether physical or mental" (quotation from the 1979 UN Code of conduct for law enforcement officials as well as from the 1988 Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, both adopted by the General Assembly).

The CPT's activities are based on the concept of co-operation (Article 3 of the European Convention for the prevention of torture and inhuman or degrading treatment or punishment). The CPT's task is not to publicly criticise States, but rather to assist them in finding ways to strengthen the "cordon sanitaire" that separates acceptable and unacceptable treatment or behaviour. In fulfilling this task the CPT is guided by the following three principles:

- i) that the prohibition of ill-treatment of persons deprived of their liberty is absolute,
- ii) that ill-treatment is repugnant to the principles of civilised conduct, even if used in milder forms, and
- iii) that ill-treatment is not only harmful to the victim but also degrading for the official who inflicts or authorises it and ultimately prejudicial to the national authorities in general.

The CPT first of all explores the prevailing factual situation in the countries it visits. In particular it:

- i) examines the general conditions in establishments visited;
- ii) observes the attitude of law enforcement officials and other staff towards persons deprived of their liberty;

- iii) interviews persons deprived of their liberty in order to understand how they perceive (i) and (ii) and hear any specific grievances they may have;
- iv) examines the legal and administrative framework on which the deprivation of liberty is based.

Subsequently, the CPT reports to the State concerned, giving its assessment of all the information gathered and providing its observations. In this regard, it should be recalled that the CPT does not have the power to confront persons expressing opposing views or to take evidence under oath. If necessary, it recommends measures designed to prevent the possible occurrence of treatment that is contrary to what reasonably could be considered as acceptable standards for dealing with persons deprived of their liberty.

In carrying out its functions, the CPT has the right to avail itself of legal standards contained in not only the European Convention on Human Rights but also in a number of other relevant human rights instruments (and the interpretation of them by the human rights organs concerned). At the same time, it is not bound by the case law of judicial or quasi-judicial bodies acting in the same field, but may use it as a point of departure or reference when assessing the treatment of persons deprived of their liberty in individual countries.

To sum up, the principal differences between the CPT and the European Court of Human Rights are:

- i) the Court has its primary goal ascertaining whether breaches of the European Convention on Human Rights have occurred. By contrast, the CPT's task is to prevent abuses, whether physical or mental, of persons deprived of their liberty from occurring; it has its eyes on the future rather than the past;
- ii) the Court has substantive treaty provisions to apply and interpret. The CPT is not bound by substantive treaty provisions, although it may refer to a number of treaties, other international instruments and the case law formulated thereunder;
- iii) given the nature of its functions, the Court consists of lawyers specialising in the field of human rights. The CPT consists not only of such lawyers but also of medical doctors, experts in penitentiary questions, criminologists, etc.;
- iv) the Court only intervenes after having been petitioned through applications from individuals or States. The CPT intervenes ex officio through periodic or ad hoc visits;
- v) the activities of the Court culminate in a legally binding finding as to whether a State has breached its obligations under a treaty. The CPT's findings result in a report, and, if necessary, recommendations and other advice, on the basis of which a dialogue can develop; in the event of a State failing to comply with the CPT's recommendations, the Committee may issue a public statement on the matter.

## **I. INTRODUCTION**

### **A. Dates of the visit and composition of the delegation**

1. In accordance with Article 7 of the European Convention for the prevention of torture and inhuman or degrading treatment or punishment (hereinafter referred to as "the Convention"), a delegation of the CPT visited Ukraine from 8 to 24 February 1998.

The visit - which was carried out within the framework of the CPT's programme of periodic visits for 1998 - was the Committee's first periodic visit to Ukraine.

2. The visit was carried out by the following members of the CPT:

- Ingrid LYCKE ELLINGSEN, 1st Vice-President of the CPT, Head of the delegation
- John OLDEN, 2nd Vice-President of the CPT
- Christina DOCTARE
- Constantin ECONOMIDES
- Jagoda POLONCOVÁ
- Pierre SCHMIT.

They were assisted by:

- Clive MEUX, forensic psychiatrist, Broadmoor Hospital, United Kingdom (expert)
- Jean-Pierre RESTELLINI, medical doctor, Specialist in Forensic Medicine and Internal Medicine, Geneva, Switzerland (expert)
- Boris KOVALTCHOUK (interpreter)
- Sergiy MAKSIMOV (interpreter)
- Serguei SAENKO (interpreter)
- Alexander SAMBRUS (interpreter)
- Larissa SYCH (interpreter).

and accompanied by the following members of the CPT's Secretariat:

- Geneviève MAYER, Deputy Secretary of the CPT
- Petya NESTOROVA.

**B. Establishments visited**

3. The delegation visited the following places of detention:

Establishments under the authority of the Ministry of Internal Affairs

Dnipropetrovsk:

- Kirovske District Command of Internal Affairs
- Zhovtnevyi District Command of Internal Affairs
- Centre for the reception and allocation of vagrants
- Centre for administrative detention
- Militia Central Holding Facility (ITT)
- Dnipropetrovsk Treatment and Labour Detention Centre for the compulsory treatment of alcoholics (LTP)

Kharkiv:

- Frounzenske District Command of Internal Affairs
- Kievske District Command of Internal Affairs
- Kharkiv Pre-trial Prison No 313/203

Kyiv:

- Darnitzke District Command of Internal Affairs
- Moskovske District Command of Internal Affairs
- Shevchenkivske District Command of Internal Affairs
- Zaliznichne District Command of Internal Affairs
- Central Railway Station Division of the Transport Militia
- Boryspil Airport Division of the Transport Militia
- Centre for the reception and allocation of minors
- Central Railway Station Transport Militia holding facility and centre for the reception and allocation of vagrants
- Militia Central Holding Facility (ITT)

Establishments under the authority of the Ministry of Public Health

- National High Security Psychiatric Hospital, Dnipropetrovsk
- Centre for forensic psychiatric assessment, Kyiv City
- Secure ward at Kyiv Emergency Hospital

Establishments under the authority of the State Security Service of Ukraine

- State Security Service Pre-trial Prison, Kyiv

Establishments under the authority of the State Committee for the Protection of National Borders

- Detention facilities at Boryspil Airport, Kyiv.

**C. Consultations held by the delegation and co-operation encountered**

4. In addition to meeting local officials at the establishments visited, the delegation held talks with the competent national authorities and with representatives of several non-governmental organisations active in the areas of concern to the CPT. A list of the national authorities, organisations and persons consulted during the visit is set out in Appendix II to this report.

5. The delegation's meetings with the national authorities, at both the start and the end of the visit, took place in a spirit of close co-operation. The CPT is grateful for the time devoted to its delegation at the beginning of the visit by the Minister for Justice, Mrs Suzana STANIK, the Deputy Minister for Internal Affairs, Mr Oleksandr TERESHCHUK, the Deputy Minister for Defence, Mr Vasyl SOBKOV, the Deputy Minister for Public Health, Mrs Lyubov NEKRASOVA, the Deputy Director of the State Security Service, Mr Volodymyr PRYSTAIKO, and the Deputy Prosecutor General, Mr Ivan VERNYDUBOV. The delegation also met senior officials of the Ministries of Internal Affairs, Defence, Public Health, Justice and Foreign Affairs as well as of the State Security Service and the Prosecutor General's Office.

The delegation appreciated the assistance provided to it during the visit by various contact persons designated by the national authorities, in particular by Mr Valery KUZMIN of the Ministry of Internal Affairs and Mr Petro MELNYK of the State Security Service. Nevertheless, the failure of the Ukrainian authorities to appoint officially a liaison officer proved a handicap in certain situations (cf. for example paragraph 8). **The CPT invites the Ukrainian authorities to proceed to such an appointment (cf. also Article 15 of the Convention).**

6. It must also be emphasised that the CPT was not supplied in good time with full lists of all types of establishments where persons deprived of their liberty may be held. Although the CPT had requested such information from the Ukrainian authorities well before the visit, it was not until the third day of the visit that its delegation received full lists of psychiatric hospitals and establishments for the treatment of alcoholics, and a list of some (but certainly not all) Militia establishments in the cities of Dnipropetrovsk and Kharkiv. Further lists of other types of establishments were transmitted to the CPT only after the visit.

In this context, **the CPT must recall that according to Article 8, paragraph 2, subparagraph b of the Convention, "a Party shall provide the Committee ... with full information on the places where persons deprived of their liberty are being held".**

7. With one exception (cf. paragraph 8), the delegation enjoyed rapid access to all the places of detention visited, including those which had not been notified in advance of the CPT's intention to carry out a visit. On the whole, the delegation received a very satisfactory reception from the management and staff in the establishments visited. Nevertheless, it should be noted that the co-operation at several establishments of the Militia was somewhat marred by the initial reticence on the part of certain officers to engage in an open and frank dialogue.

8. The exception referred to above relates to the difficulties encountered by the delegation at the detention facilities falling under the competence of the State Committee for the Protection of National Borders at Boryspil Airport. When a sub-group of the delegation went to Boryspil Airport on Saturday, 14 February 1998 with the intention of visiting the detention facilities, the Director of the Control Post at Boryspil Airport did not give instructions to the officer on duty to allow access to the facilities and provide the information requested by the sub-group; moreover, he refused to meet the members of the delegation himself. The delegation sought the assistance of Mr Valery KUZMIN of the Ministry of Internal Affairs, and was eventually able to hold a meeting with the State Committee and visit the detention facilities in question on 23 February 1998.

The CPT must stress that the initial failure to allow access to the detention facilities in question constituted a serious violation of the provisions of Article 8, paragraph 2, sub-paragraph c of the Convention and the general principle of co-operation set out in Article 3. However, the Committee was pleased to learn that subsequently the delegation enjoyed full co-operation from the State Committee for the Protection of National Borders.

9. The CPT must add that its delegation had the clear impression that many detained persons met at the Militia establishments visited, and in particular at some of the District Commands of the Militia in Dnipropetrovsk, Kharkiv and Kyiv, were afraid to talk to or be examined by medical members of the delegation, because of the repercussions that that might have on their subsequent treatment by the Militia. The demeanour, and on occasion even the statements, of these persons suggested that they had come under pressure not to make complaints to the CPT's delegation.

Needless to say, **any such pressure would be quite incompatible with the principle of co-operation set out in Article 3 of the Convention.**

**D. Context of the visit**

10. The Ukrainian authorities stated repeatedly to the CPT's delegation that their country was encountering serious economic and social problems in the course of systemic transition. More specifically, Ukraine was confronted simultaneously with a grave economic crisis and an alarming increase in the crime rate. Inevitably, these phenomena had negative repercussions on areas covered by the CPT's mandate.

These factors were borne in mind by the CPT's delegation, especially when considering material conditions and the activities offered to detained persons and psychiatric patients. However, as was stressed during the final talks with the Ukrainian authorities, such difficulties can never excuse deliberate physical ill-treatment.

11. In the light of the facts found during the visit, the CPT makes a number of recommendations in this report. Some of them will not have important financial implications and could be implemented without delay. However, the implementation of others may require considerable budgetary expenditure which - as the CPT is fully aware - is beyond the current financial capacity of the Ukrainian authorities.

The CPT is aware that certain initiatives have already been undertaken by various States on a bilateral basis, as well as within the framework of international organisations, with a view to assisting Ukraine (for example, the Joint Programme between the Commission of the European Communities and the Council of Europe for legal system reform, local government reform and the transformation of the law enforcement system in Ukraine, which focuses on the reform of the prison system). **The CPT trusts that these efforts will be continued and intensified. It is hoped that the recommendations and other remarks set out in this report will make it possible to distinguish priorities in the fields falling within the CPT's competence.**

12. The priority of priorities must be – through one means or another – to tackle the **endemic overcrowding** which blights both Militia establishments and establishments run by the prison service. If this is not done, all attempts to improve conditions of detention will inevitably founder (cf. also paragraphs 17 and 111).

In this context, it must be emphasised that the huge incarceration rate which currently prevails in Ukraine - approximately 400 persons by 100 000 of the national population, not counting those held in Militia central holding facilities - cannot be convincingly explained away by a high crime rate. Further, it is unrealistic from an economic standpoint to offer decent conditions of detention to such vast numbers. It follows that attacking the roots of the problem of overcrowding will require existing law and practice in relation to custody pending trial as well as sentencing policies to be considered afresh.

**E. Action taken upon immediate observations under Article 8, paragraph 5, of the Convention**

13. On 24 February 1998, the CPT's delegation had a final meeting with representatives of the Ukrainian authorities at the Ministry of Internal Affairs, in order to acquaint them with the main facts found during the visit. At that meeting, the delegation made certain immediate observations, in pursuance of Article 8, paragraph 5, of the Convention, as follows:

- i) persons detained in District Commands of Internal Affairs should have ready access to drinking water and to toilet facilities;
- ii) steps should be taken to ensure that every person detained for more than a few hours in District Commands of Internal Affairs has something to eat. If necessary, food should be provided by the authorities;
- iii) the practice of handcuffing detained persons to metal rings in the corridor of the detention area of Zaliznichne District Command of Internal Affairs in Kyiv should be immediately discontinued and the metal rings removed;
- iv) detained persons at Kyiv ITT should be offered at least one hour of outdoor exercise per day;
- v) prisoners sentenced to capital punishment who are being held at Kharkiv Pre-trial Prison No 313/203, as well as elsewhere in Ukraine, should be offered at least one hour of outdoor exercise per day.

14. The above-mentioned immediate observations were subsequently confirmed in a letter of 3 March 1998 from the Head of the CPT's delegation. The CPT requested the Ukrainian authorities to submit, within three months, a report on the action taken in response to those observations.

By letter of 29 June 1998 (supplemented by a letter of 16 September 1998), the Ukrainian authorities informed the CPT of the measures taken. Those measures will be considered in detail later in this report.

## II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

### A. Militia establishments

#### 1. Preliminary remarks

15. The detention of criminal suspects by the Militia in Ukraine is currently governed by the Code of Criminal Procedure (CCP), in force since 1961 (with subsequent amendments), and the Law on the Militia of 1991. A new draft CCP, which has been submitted to the Supreme Rada for consideration, envisages various changes to the present legal situation.

A person suspected of a criminal offence in Ukraine may be held by the Militia on their own authority for up to 72 hours. During the first 24 hours, the bodies of the inquiry (*diznanie*) i.e. officers of the criminal Militia, must undertake urgent operational and investigatory duties concerning the case, carry out an initial questioning of the apprehended person and establish a protocol of detention, which is transmitted to the public prosecutor. Within 48 hours of receiving the protocol of detention, the public prosecutor must examine the relevant documents, interrogate the detained person if this is deemed necessary (and in all cases minors), and take a decision to either remand him in custody or order his release.<sup>1</sup>

16. Persons remanded in custody are in principle held in pre-trial establishments (SIZO, i.e. "investigation isolation" establishments). In exceptional cases, such persons may be kept at a Militia central holding facility (ITT) for up to 10 days, if this is required for the purposes of the inquiry or if the transfer to a SIZO cannot be effected promptly.<sup>2</sup>

Moreover, persons placed in a SIZO may subsequently be returned to the custody of the Militia and spend periods of up to 10 days at a time in an ITT, if this is considered necessary for the preliminary investigation.

However, the delegation observed that in practice persons could be held at District Commands of the Militia beyond the initial 72 hour period (in some instances, for up to a month). Further, it was not uncommon to meet persons who had been held continuously at an ITT beyond the maximum period of 10 days (in some cases, for up to 2 months). **The CPT would welcome the Ukrainian authorities' comments on these findings.**

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<sup>1</sup> cf. Sections 106 and 157 of the CCP. According to Article 29 of the Ukrainian Constitution, the power to remand a person in custody is vested in the competent court. However, under the transitional provisions of the Constitution, the application of this article is suspended for five years (i.e. until 2001).

<sup>2</sup> cf. Section 155 of the CCP.

17. Further, the information gathered during the visit, including in the course of discussions with public prosecution services, indicated that decisions to remand criminal suspects into custody tended to be the rule, decisions to order their release the exception. Such an approach is diametrically opposed to that advocated in Recommendation R (80) 11 of the Committee of Ministers of the Council of Europe concerning custody pending trial. The general principles set out in that recommendation deserve to be quoted:

- "1. Being presumed innocent until proved guilty, no person charged with an offence shall be placed in custody pending trial unless the circumstances make it strictly necessary. Custody pending trial shall therefore be regarded as an exceptional measure and it shall never be compulsory nor be used for punitive reasons."

If the relevant authorities in Ukraine (today, the public prosecutor, tomorrow - it is to be hoped - a court) were to be guided by the general and specific principles set out in Recommendation R (80) 11, this would bring great benefits for both the individual and the State. As regards matters directly related to the CPT's mandate, it would significantly reduce the current pressures on Militia central holding facilities and pre-trial establishments.

**The CPT recommends that the Ukrainian authorities review the law and practice relating to custody pending trial, in the light of the principles set out in Committee of Ministers' Recommendation R (80) 11.**

18. Persons suspected of having committed administrative offences can be held by the Militia for up to 3 days (Section 11 of the Law on the Militia). If found guilty, such persons can be placed in administrative detention, which in principle does not exceed 30 days and is usually served in special centres for administrative detention run by the Militia. However, the delegation observed that it was not uncommon for persons to serve the period of administrative detention in District Commands of the Militia.

In addition, a person without the necessary documents (passport, *propiska*) and suspected of being a vagrant can be detained by the Militia for up to 30 days in a detention centre for the reception and allocation of vagrants. This period of detention is used by the Militia to establish the identity of such a person and verify whether he has committed any crimes. The delegation was told that the initial 30 days could subsequently be extended to 2 months if the person concerned is accused of having committed a crime.

19. It should also be noted that, according to Section 11 of the Law on the Militia, persons under the age of 16 may not be held by the Militia for more than 8 hours. Such persons can subsequently be transferred to special centres for the reception and allocation of minors, the authorised length of detention in such centres being 30 days. **The CPT would like to be informed as to whether this rule applies to all persons under the age of 16 detained by the Militia, whatever the reason for the detention.**

## **2. Torture and other forms of physical ill-treatment**

20. During its visit, the delegation received numerous allegations of physical ill-treatment of detained persons by officers in District Commands of the Militia, in different parts of the country. In certain cases, the severity of the ill-treatment alleged could be considered to amount to torture. It is noteworthy that these allegations were made by men, women and juveniles who were at the time of the visit, or had been, in the custody of the Militia

In contrast, only few allegations were received of physical ill-treatment by staff working in ITT facilities (cf. paragraph 27). Further, the delegation received no allegations of physical ill-treatment by staff working at the centres for the reception and allocation of vagrants, for administrative detention and for the reception and allocation of minors which it visited.

21. The allegations of ill-treatment related to both the time of apprehension and subsequent questioning by members of the criminal Militia. They mainly concerned slaps, punches, kicks and blows with a truncheon.

Some allegations were heard of even more severe forms of ill-treatment, such as: asphyxiation by placing a gas mask or a plastic bag over the detained person's face (the former sometimes being accompanied by the insertion of a cigarette in the breathing tube); beating detained persons while they are handcuffed and suspended by the legs and/or arms or maintained in a hyperextended position (techniques known as "swallow" and "parrot"); squeezing and twisting detained persons' genitals; beating of the soles of the feet; sexual humiliation of women. A small number of allegations were heard of the infliction of electric shocks.

22. Only a relatively modest amount of medical evidence consistent with the above-mentioned allegations was gathered directly by the delegation from the persons interviewed. However, this should not be taken as undermining the credibility of those allegations; in fact, most of the allegations pre-dated the delegation's visit by weeks or even longer and any marks which might have been caused by the kinds of ill-treatment alleged would almost certainly have healed in the meantime. Further, as already mentioned (cf. paragraph 9), some persons met by the delegation who alleged ill-treatment and sometimes even displayed visible physical marks, declined to be examined by a medical member of the delegation.

The following are examples of medical observations made directly by doctors in the delegation, which are consistent with allegations of recent physical abuse:

- a man detained at Frounzenske District Command of Internal Affairs in Kharkiv alleged that he had been punched and kicked whilst handcuffed (both in a lying position and standing up) in the course of repeated interrogations, including on the day preceding the delegation's visit. On medical examination, the anterior arch of the tenth rib on the left side was found to be extremely painful to palpation, which suggested a fracture; the left zygomatic arch was of a reddish colour and was also tender to palpation;

- a prisoner interviewed at SIZO No 203 in Kharkiv alleged that about 15 days previously, while being interrogated at the Kievskoe District Command of Internal Affairs in Kharkiv, he had, inter alia, been beaten with a truncheon and punched. On medical examination, the anterior arch of the ninth rib on the right side was found to be extremely painful to palpation, which strongly suggested a bone injury;
- a woman interviewed at the Militia Central Holding Facility (ITT) in Dnipropetrovsk alleged that three days previously, while detained at a Militia post, she had been beaten with batons by Militia officers. Upon medical examination, the woman displayed a yellow-green-red discoloration of about 6 x 4 cm, tender to palpation, on the anterior aspect of the distal third of the left thigh. The women concerned also claimed that she had been made to take off most of her clothes and ordered to clean the offices at the Militia post in question;
- a detained person interviewed at the Moskovskoe District Command of Internal Affairs in Kyiv alleged that about two weeks previously, he had been kicked in the face while being interrogated. A medical examination revealed a swelling of the zygomatic arch with an erythema on the left side of the face, as well as swelling of the eyelids;
- a detained person interviewed at the Militia Central Holding Facility (ITT) in Kyiv alleged that at the beginning of February 1998, he had been punched and hit with a truncheon on the face and body while being interrogated at a Militia post in Kyiv. On medical examination, the person concerned was found to bear a large haematoma around the left eye, and the left anterior part of the ribcage was tender to palpation.

23. In some cases involving less recent allegations of physical ill-treatment, the delegation found in the relevant registers and medical files of the detained persons concerned medical information (copies of certificates or medical reports drawn up upon arrival) which mentioned injuries consistent with the allegations made; however, this information did not give any indication of the possible origin of the lesions.

One particular case documented in a detailed manner deserves to be highlighted. A prisoner interviewed by the delegation at the SIZO in Kharkiv alleged that he had been beaten while being detained by the Militia in December 1997. Following his custody by the Militia, he had lodged a complaint about his treatment and undergone a forensic medical examination at the Regional Department of the Institute of Forensic Medicine in Kharkiv. The forensic medical report established in this case, and subsequently sent to the CPT by the Ukrainian authorities, contains, inter alia, the following information:

Circumstances of the case: According to the account of the person giving evidence, at around 7 am on 18 December 1997, two officers of the Militia came to his home and invited him to accompany them to the Militia post. At the Ordzhonikidzevsky District Militia Command, in office N° 39, three officers of the Militia beat him on different parts of the body. Two of them punched and kicked him, while the third hit him with a piece of wood on the body. At 1 pm on the same day he was already back home. The person complains of pain in the places where he has been hit and feels nauseous.

Examination: There are haematomas of indeterminate shape near the upper extremity of the left shoulder-blade, in the right lumbar region, near the lower extremity of the right shoulder-blade, on the superior aspect of the left shoulder (middle upper-third), on the ventral aspect of the left shin (middle third), as well as some stripe-shaped haematomas on the back, ranging from 2 x 1 cm to 5 x 2 cm in size. The person is sent for examination by a surgeon.

Medical documentation submitted: Mr ...'s (\*) medical card indicates that on 19 December 1997 he was examined by a neurologist. He complains of headache, dizziness, unsteadiness when walking. According to his words, he was beaten up at the Militia division on 18 December 1997. He indicates that he fainted. Objective findings: blood pressure - 110/60. Restriction of upward gaze, reduced convergence, bilateral nystagmus. Asymmetry of the nasolabial folds. Unsteady in Romberg's position. Tremor of the hands (stronger in the right hand). No signs of meningitis. Haematomas on the back. Diagnosis: concussion of the brain

The document issued by the emergency hospital on 19 December 1997 indicates that Mr ... (\*) was examined by the general therapy team. Diagnosis of the neurosurgeon: nonpenetrating cranial trauma. Concussion of the brain. Contusion of the soft tissues in the occipital region. X-ray of the skull - normal. Opinion of the traumatologist: at the moment of examination, there is no evidence of acute skeletal trauma.

In a letter dated 2 June 1998, the Deputy Prosecutor General of Ukraine informed the CPT that, following the investigation conducted by the Ordzhonikidzevsky Regional Prosecutor's Office in Kharkiv, the Office of the Prosecutor General had decided to initiate a prosecution on the basis of Section 166 (2) of the Criminal Code (abuse of authority). **The CPT would like to be informed, in due course, of the outcome of the proceedings.**

24. Reference should also be made to information supplied to the delegation by doctors of one of the departments of the Regional Office of the Institute of Forensic Medicine in Kharkiv. According to those doctors, examinations carried out by their department of persons alleging ill-treatment by the Militia sometimes revealed signs of blows or marks left by handcuffs as a result of various forms of suspension. The doctors also indicated that they had on occasion heard allegations of persons having received electric shocks or having been subjected to asphyxiation with a gas mask.

25. It should also be noted that in the course of its visit to Frounzenske District Command of Internal Affairs in Kharkiv, the delegation found in an investigator's office a 16-kg spherical weight with a handle. The officer in whose office this non standard-issue item was found explained that he was using it for weight-training purposes. However, the weight corresponded to that described by some of the detained persons interviewed at the Kharkiv SIZO, who alleged that Militia officers of that District Command had suspended them in the "parrot" position and placed a weight marked "16-kg" on their legs. **The CPT considers that non standard-issue items capable of being used for inflicting ill-treatment - such as the item described above - should not be held on Militia premises.**

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(\*) In accordance with Article 11, paragraph 3, of the Convention, the name of the prisoner has been omitted.

26. During the visit to Zaliznichne District Command of Internal Affairs in Kyiv, the delegation itself encountered an intoxicated person who was handcuffed to metal rings fixed to a door in the corridor of the detention area, in full view of other detainees. In addition to being degrading, such a practice is dangerous for agitated or intoxicated persons. Moreover, the delegation received allegations that other persons had been restrained in a similar way in order to be beaten.

In the light of all the information received, the delegation made an immediate observation under Article 8, paragraph 5, of the Convention, requesting that the above-mentioned practice be immediately discontinued and the metal rings in question removed. In their reply of June 1998, the Ukrainian authorities indicated that the relevant Militia officers had been warned not to use this method in the future. Whilst welcoming this measure, **the CPT would like to receive confirmation that the metal rings in question have been removed.**

27. The few allegations received of ill-treatment by staff at the ITT in Dnipropetrovsk concerned detainees being handcuffed and beaten with batons when showing disobedience.

As far as the ITT in Kyiv is concerned, the delegation heard some allegations of guards using truncheons to beat detained persons who did not return to the "karzer" (punishment cell) at the required pace (i.e. running) during the daily cell inspection. Moreover, some detained persons interviewed alleged that whenever they were too noisy or troublesome in their cells, the guards - after giving a warning - sprayed tear gas into the cells through the grille in the door. It should be noted in this connection that all guards carried a tear gas spray (cf. paragraph 32).

28. In the light of all the information at its disposal, the CPT has been led to conclude **that persons deprived of their liberty by the Militia in Ukraine run a significant risk of being ill-treated at the time of their apprehension and/or while in the custody of the Militia (in particular when being interrogated), and that on occasion resort may be had to severe ill-treatment/torture.**

29. Later in this report, the CPT will recommend some strengthening of formal safeguards against the ill-treatment of persons detained by the Militia (cf. paragraphs 39 and following). However, it should be emphasised that legal and other technical safeguards - while important - will never be sufficient; the best possible guarantee against ill-treatment is for its use to be unequivocally rejected by officers of the Militia. It follows that the provision of adequate professional training, integrating human rights principles, is an essential element of any strategy for the prevention of ill-treatment.

Such training should be pursued at all levels of the Militia, and should be ongoing. It should seek to put across and develop two points. First, that all forms of ill-treatment are an affront to human dignity and as such are incompatible with the values enshrined in Article 28 of the Ukrainian Constitution as well as in many international instruments ratified by and binding upon Ukraine. Second, that resort to ill-treatment is a fundamentally-flawed method of obtaining reliable evidence for combating crime. More advanced interrogation and investigation techniques will lead to better results from a security standpoint.

Further, particular attention should be given to training in the art of handling, and more especially of speaking to, persons in the custody of the Militia i.e. interpersonal communication skills. The possession of such skills will often enable officers to defuse situations which might otherwise become violent.

30. Consequently, **the CPT recommends:**

- **that a very high priority be given to professional training for officers of the Militia of all ranks and categories, taking into account the above remarks. Experts not belonging to the Militia should be involved in this education and training;**
- **that an aptitude for interpersonal communication be a major factor in the process of recruiting officers of the Militia and that, during the training of such officers, considerable emphasis be placed on acquiring and developing interpersonal communication skills.**

**The CPT also recommends that the relevant national authorities as well as senior officers make it clear to officers of the Militia that the ill-treatment of persons in their custody is not acceptable and will be dealt with severely.**

31. As regards more specifically the allegations of ill-treatment at the time of apprehension, the CPT fully recognises that the apprehension of a suspect may often be hazardous, particularly if the individual concerned resists and/or the Militia have reason to believe that the person might be armed and dangerous. The circumstances may be such that the apprehended person (and possibly also Militia officers) suffer injuries, without this being the result of an intention to inflict ill-treatment. However, no more force than is strictly necessary should be used. Furthermore, once apprehended persons have been brought under control, there can never be any justification for their being struck by officers of the Militia.

**The CPT recommends that officers of the Militia be reminded of these precepts.**

32. With regard to the allegations concerning the use of tear gas, the CPT must emphasise that only exceptional circumstances can justify using tear gas inside a place of detention for control purposes.

To spray tear gas inside cells because detainees are too noisy or troublesome represents a manifest abuse of this means of restraint. **The CPT recommends that the Ukrainian authorities take the necessary measures to ensure that such practices are not employed.**

33. Naturally, one of the most effective means of preventing ill-treatment by officers of the Militia lies in the diligent examination by the competent authorities of all complaints of such treatment brought before them and, where appropriate, the imposition of a suitable penalty. This will have a very strong dissuasive effect.

Consequently, **the CPT would like the Ukrainian authorities to supply the following information in respect of 1997 and 1998:**

- **the number of complaints of ill-treatment made against officers of the Militia and the number of criminal/disciplinary proceedings which were instituted as a result;**
- **an account of criminal/disciplinary sanctions imposed following complaints of ill-treatment.**

**The CPT would also like to receive detailed information on the disciplinary procedures applied in cases involving allegations of ill-treatment by Militia staff, including the safeguards incorporated to ensure their objectivity.**

34. The CPT must also point out that its delegation was told by some detained persons alleging ill-treatment by the Militia that they had complained about their treatment to the responsible investigator and/or public prosecutor, but that the latter had shown little interest in the matter.

**The CPT recommends that investigators and public prosecutors be given instructions concerning the approach to be adopted when they receive allegations of ill-treatment by the Militia, or observe that a criminal suspect brought before them may have suffered such treatment. Investigators and public prosecutors should, *inter alia*, be encouraged to order, in appropriate cases, an immediate forensic medical examination of the person concerned.**

35. The recommendation in the previous paragraph presupposes that criminal suspects are brought before a public prosecutor. However, as already pointed out (cf. paragraph 15), under the provisions of the existing CCP, public prosecutors only interrogate such persons "in necessary cases". The delegation learned that in practice detained persons are often not brought before a public prosecutor, the latter usually taking his decision on the basis of the file, in the absence of the detainee. Taken together with the fact that the application of Article 29 of the Ukrainian Constitution (vesting the power to remand persons in custody in a court) has been suspended until 2001, this means that a person can be held and interrogated by the Militia, and subsequently remanded in custody and sent to a pre-trial establishment, without ever being brought before an authority which is independent from the Militia. Such a situation lends itself to abuse.

The CPT is aware that according to the draft Code of Criminal Procedure (Section 110), public prosecutors will be obliged in all cases to interrogate criminal suspects. However, in the interests of the prevention of ill-treatment, **the CPT recommends that appropriate steps be taken as of now to ensure that all criminal suspects taken into the custody of the Militia are brought before the public prosecutor responsible for taking a decision on their remand in custody or release.** In other words, given the current state of affairs and pending the entry into force of the above-mentioned provisions, the interrogation of criminal suspects by a public prosecutor should always be deemed "necessary".

36. Finally, the CPT has serious reservations about the frequency with which persons placed in pre-trial detention are returned to the custody of the Militia for the purposes of the investigation (cf. paragraph 16). In the interests of the prevention of ill-treatment, it would be far preferable for further questioning of persons committed to a SIZO to take place in that establishment rather than on Militia premises. Consequently, **the CPT recommends that the return of prisoners to Militia premises should only be sought and authorised when it is absolutely unavoidable, and that such a measure require the express authorisation of the competent public prosecutor.**

### **3. Safeguards against the ill-treatment of persons deprived of their liberty**

#### **a. introduction**

37. The CPT attaches particular importance to three rights for persons deprived of their liberty by the Militia:

- the right of those concerned to inform a close relative or another third party of their choice of their situation,
- the right of access to a lawyer,
- the right of access to a doctor.

The CPT considers that these three rights are fundamental safeguards against the ill-treatment of persons deprived of their liberty, which should apply from the very outset of custody (that is, from the moment when the persons concerned are obliged to remain with the Militia). These rights should be enjoyed not only by criminal suspects, but also by all other categories of persons deprived of their liberty by the Militia (e.g. persons placed in administrative detention, persons held in centres for vagrants, persons detained under the Aliens' legislation, etc.).

38. Furthermore, persons taken into the custody of the Militia should be expressly informed, without delay and in a language they understand, of all their rights, including those referred to above.

b. notification of custody

39. The right of persons deprived of their liberty by the Militia to inform immediately a close relative of their situation is guaranteed by the Ukrainian Constitution (Article 29). However, as already mentioned, the application of this article has been suspended for five years in accordance with the transitional provisions of the Constitution. Therefore, the notification of custody is currently regulated by Section 106 of the CCP, which stipulates that "the detention of a criminal suspect should be notified by the bodies of the inquiry to the concerned person's family, when their address is known".

Officers of the Militia interviewed by the delegation affirmed that, once the protocol of detention had been drawn up (i.e. within 24 hours from the moment of apprehension), detained persons were allowed to telephone their relatives.

However, many persons who were, or who had recently been, in the custody of the Militia told the delegation that they had not been expressly informed of the possibility to inform a relative of their choice of their situation. Some of them alleged that they had made a request to that effect but that, to the best of their knowledge, no action had been taken upon that request. Certain persons, including a number of detainees of foreign nationality, claimed that their families had been unaware of their detention for weeks, even months.

40. It should also be noted that the current wording of Section 118 (notification of detention and taking into custody) of the new draft Code of Criminal Procedure, which provides that "within 24 hours an inquirer, investigator or the court shall be obliged to notify the spouse or another relative of the detention or taking into custody of a suspect, accused or defendant, and to inform that person of the place of stay", would merely confirm the existing situation. Contrary to what is provided in Article 29 of the Constitution, the text of the draft CCP in its present form would not guarantee that the relatives of a person deprived of his liberty are immediately informed of his situation.

41. As already indicated, a detained person's right to inform a relative or a third party of his choice of his situation should apply as from the very outset of his apprehension by the Militia, and not only from the moment when the person concerned is officially declared a "criminal suspect" through the drawing up of a protocol of detention. The exercise of this right may, of course, be subject to certain exceptions designed to protect the interests of justice; however, such exceptions should be clearly defined and strictly limited in time.

**The CPT therefore recommends that the Ukrainian authorities take the necessary steps to ensure that:**

- **persons apprehended by the Militia have the right to inform, without delay, a close relative or a third party of their choice of their situation, either directly or through a Militia officer;**
- **any possibility exceptionally to delay the exercise of this right is clearly circumscribed in law, made subject to appropriate safeguards (e.g. any delay to be recorded in writing with the reasons therefor and to require the approval of a court or a public prosecutor) and strictly limited in time.**

c. access to a lawyer

42. Under Section 43 of the CCP, the rights of the suspect and the accused include the right to have a lawyer and to meet him prior to the first "interrogation"; however, it would appear that this latter term does not englobe initial questioning by the criminal Militia before the drawing up of a protocol of detention. Section 44 of the CCP entitles the lawyer to take part in the proceedings from the moment of bringing of charges or, if the criminal suspect has been detained or taken into custody, not later than 24 hours after the moment of detention. It is also noteworthy that in their substance, the provisions of the new draft CCP concerning access to a lawyer reproduce the existing provisions.

The CCP also contains provisions concerning the right to have a lawyer present at all stages of the preliminary investigation (including interrogations) and the requirement for compulsory legal counsel in certain cases (when the suspect is a minor, is mentally or physically deficient, does not speak the language of the proceedings, is prosecuted for a crime punishable with the death penalty, etc.).

43. The delegation heard various interpretations of the existing legal provisions. According to some Militia officers, access to a lawyer is not possible during the first 72 hours of the deprivation of liberty, i.e. before the decision on pre-trial custody has been taken. Others affirmed that a lawyer can be present as from the moment a protocol of detention has been drawn up (which must occur within 24 hours from the moment of apprehension). Further, as a result of the divergent information received, the delegation was unable to form a clear idea of the situation concerning the right of access to a lawyer for persons detained on suspicion of being vagrants.

Many persons interviewed by the delegation indicated that they had requested to see a lawyer, but that such access had been denied or delayed. It was also alleged that meetings with a lawyer could only take place with the permission of the investigator.

44. Neither the existing provisions, nor those of the new draft CCP, concerning access to a lawyer are satisfactory. The CPT wishes to stress that, in its experience, it is during the period immediately following deprivation of liberty that the risk of intimidation and ill-treatment is greatest. Consequently, the possibility for persons taken into custody by the Militia to have access to a lawyer during that period is a fundamental safeguard against ill-treatment. The existence of that possibility will have a dissuasive effect on those minded to ill treat detained persons; moreover, a lawyer is well placed to take appropriate action if ill-treatment actually occurs.

The CPT recognises that in order to protect the interests of justice, it may exceptionally be necessary to delay for a certain period a detained person's access to a particular lawyer chosen by him. However, this should not result in the right of access to a lawyer being totally denied during the period in question. In such cases, access to another, independent, lawyer who can be trusted not to jeopardise the legitimate interests of the investigation should be arranged.

The right of access to a lawyer must include the right to talk to him in private. The person concerned should also be entitled to have a lawyer present during any questioning conducted by the Militia (whether this be during or after the initial period of custody). Naturally, the fact that a detained person has stated that he wishes to have access to a lawyer should not prevent the Militia from beginning to question him on urgent matters before the lawyer arrives.

45. In the light of these considerations, **the CPT recommends that steps be taken to ensure that all persons apprehended by the Militia have, as from the very outset of their deprivation of liberty, a right of access to a lawyer as defined in paragraph 44. Moreover, its exercise should not be made subject to the authorisation of an investigator.**

**The CPT would also like to receive information concerning the right of access to a lawyer for persons detained on suspicion of being vagrants.**

46. It should also be noted that several persons detained by the Militia stated that they had not been in a position to consult a lawyer because of lack of resources.

It is axiomatic that for the right of access to a lawyer to be effective, there must be a system of legal aid for detained persons. **The CPT would like to be informed if such a system exists in Ukraine.**

d. access to a doctor

47. The situation concerning access to a doctor varied depending on the type of establishment.

As far as the CPT's delegation could ascertain, there are no specific provisions governing access to a doctor for persons held at District Commands of the Militia. Nevertheless, Militia officers indicated that, in practice, they did not hesitate to summon a doctor if the detained person so requested or if they thought that his state of health justified such a measure. In the most serious cases, they would use the emergency services of the nearest hospital. All District Commands of the Militia possessed special books registering visits by a doctor and the transfer of detained persons to a hospital.

As for the other types of establishments run by the Militia (ITT, centres for the reception and allocation of vagrants, centres for the detention of minors), there was permanent health-care staff attached to these establishments (cf. paragraph 82).

48. **The CPT recommends that the right of persons deprived of their liberty by the Militia to have access to a doctor be expressly guaranteed. The relevant provisions should stipulate that:**

- **all medical examinations should be conducted out of the hearing and - unless the doctor concerned expressly requests otherwise in a given case - out of the sight of Militia officers;**
- **the results of every examination, as well as any relevant statements by the detained person and the doctor's conclusions, should be formally recorded by the doctor and made available to the detainee and his lawyer.**

e. information on rights

49. The CCP stipulates that persons detained by the Militia should be informed of various rights - including the right to have access to a lawyer - in the protocol of detention which they are required to sign. However, as far as the delegation could ascertain, no reference was made in the protocol to the right to inform a relative of the fact of one's detention. Further, it would appear that detained persons received no information concerning their rights during the first 24 hours of custody, i.e. before the protocol of detention had been drawn up.

50. The CPT has already indicated the importance it attaches to persons deprived of their liberty by the Militia being informed without delay of all their rights, including those referred to in paragraphs 37 to 48. In this connection, it should be noted that numerous detained persons whom the delegation met stated that they had not been informed of their rights.

In order to ensure that persons deprived of their liberty by the Militia are duly informed of all their rights, **the CPT recommends that a form setting out those rights in a straightforward manner be systematically given to such persons at the very outset of their custody. The form should be available in an appropriate range of languages.**

f. conduct of interviews

51. The questioning of persons suspected of a criminal offence is the responsibility of the bodies of the inquiry and the preliminary investigation.

Article 28 of the Ukrainian Constitution states that "no one shall be subjected to torture, cruel, inhuman or degrading treatment or punishments that violate his or her dignity". Further, the CCP contains some procedural provisions concerning the interrogation of suspects and accused persons. However, there are no detailed directives on how to conduct interviews.

52. The art of questioning criminal suspects will always be based in large measure on experience. However, the CPT considers that formal guidelines should exist on a number of specific points; the existence of such guidelines will, *inter alia*, help to underpin the lessons taught during training.

Consequently, **the CPT recommends that a code of conduct for interviews be drawn up. In addition to reiterating the total prohibition of ill-treatment, the code should deal, *inter alia*, with the following: the systematic informing of the detained person of the identity (name and/or number) of those present at the interview; the permissible length of an interview; rest periods between interviews and breaks during an interview; places in which interviews may take place; whether the person detained may be required to remain standing while being questioned; the questioning of persons who are under the influence of drugs, alcohol or medicine, or who are in a state of shock. It should also be stipulated that a systematic record be kept of the times at which interviews start and end, the persons present during each interview and any request made by the detained person during the interview.**

**The position of specially vulnerable persons (for example, the young, those who are mentally disabled or mentally ill) should be subject to specific safeguards.**

g. custody registers

53. The CPT noted that in certain of the District Commands of the Militia and in the ITT visited, the detention of a person was not always correctly recorded - if recorded at all - in the custody register.

No safeguard against ill-treatment is more fundamental than the requirement that the fact of a person's detention should be properly recorded. Consequently, **the CPT recommends that steps be taken immediately to ensure that whenever a person is detained in a Militia establishment, for whatever reason or length of time, the fact of his detention is recorded without delay.**

54. Further, **the Committee considers that the fundamental safeguards offered to persons in the custody of the Militia would be reinforced if a single and comprehensive custody record were to be kept for each person detained, in which would be recorded all aspects of his custody and all the action taken in connection with it (time of and reason(s) for the arrest; time of arrival on the Militia premises; when informed of rights; signs of injury, mental disorder, etc.; contact with and/or visits by a relative, lawyer, doctor or consular officer; when offered food; when interviewed; when brought before a public prosecutor; when remanded in custody or released, etc.).**

h. independent inspections

55. Systems for the inspection by an independent authority of detention facilities run by the Militia are capable of making an important contribution towards the prevention of ill-treatment and, more generally, of ensuring satisfactory conditions of detention.

56. In Ukraine, all Militia establishments are the subject of regular visits by a public prosecutor, in accordance with the powers and duties of the public prosecutors under the Ukrainian legislation. In the course of such visits, public prosecutors verify the legality and length of detention and monitor the progress of the inquiry/preliminary investigation. They will also consider any complaints lodged by detained persons.

**The CPT would like to stress that, to be fully effective from the standpoint of preventing ill-treatment, visits by public prosecutors to Militia establishments should be unannounced and should include an inspection of the establishment's cellular facilities, as well as direct contact between the public prosecutor and detained persons. Further, the CPT would like to be informed if visits by public prosecutors to Militia establishments result in reports and, in the affirmative, to receive a copy of the most recent report drawn up in respect of the largest District Command of Internal Affairs in Kyiv.**

#### **4. Conditions of detention**

##### **a. introduction**

57. All police cells should be clean and of a reasonable size for the number of persons they are used to accommodate, and have adequate lighting (i.e. sufficient to read by, sleeping periods excluded) and ventilation; preferably, cells should enjoy natural light. Further, cells should be equipped with a means of rest (e.g. a fixed chair or bench), and persons obliged to stay overnight in custody should be provided with a clean mattress and clean blankets.

Persons in police custody should be allowed to comply with the needs of nature in clean and decent conditions, and be offered adequate washing facilities. They should have ready access to drinking water and be given food at appropriate times, including at least one full meal every day. Persons held in custody for 24 hours or more should, as far as possible, be offered outdoor exercise every day.

58. In most countries visited by the CPT, persons are held for only a relatively short time on police premises. However, in Ukraine, criminal suspects may be held for weeks in Militia establishments. Furthermore, persons serving a sentence in connection with an administrative offence may also be held for prolonged periods in Militia establishments. Persons held for such periods of time are entitled to conditions of detention that are better than the elementary requirements described above.

Unfortunately, with the notable exception of the centre for the reception and allocation of minors in Kyiv, the delegation found that conditions of detention in Militia establishments were as a whole extremely poor.

##### **b. District Commands of Internal Affairs**

59. The delegation visited eight district commands in the towns of Dnipropetrovsk, Kharkiv and Kyiv. These establishments in principle accommodate detained persons during the first 72 hours of their deprivation of liberty by the Militia. However, in practice, as already stated in paragraph 16, detained persons were frequently held in such facilities well beyond this period.

60. The cell blocks comprised between two and six cells; the cells seen by the delegation varied in size from 5m<sup>2</sup> to 17m<sup>2</sup>.

The occupancy rates observed in the majority of the District Commands visited in Kyiv, as well as at Frounzenske District Command in Kharkiv, were very high. By way of example, four persons were being held in a cell of approximately 5m<sup>2</sup> at Frounzenske District Command in Kharkiv; between five and seven persons had been detained for periods varying from several days to almost one month in cells of approximately 7m<sup>2</sup> at Zaliznichne District Command in Kyiv; six persons had been detained for a number of days in cells of between 8m<sup>2</sup> and 10m<sup>2</sup> at Darnitzke and Moskovske District Commands in Kyiv; twelve persons were being held in cells of between 15m<sup>2</sup> and 17m<sup>2</sup> at Moskovske District Command in Kyiv. Such occupancy rates can only be described as intolerable. It should be noted, however, that living space in the cells at Shevchenkivske District Command in Kyiv was slightly better, albeit still not acceptable: four persons in a cell of 9m<sup>2</sup> and five in a cell of 11m<sup>2</sup>.

In this connection, the CPT should stress that a cell of 5m<sup>2</sup> is just about sufficient for holding one person detained overnight. Further, cells of 7m<sup>2</sup> provide a barely tolerable amount of living space for two persons held in custody for extended periods. Cells of between 8m<sup>2</sup> and 10m<sup>2</sup> should not accommodate more than two persons for extended periods, cells of 11m<sup>2</sup> not more than three persons, and cells of between 15m<sup>2</sup> and 17m<sup>2</sup> not more than four to five persons.

61. The cells in the district commands visited were equipped in an identical fashion, the only piece of furniture being a narrow bench attached to the wall or a raised platform; in some cases, the cells were totally devoid of equipment. Detained persons held overnight were not provided with a mattress or blankets in any of the establishments visited.

Two of the three cells at Kievske District Command in Kharkiv and all the cells at Shevchenkivske District Command in Kyiv had adequate access to natural light. Unfortunately, this positive situation was an exception. The rest of the cells were deprived of access to natural light, even when there were windows (the latter being obscured). Artificial lighting was, without exception, of poor quality, sometimes to the extent that cells were in semi-darkness.

As for the ventilation, it left much to be desired. Many of the cells seen by the delegation were stuffy and foul-smelling, which is hardly surprising in view of the number of people crammed together in the cells.

62. The state of repair and level of cleanliness in the cells were rarely acceptable; usually, the cells were dirty, even very dirty.

Moreover, detained persons did not have the opportunity to maintain a minimum level of personal hygiene. The most they could do was to briefly wash their face during authorised visits to the toilets (cf. paragraph 63). No basic personal hygiene products were available; further, detained persons, including those held in custody for extended periods, had no opportunity to take a shower.

63. All cell blocks had a sanitary facility containing toilets and one or more washbasins with drinking water. Without exception, the sanitary facilities' level of hygiene left a great deal to be desired, if not being simply appalling. In addition, the equipment was sometimes in a poor state of repair: for example, at the time of the visit to Frounzenske District Command in Kharkiv, water running out of the toilets had flooded the corridor of the cell block, while at Kievskie District Command in Kharkiv, the toilets did not have any water supply.

At all establishments visited, the delegation heard numerous complaints from persons detained regarding access to toilets. Such access was only possible at fixed times: usually twice (at 7 a.m. and 7 p.m.) or three times (at 7 a.m., 11 a.m. and 7 p.m.) a day. Outside these periods, detained persons unable to wait were compelled to relieve themselves in a corner of their cell. The delegation noticed clear evidence of such situations.

64. It should be added that persons held in custody for extended periods were not offered outdoor exercise or any other form of activity. Out-of-cell time consisted only of the periods set aside for visiting the toilet and for interrogations.

65. The provision of food and access to water for those held in the Militia commands visited were also matters of serious concern to the delegation.

It appeared that there were no arrangements for supplying persons detained in these establishments with food. In practice, the provision of food was ensured by the families and close friends of detained persons, who brought food parcels. Those with no family or friends did not receive any food from the establishment and had to rely on the generosity of other detained persons willing to share the contents of their parcels.

As for access to water, with the exception of one or two of the establishments visited (where reserves of water were allowed to be kept in the cells), detainees were only able to quench their thirst during the periods set aside for visiting the toilets.

66. As already stated in paragraph 13, the delegation made an immediate observation in respect of all the district commands visited, calling upon the Ukrainian authorities to ensure that persons detained in such establishments have ready access to drinking water and to toilet facilities, and are provided with food.

By letter of 16 September 1998, the Ukrainian authorities indicated that persons detained by the Militia have ready access to toilets. Further, in order to ensure the provision of food to such persons, a daily allowance of 3 hryvnas per person had been allocated. The CPT has noted with interest these developments. Nevertheless, the question of access to drinking water remains open.

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67. It is clear that the detention facilities of the district commands of Internal Affairs are unsuitable for accommodating persons deprived of their liberty for extended periods of time. The objective should be to put an end as soon as possible to their use for such periods of detention, and to ensure that they are used exclusively for the initial 72-hour period of custody by the Militia, in accordance with the spirit of the law and the declared intentions of the Ukrainian authorities.

**The CPT recommends that the Ukrainian authorities ensure that the necessary measures are taken to achieve this objective.**

68. Furthermore, the CPT considers that a number of other measures need to be taken without delay in order to tackle the most urgent problems in the district commands visited. **The CPT recommends that:**

- **detained persons be guaranteed access to drinking water;**
- **improvements be made to the state of cleanliness and repair of the sanitary facilities;**
- **detained persons be provided with essential personal hygiene products (soap, towel, sanitary towels/protection, etc.);**
- **all persons held in custody overnight be provided with a clean mattress and blankets;**
- **lighting be improved in the cells (as far as possible, there should be access to natural light and artificial lighting should be sufficient to allow detainees to read, sleeping periods excluded) and the in-cell ventilation be reviewed to ensure that it is adequate.**

69. **The CPT also recommends that the Ukrainian authorities explore the possibility of persons held in custody for more than 24 hours being offered genuine outdoor exercise (i.e. in an area sufficiently large to allow them to exert themselves physically) for at least one hour a day.**

c. Militia central holding facilities (ITT)

70. The ITT in Dnipropetrovsk occupies the first and second floors of a building located in a residential suburb. It has a total of 27 cells with an official capacity of 150 places. On the day of the delegation's visit, the ITT was holding 93 persons (of whom 54 women and 2 minors). The periods of detention ranged from a few days to over a month.

At the beginning of the visit, the Deputy Director of the ITT described the establishment as "the best ITT in Ukraine".

71. Material conditions of detention within the establishment varied considerably. One group of cells had an occupancy rate (two persons in 8m<sup>2</sup>, three in 12m<sup>2</sup>) which could be considered as acceptable (albeit far from ideal). Further, these cells had adequate access to natural light, were clean and were equipped with beds (with clean bed linen and blankets), a table (and a tablecloth), chairs, a TV set and various personal belongings.

Another group of cells offered less good conditions of detention. Although these cells were not overcrowded at the time of the visit, the number of beds suggested that they could become so (four beds in 8m<sup>2</sup>, ten beds in 26m<sup>2</sup>). However, access to natural light and artificial lighting were adequate and, sufficient ventilation was provided through windows which could be opened.

However, a number of other cells in the ITT offered very poor conditions of detention. They were seriously overcrowded (e.g. four persons in 8m<sup>2</sup>, six in 12m<sup>2</sup>), dimly lit, fetid and dirty. Access to natural light was obstructed by dense metal netting on the windows, artificial lighting was inadequate and ventilation practically non-existent. The cells were equipped with beds and mattresses as well as a small table and bench. That said, the mattresses were as a general rule soiled; further, there were no blankets or bedlinen. Some detained persons stated that they were given bedlinen and/or blankets at night, while others alleged that they did not receive such items at all.

72. Each cell was fitted with a non-partitioned toilet; as a result, detained persons complied with the needs of nature in full view of their cellmates. Further, in some of the cells, the toilets were filthy.

The delegation also heard complaints to the effect that some cells were infested with insects and mice.

73. In general, detainees were allowed to have a shower once a week, although there were some allegations that access to a shower could be less frequent. The establishment's shower room was equipped with two showers, and hot water was available only at the weekends. Such an arrangement is clearly insufficient for up to 150 persons.

Maintaining personal hygiene between the weekly visits to the shower room was far from easy; there were no sinks in the cells, and consequently no possibility to wash. Further, no provision was made to supply detainees with appropriate personal hygiene products. Consequently, those who could not receive such items from their relatives were deprived of basic hygiene products throughout their stay at the ITT.

74. The delegation received conflicting information about outdoor exercise. Staff asserted that detained persons were offered exercise on a daily basis; however, some of the persons detained claimed that this happened sporadically, while others alleged that they had not been allowed exercise at all.

In any event, the establishment's facilities for "outdoor" exercise were totally inadequate. They comprised two bare rooms, measuring some 12m<sup>2</sup> each, which had barred windows without glass; the delegation was told by staff that two detained persons could "exercise" at a time in each of the rooms. Such facilities do not provide access to the open air and are too small to allow detained persons to exert themselves physically.

75. The Militia ITT in Kyiv is the only establishment of this kind in the Ukrainian capital. With a capacity of 156 places, its cell block comprises three levels, each with ten cells. At the time of the visit, 319 people were detained there, which represents an occupancy rate of over 200% of the official capacity. The persons detained were mostly adult men suspected of or awaiting trial for criminal offences; there were also about thirty women and six minors. The period of detention generally varied from several days to a month; however, in a certain number of cases, it was as long as two months.

76. The 319 persons detained were locked up in grossly overcrowded cells (e.g. cells of between 8m<sup>2</sup> and 10m<sup>2</sup> held up to eight persons, and cells of around 21m<sup>2</sup> between sixteen and eighteen). The cell equipment was very basic, consisting only of a wide raised platform. Unlike the situation observed at the ITT in Dnipropetrovsk, there were no mattresses, and only very few detained persons had (thanks to their close friends or families) been able to obtain a blanket.

The cells were deprived of access to natural light, their windows being totally obscured by dense metal covers. Artificial lighting was poor and, in addition, was permanently switched on. As for the ventilation, it left a great deal to be desired; the cells were fetid and foul-smelling. In this context, it should be mentioned that according to health-care staff, the situation became much worse in summer: the intense heat at that time of year even caused detained persons to faint.

77. The persons detained had access to a toilet inside their cells. However, it was not partitioned off and was totally unhygienic. Next to the lavatory was a washbasin, with a tap providing drinking water; its condition was just as appalling as that of the toilet. Furthermore, the water supply could only be turned on from outside by guards, at the detained persons' request. The delegation heard numerous complaints that staff only complied with such requests after a long delay.

78. The cells were in an appalling state of hygiene and, in addition, were infested with lice, bugs and other parasites. Many detained persons bore traces of repeated attacks by this vermin; for example, an examination of one detained person by a medical member of the delegation revealed a large number of papules between 1 cm and 1.5 cm in diameter, causing itching and erythema all over the face, hands and other exposed parts of the body.

In this connection, health-care staff informed the delegation that various measures were used to combat lice and bugs; however, it was acknowledged that these methods had proved to be ineffective.

79. It should be added that detained persons had no opportunity to maintain a minimum level of personal hygiene. In the whole ITT, there was only one shower for all the detainees, which, moreover, was not in working order. Furthermore, with the exception of a very small number of detained persons who were able to obtain basic personal hygiene products from their families, the vast majority had no access whatsoever to such products and the establishment was apparently unable to provide them.

80. The harmful effects of these conditions were exacerbated by the fact that detained persons were not allowed any outdoor exercise. In fact, they spent 24 hours a day in their cells, except for possible interrogations and rare visits (cf. paragraph 83).

As mentioned earlier (cf. paragraph 13), the delegation made an immediate observation aimed at ensuring that persons detained at the ITT were offered at least one hour of outdoor exercise per day. In a letter dated 29 June 1998, the Ukrainian authorities replied that measures had been taken to offer outdoor exercise to those held in custody for over ten days.

The CPT notes this development with interest. However, **it wishes to stress that all persons detained at the ITT, and not merely those who have been held there for over ten days, should benefit from one hour of outdoor exercise per day.**

81. With regard to food, the delegation heard numerous complaints about its quality and quantity from persons detained at both ITTs visited. Almost invariably, the food consisted of a sort of porridge, occasionally supplemented with pieces of sausage or bacon, bread (which was often hard and dry), and tea. The food was brought in from nearby establishments and heated up at the ITT. Nevertheless, in both ITTs, detainees claimed that the food was cold when they received it in their cells.

82. Both ITTs had a health-care service. At Dnipropetrovsk, health-care was provided by two full-time feldschers and at Kyiv, by four. However, at Kyiv, the delegation noted that health-care staff were frequently absent. For example, an examination of the relevant register revealed that between 1 and 11 February 1998, no feldschers had been present at the establishment. This state of affairs obviously had a negative effect on the provision of health-care.

The facilities and the care provided to detained persons were in all respects modest. In case of emergency, a doctor was called in and, if necessary, detainees could be transferred relatively easily to a hospital. In all other cases, however, persons detained could wait a long time to see a doctor, and at Kyiv in particular, health-care staff pointed out that, in principle, they would not receive treatment until they were transferred to a SIZO.

Moreover, it quickly became apparent that persons detained did not benefit from a systematic and thorough medical examination on admission. At both Dnipropetrovsk and Kyiv, new arrivals were supposed to be seen by a feldscher immediately. However, at Kyiv, owing to the staffing situation described above, this rule was not applied systematically. Further, at both establishments, the medical screening on admission was superficial and basically entailed verifying whether detainees bore injuries or complained of sickness on arrival, and whether they possessed a medical certificate stating that they could be admitted to the ITT, as well as asking questions concerning possible contagious diseases or the presence of parasites.

83. With regard to contact with the outside world, visits were subject to the express authorisation of the relevant investigating authority. When visits were allowed, they took place in the investigators' offices. The same rule concerning authorisation applied to correspondence. Many detained persons complained that they had been refused visits and letters for weeks, or even throughout their period of detention at the ITT. Furthermore, with the exception of a few detained persons at the ITT in Dnipropetrovsk, detainees had no access to newspapers, radio or television.

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84. Depriving persons of their liberty brings with it the responsibility to detain them under conditions which are consistent with the inherent dignity of the human person. The facts found in the course of the CPT's visit show that the Ukrainian authorities have failed to fulfil that responsibility with regard to persons held at the Militia central holding facilities visited. Moreover, information at the CPT's disposal suggests that the situation is no different in other Militia central holding facilities in Ukraine. The conditions prevailing at the ITT in Kyiv amounted to inhuman and degrading treatment and, in addition, constituted a risk to the health of the persons held there. As for the conditions at the ITT in Dnipropetrovsk, they were better than at Kyiv but nevertheless left much to be desired as regards the vast majority of the persons detained.

85. The CPT has already recommended that the existing law and practice relating to custody pending trial be reviewed (cf. paragraph 17). This is a *sine qua non* condition for remedying the present state of affairs in ITT facilities.

It is also important to ensure that the length of time spent in an ITT does not exceed the maximum period stipulated by Section 155 of the Code of Criminal Procedure, i.e. ten days. These establishments are not suitable for longer periods of detention. **The CPT recommends that the Ukrainian authorities take the necessary measures to achieve this objective.**

86. With regard to achieving acceptable conditions of detention in ITTs, **the aim should be to provide material conditions comparable to those observed in the group of cells at the ITT in Dnipropetrovsk described in the first sub-paragraph of paragraph 71, and to ensure daily access to an open exercise yard large enough to enable detained persons to exert themselves physically.**

The CPT acknowledges that it will not be possible to transform overnight the current situation in the ITTs. Nevertheless, a number of measures need to be taken without delay. In this connection, the CPT welcomes the measures announced by the Ukrainian authorities in the above-mentioned letter of 29 June 1998, which are aimed at making technical alterations to the windows and improving the in-cell toilets at the ITT in Kyiv.

In this context, **the CPT recommends that the Ukrainian authorities take immediate steps to:**

- **ensure that all persons detained in ITTs are:**
  - **each provided with a clean mattress and blankets;**
  - **supplied with essential personal hygiene products (soap, towel, sanitary towels/protection, etc.) and have the opportunity to wash every day, with sufficient quantities of water;**
  - **enabled to take a warm shower on arrival and entitled to a warm shower at least once a week during their period of detention;**
  - **given the necessary products to keep their cells clean and hygienic;**
- **ensure that the food provided to detained persons is of an appropriate quality and quantity;**
- **ensure that effective methods are used for fighting parasites;**
- **improve the in-cell lighting and ventilation;**
- **find ways of partitioning off the toilets in the cells;**
- **ensure that detained persons are provided with reading matter;**
- **review the possibilities for detained persons to maintain contact with the outside world, in order to ensure that such contact is not being restricted unjustifiably.**

The CPT also recommends that the Ukrainian authorities examine as a matter of priority the possibility of offering to persons detained in ITTs genuine outdoor exercise (i.e. in an area sufficiently large to allow them to exert themselves physically) for at least one hour per day.

Further, as regards health-care, the CPT recommends that:

- **all newly-arrived detainees be appropriately examined upon arrival by a qualified member of the health-care service;**
- **regular attendance by a doctor be envisaged at large ITTs, such as the ones in Dnipropetrovsk and Kyiv. In addition to providing medical examinations, such a doctor could be responsible for the health-care service and for supervising the work of the rest of the health-care staff.**

d. centre for the reception and allocation of minors in Kyiv

87. This centre is one of 21 in Ukraine for the reception and allocation of minors. Located in a residential area of Kyiv, it was set up in 1935 as a home for parentless children. At present, the establishment fulfils the purpose of holding several categories of minors for periods not exceeding 30 days: minors suspected of criminal offences and detained by order of a public prosecutor; minors in respect of whom a court has ordered placement in a special educational establishment; children who are vagrants or whose identity cannot be established; unaccompanied children of foreign nationality awaiting repatriation.

With a total capacity of 60 places, at the time of the visit the centre was holding 12 children (3 girls and 9 boys). Although in principle the establishment was intended for the age group 11-14, in practice it catered for children up to the age of seventeen, as well as for children younger than eleven (in one case, as young as six). As a general rule, the periods of stay ranged from a few days to a month; however, two boys from Sri Lanka had spent 5 months at the centre.

The delegation was on the whole favourably impressed by the conditions of detention at the centre.

88. The children detained at the establishment spent the day engaged in various activities (cf. paragraph 89). At night, they were accommodated in several dormitories which were of an adequate size for the numbers of children to be held (e.g. a room measuring 42 m<sup>2</sup> contained 12 beds). All dormitories had satisfactory access to natural light, artificial lighting and ventilation, were fitted with beds and a few lockers, and had the occasional poster on the walls.

The centre's sanitary facilities and shower room were clean and generally in a good state of repair. However, the dormitories' doors were locked at night and there were some complaints from the boys that access to the toilets during the night was not always guaranteed. This issue did not arise in the girls' dormitory, which was equipped with a separate sanitary annexe. **The CPT invites the Ukrainian authorities to verify that boys held at the centre can have access to the toilet facilities whenever needed, including at night.**

As regards food, it was prepared in the centre's kitchen and served three times a day in a pleasant dining room. No complaints were heard concerning the quality and quantity of food provided.

89. The activities offered to children detained at the centre can be considered as satisfactory for a stay of up to 30 days. The daily programme included 2.30 hours of schooling, one hour of games/sport, and - on alternative days - 1.30 hours of activities in either the workshop (making envelopes) or the reading room. Further, the children had access to two spacious and pleasant activities rooms equipped with TV sets, video and various games. The classrooms, reading room and library were all excellent facilities. The centre also possessed a hothouse for growing vegetables where the children were welcome to help.

Moreover, the delegation was shown a pavilion under construction which in the summer was to be equipped with tennis tables and games.

The above-mentioned activities were provided by a team of educators, teachers and a psychologist. Many of the children interviewed by the delegation spoke warmly of staff members. The CPT wishes to place on record the obvious determination of the centre's management and other staff to create an agreeable environment for children detained at the centre.

90. In principle, children were entitled to one hour of outdoor exercise per day in the centre's spacious yard. However, it became evident that in bad weather the outdoor exercise allowance could be substantially reduced, apparently because there was not sufficient outdoor clothing for the children. **The CPT invites the Ukrainian authorities to take measures to overcome this problem.**

91. The centre employed one full-time nurse, who worked from 9 am to 5 pm on week days. Upon arrival, all children were seen by the nurse, who checked their general health condition, and entered the information in a register. Children in need of medical care could quickly be transferred to an outside hospital.

92. Reference should also be made to two rooms, used for disciplinary isolation of up to 3 days as well as for quarantine purposes. The rooms were of an acceptable size (6m<sup>2</sup>), had adequate access to natural light, artificial lighting and ventilation, and were equipped with a bed and a chair. During their placement in the isolation rooms, children could go out three times a day to take their meals in the centre's dining room. However, no provision was being made for offering them outdoor exercise or access to reading matter.

Staff affirmed that disciplinary isolation was only used exceptionally. Unfortunately, this could not be verified owing to the absence of recording the use of the rooms.

93. In the light of the above remarks, **the CPT recommends that the Ukrainian authorities take steps to ensure that:**

- **children placed in the isolation rooms (for whatever reason) are guaranteed at least one hour of outdoor exercise every day and are provided with reading matter;**
- **a full record is kept of the use of the isolation rooms.**

e. other Militia detention facilities

i. *detention facilities of the Transport Militia in Kyiv*

94. The CPT's delegation visited three facilities of the Transport Militia in Kyiv: one at Boryspil Airport, and two at the Central Railway Station (a so-called "filtration room", and a holding facility for vagrants and criminal suspects).

95. The detention facility of the Division of the Transport Militia at Boryspil Airport – which measured some 6m<sup>2</sup>, and was properly equipped, lit and ventilated – offered satisfactory conditions for the periods of time for which it was being used, i.e. up to several hours.

96. On the contrary, conditions of detention in the "filtration room" at the Central Railway Station Division of the Transport Militia were not acceptable. This was a narrow cage-like area, bare save for a few stools (not enough for the number of persons being held), situated in a room used for interrogations by Militia officers. Persons apprehended by the Militia at the railway station could be held for up to 24 hours in this area. The delegation was told that this was a temporary solution, pending the refurbishment of the facility in question. **The CPT would like to receive confirmation that this refurbishment has now been completed, as well as information on conditions of detention in the refurbished detention facility.**

97. The Railway Transport Militia holding facility for criminal suspects and centre for the reception and allocation of vagrants was located in a separate building adjacent to the railway station. It contained four cells. The official capacity was 20 places and at the time of the visit 24 persons were in custody (five criminal suspects and nineteen persons whose identity was being checked, some of whom were foreign nationals). The length of detention ranged from up to 10 days for the criminal suspects to a month for the other persons.

Conditions of detention were very poor. The cells were submerged in near darkness, fetid and dirty. In addition, they were seriously overcrowded (five persons in 8m<sup>2</sup>, five to seven persons in 13m<sup>2</sup>, seven persons in 16m<sup>2</sup>) and an examination of the custody register revealed that in the past the occupancy levels had been even higher. All cells were equipped with beds, a sink and a non-partitioned toilet, and in addition some had a table and a bench. However, the beds were insufficient for the number of occupants; consequently, some detained persons shared beds or slept on mattresses placed on the floor. Further, there were not enough blankets for all detainees.

As at the other Militia establishments visited, detained persons were not provided with any personal hygiene products.

98. According to staff, detainees were entitled to a daily walk of up to an hour, if the weather was good. This exercise took place in an outdoor area enclosed with wire netting and measuring 18m<sup>2</sup>; up to five persons could take exercise at the same time. However, detained persons interviewed by the delegation claimed that the exercise period was limited to 5-15 minutes. No other form of out-of-cell activity was provided.

99. **The CPT's recommendations concerning this holding facility are set out in paragraphs 106 and 107.**

ii. *centre for the reception and allocation of vagrants in Dnipropetrovsk*

100. The detention facilities of the centre for the reception and allocation of vagrants in Dnipropetrovsk consisted of six cells located on the ground floor of the building which housed the ITT. The centre's official capacity was 50 places and at the time of the visit, 32 persons were in custody (7 women and 25 men). The length of detention was in principle up to a month (although, as already indicated in paragraph 18, it could be extended to two months).

101. While three of the cells were empty at the time of the visit, the other three were holding persons under overcrowded conditions. A cell measuring 14m<sup>2</sup> had seven female occupants, and the other two cells - each measuring 26m<sup>2</sup> - were holding respectively eleven and twelve persons. From what the delegation was told on the spot, the occupancy rate had apparently been higher in the past: up to ten persons in the first cell, and up to sixteen in each of the other cells.

Although the cells had windows, access to natural light was obstructed by thick metal grating attached to the windows. Further, artificial lighting was poor, as was the ventilation. Most of the floor space in the cells was taken up by a sleeping platform. In addition, each cell had a WC in one corner; it was not partitioned and invariably in a poor state of repair and cleanliness. The cells did not contain any mattresses at the time of the visit and the delegation received contradictory information as to whether mattresses were supplied at night.

Women detained at the centre had access to a shower every second day, and men - twice a week. However, as in other Militia establishments visited, detainees were not provided with personal hygiene items.

Food arrangements were identical to those already described in respect of the neighbouring ITT (cf. paragraph 81).

102. As regards access to outdoor exercise, some of the detainees interviewed by the delegation maintained that this was being offered regularly, while others alleged that they had been deprived of any out-of-cell activity. In fact, the delegation found that the establishment did not possess an outdoor exercise area, but merely a room of the kind used for this purpose in the neighbouring ITT (cf. paragraph 74). Concerning activities, several of the detained women worked for a few hours a day in the centre's kitchen. The other detainees spent their time idle in their cells.

103. As regards health-care, a part-time feldscher was employed at the centre. He examined new arrivals and paid daily visits to the cells in order to check if detainees had any medical problems. The arrangements for the initial examination of new arrivals were similar to those already described in respect of the ITT in Dnipropetrovsk. In case of need, detainees could be transferred to a hospital.

104. **The CPT's recommendations concerning the Centre are set out in paragraphs 106 and 107.**

iii. *centre for administrative detention in Dnipropetrovsk*

105. The centre for administrative detention consists of five cells located on the same floor as the centre for the reception and allocation of vagrants in Dnipropetrovsk. They are used to hold persons serving short-term sentences (up to 30 days) for administrative crimes (public misbehaviour, hooliganism, drunkenness, resistance to officers, etc.).

The material conditions and arrangements for activities resembled in every respect those of the nearby centre for vagrants.

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106. **The recommendations already made in paragraph 86 concerning ITT facilities are to be read as applying *mutatis mutandis* to the holding facility for criminal suspects and the centre for the reception and allocation of vagrants at Kyiv Central Railway Station, as well as to the centres for the reception and allocation of vagrants and for administrative detention in Dnipropetrovsk.**

As regards more particularly the centre for vagrants in Dnipropetrovsk, **it is recommended that steps be taken to ensure that persons detained are evenly distributed throughout the available accommodation.**

107. It should also be emphasised that unlike ITT facilities, the above-mentioned centres are intended to be used for periods of detention of up to one month and, on occasion, two months. This makes the conditions of detention described above all the more unacceptable. Persons deprived of their liberty for such a length of time should also have, at the very least, regular access to some form of day room where they can associate with other detainees and enjoy appropriate means of recreation (board games, table tennis, etc.).

**The CPT recommends that the Ukrainian authorities explore the possibility of providing such day rooms in centres for administrative detention and for the allocation and reception of vagrants.**

**B. Establishments under the authority of the State Department for the Execution of Sentences**

**1. Preliminary remarks**

108. At the time of the visit in February 1998, prison establishments were under the authority of the Ministry of Internal Affairs. The CPT has since been informed that as of 22 April 1998, these establishments are run by an independent authority, the State Department for the Execution of Sentences.

**The CPT wishes to obtain detailed information on the organisation and duties of this department.**

109. At the beginning of the visit, the Head of the Prison Administration highlighted several serious problems facing the prison system: an increasing prison population, which resulted in overcrowding and hence a deterioration in conditions of detention, and a lack of work opportunities for prisoners.

110. At the time of the visit, the situation in Ukraine was as follows: 44,000 persons detained in 32 pre-trial prisons (SIZOs) with a capacity of 34,000 places; 167,000 sentenced prisoners in 126 colonies with a capacity of 156,000 places.<sup>3</sup> In order to tackle the problem of overcrowding, measures have been taken to renovate and expand the existing prisons. In 1997, for example, 1,800 places were created in establishments for sentenced prisoners and 400 in SIZOs. The delegation was also told of plans to build nine new SIZOs. However, the serious economic crisis with which Ukraine has been confronted is considerably hampering progress in this area.

The Ukrainian authorities also informed the delegation of other plans to combat overcrowding, such as the drafting of a new Criminal Code, Code of Criminal Procedure and Code for the Enforcement of Sentences. In particular, there were plans to reduce the number of offences punishable by imprisonment, introduce alternatives to imprisonment, commute the length of sentences for certain offences, and allow a more systematic use of early or conditional release.

111. The CPT has itself highlighted the crucial importance of measures to combat overcrowding. In this context, it has already made a recommendation that the law and practice relating to custody pending trial be reviewed (cf. paragraph 17).

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<sup>3</sup> To these figures should be added eleven establishments for minors, which are apparently not affected by overcrowding (3,000 detainees for 4,500 places).

As to the idea of tackling overcrowding by building new prisons, it has come up against economic obstacles which are not easy to overcome. Moreover, the CPT would like to point out that in the experience of other countries, providing additional accommodation will not always represent in itself a lasting solution to the problem of overcrowding. Indeed, a number of European countries have embarked on extensive programmes of prison building, only to find their prison populations rising in tandem with the increased capacity acquired by their prison estates. By contrast, the existence of policies to limit or modulate the number of persons being sent to prison has in certain States made an important contribution to maintaining the prison population at a manageable level.

In this connection, it is also worth mentioning the Committee of Ministers' Recommendation R(92)17 concerning consistency in sentencing, in particular paragraph B5(a), which states that "custodial sentences should be regarded as a sanction of last resort, and should therefore be imposed only in cases where, taking due account of other relevant circumstances, the seriousness of the offence would make any other sentence clearly inadequate."

**The CPT recommends that the Ukrainian authorities give high priority to the implementation of the whole range of measures designed to reduce overcrowding.**

112. The CPT has also noted that as far as the SIZOs are concerned, the law governing detention on remand sets down a standard of 2.5m<sup>2</sup> of living space per person.<sup>4</sup> The CPT wishes to stress that this standard of 2.5m<sup>2</sup> per prisoner does not provide a satisfactory amount of living space. The Committee is aware that any improvements in this area are dependent upon overcrowding being reduced. **Nevertheless, the CPT recommends that the standard on living space to be provided per person in pre-trial prisons – and, if need be, in other types of prison establishment – be increased as soon as possible. The standard should be at least 4m<sup>2</sup> per person (and any cells measuring less than 6m<sup>2</sup> should be taken out of service as prisoner accommodation).**

113. With regard to the lack of work for prisoners, a problem highlighted by the authorities, the CPT wishes to stress that the provision of appropriate work to sentenced prisoners is a fundamental part of the rehabilitation process. Moreover, in the interests of their psychological well-being, remand prisoners should as far as possible also be offered work. It follows that the employment situation within the prison system should not be dictated exclusively by market forces. **The CPT recommends that the Ukrainian authorities introduce special measures to provide more work for prisoners.**

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<sup>4</sup> This minimum requirement is increased to 4.5m<sup>2</sup> for women who are pregnant or are accompanied by a child.

## **2. Ill-treatment**

114. The delegation heard very few allegations of ill-treatment of prisoners by staff at the SIZO in Kharkiv.

However, the CPT did receive information concerning an incident which apparently took place at the SIZO on 10 February 1998. According to this information, in the unit reserved for prisoners sentenced to death, one prisoner, who had announced that he was refusing to eat, was forced - by way of dissuasion - to stand against the wall, with his legs as far apart as possible and his hands handcuffed behind his back, until he fainted. **The CPT wishes to receive information from the Ukrainian authorities on this matter.**

115. Unfortunately, cases of ill-treatment occur from time to time in any prison system. When such cases arise, it is essential that the authorities take rapidly the necessary measures. In this connection, **the CPT would like to receive the following information for 1997 and 1998:**

- **the number of complaints of ill-treatment lodged against the staff of establishments under the authority of the State Department for the Execution of Sentences;**
- **an account of disciplinary and/or criminal sanctions imposed following such complaints.**

116. Reference should also be made to a practice witnessed by the CPT's delegation at the SIZO in Kharkiv which could well be considered as humiliating by prisoners. The practice in question involved obliging prisoners to face the wall when staff or visitors passed by. Such a practice serves no security purpose and is hardly likely to promote positive staff-prisoner relations. **The CPT recommends that this anachronistic practice cease.**

117. Although not deliberate ill-treatment, the CPT feels compelled to point out that at the SIZO in Kharkiv, a large number of prisoners were subjected to a combination of negative factors – overcrowding, appalling material conditions and levels of hygiene, and practically non-existent activity programmes – which could easily be described as inhuman and degrading treatment.

### **3. Pre-trial Prison (SIZO) No. 313/203 in Kharkiv**

#### **a. introduction**

118. SIZO No. 313/203 is situated in the town of Kharkiv on an area of 2.5 hectares. Some of its buildings date from the early nineteenth century and are the legacy of the former prison on the site; the rest are more recent. There are 301 cells in all.

At the time of the visit, there were 3,760 prisoners at the establishment, the overwhelming majority of whom were men (3,522 men and 238 women). Out of the total prison population, 166 were minors. Most of the prisoners (over 2,900) were awaiting trial, while the rest were either sentenced or in transit from one establishment to another. Further, there were 15 prisoners sentenced to death<sup>5</sup>, who were being held separately from the rest of the prison population in a cell block on the ground floor of building No. 2; the conditions of detention and various other matters relating to these prisoners will be dealt with later in a separate section of the report.

119. The prison Director pointed out at the outset that material conditions of detention left much to be desired and that, in particular, it was impossible to meet the (very modest) standard of 2.5m<sup>2</sup> of living space per person. Efforts were being made to improve material conditions as much as possible (several buildings were in the process of refurbishment or modernisation, and a new detention building providing 270 places was being equipped). However, progress had been limited: only 73% of the state funding awarded for 1997 had been made available, and at the start of February 1998, the establishment already owed 1,000,000 hryvnias (about \$ 500,000) to its suppliers.

The delegation's subsequent visit to the SIZO more than confirmed the Director's assessment.

#### **b. conditions of detention for the general prison population**

##### *i. material conditions*

120. The cell blocks were located in five buildings: two of them (Nos. 1 and 6) were situated in a large complex housing mostly prisoners awaiting trial, but also a number of sentenced prisoners who were employed at the establishment; building No. 2 accommodated remand and sentenced prisoners under different types of regime or awaiting transfer/departure; building No. 3 comprised a small cell block reserved exclusively for a permanent contingent of sentenced prisoners employed at the establishment, and building No. 5 was reserved for women and minors.

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<sup>5</sup> It should be noted that in Ukraine, persons sentenced to death are held in special sections of SIZOs.

121. It should be stressed at the outset that the material conditions of detention under which about a hundred working sentenced prisoners were being held in building No. 3 were the best in the establishment. These prisoners were accommodated in relatively spacious dormitories, with large windows allowing good access to natural light; the artificial lighting and ventilation were also acceptable. Further, there were fully-partitioned sanitary annexes which were accessible at all times. Prisoners had access to a living room with a television, and to a refectory, both of which were of an acceptable standard. The dormitories, common areas and sanitary annexes were in a satisfactory state of repair and cleanliness.

122. Building No. 6, which accommodated about 800 prisoners, was of recent construction and, after building No. 3, had the least unfavourable material conditions in the whole prison. The cells had reasonable access to natural light, and adequate artificial lighting and ventilation. Further, they were reasonably well furnished, with proper beds and full bedding, a table, benches, lockers and sometimes a water heater and a television. Finally, there was a toilet, although this was only rarely partitioned off entirely. The facilities as a whole were in an acceptable state of repair and cleanliness.

Unfortunately, there was a major deficiency: the occupancy rates were too high in most cells. For example, a cell of about 14m<sup>2</sup> contained five or six prisoners and cells of about 20m<sup>2</sup>, up to nine.

In building No. 5, which accommodated some 400 prisoners, the cells were not as overcrowded as they were elsewhere; the minimum requirement of 2.5m<sup>2</sup> per person was generally being respected, although the number of beds in the dormitories seen by the delegation suggested that the occupancy levels could rise above this requirement. As in building No. 6, the cells were reasonably well furnished and the state of repair and level of cleanliness were acceptable. Efforts had also been made to decorate this building so that there was less of a prison atmosphere. That said, the windows in the cells in this building, unlike those in building No. 6, were covered by a metal plate which prevented a sufficient amount of natural light and air from entering.

123. The majority of the prisoners (i.e. over 2,000) were housed in buildings Nos. 1 and 2. With few exceptions, these prisoners lived in conditions which were simply deplorable. The overcrowding reached extreme proportions: in building No. 1, for example, 25 prisoners awaiting trial had to share a cell of approximately 43m<sup>2</sup>, and cells of approximately 50m<sup>2</sup> housed between 27 and 59 persons. In building No. 2, six prisoners shared cells of between 8m<sup>2</sup> and 9m<sup>2</sup>, cells of about 55m<sup>2</sup> housed between thirty-five and forty-four prisoners, and one of these latter cells (No. 71) contained as many as 60 beds.

Most of the prisoners in these two buildings were left to stagnate in cells which had no access – or only very limited access – to natural light, had artificial lighting which was permanently on and varied greatly in quality, and in which the air was stuffy and foul-smelling. The furniture was usually reduced to a bare minimum: rudimentary metal bunk beds (on two or three levels) or wooden platforms (on two levels), equipped with scanty bedding that was generally threadbare. Some cells, moreover, did not have enough beds or sleeping places for all prisoners. What little space remained in the cells was filled by a long table and a bench where prisoners were supposed to have their meals (which they could only do by taking turns, given the number of occupants in each cell).

The in-cell sanitary annexes (washbasin and toilet) were only rarely partitioned off completely; usually, there were only walls at the sides, approximately 1.10 m high. These facilities were generally dirty and unhygienic, occasionally overflowed and emitted an almost unbearable smell.

The state of repair and level of cleanliness in the vast majority of cells in these two buildings also gave grounds for serious concern: the walls and ceilings were crumbling and were being eaten away by mildew, the rudimentary furniture was generally in a poor state of repair, and the surrounding filth begged description. Worse still, the cells were swarming with cockroaches, fleas and other vermin. It was also observed that there were rodents in some cells.

In fact, the living conditions and level of hygiene in most parts of these two buildings represented a serious health hazard.

124. In building No. 1, renovation work had started on certain floors, and the delegation was able to see some of the refurbished cells. It observed that the renovation was only superficial, consisting of nothing more than repainting and repair work. The major failings remained: the potential occupancy rate was still unacceptable, the windows were obscured, and the toilets only partly partitioned off.

125. Moreover, the opportunity for all prisoners to maintain personal hygiene left a great deal to be desired. Essential hygiene products, such as soap, were not provided in sufficient quantities and the prisoners had to rely on parcels from their relatives. In addition, access to the showers was only possible once every ten days. At the time of the visit, the SIZO had only three shower rooms (including one which was being renovated), containing in all thirty-five shower heads for the entire population of the prison. This is manifestly insufficient to meet the needs of almost 4,000 prisoners. The delegation was therefore pleased to note that a new, good-quality shower block was being built between buildings Nos. 1 and 6, which would significantly improve the situation.

## *ii. activities*

126. Only about 200 sentenced prisoners had work. For the most part, they carried out maintenance and renovation work in the SIZO or worked in the kitchens; a small number were employed in various workshops (iron work; joinery; manufacture of rubber products for vehicles, paving stones and plastic packaging and bottles) which also produced goods for outside firms. These prisoners were also entitled to take part in certain sporting activities in a small area set aside for this purpose.

The overwhelming majority of prisoners did not take part in any activities outside the cells, apart from outdoor exercise (which, moreover, took place in unsuitable conditions – cf. paragraph 127). There were no opportunities for work and no access to educational/training or sporting activities (even though there were some open spaces as well as an abandoned building on the SIZO's premises which could, at very little cost, have been converted into a sports facility). In-cell activities were limited to reading and, for some prisoners, watching television acquired through their families.

That said, special efforts had been made to cater for women and minors: their cells were fitted with a built-in radio system designed to broadcast programmes. For minors, there had also been a modest initiative to set up a relaxation room with a chessboard and newspapers.

127. According to Section 9 of the Law on detention on remand and under the relevant provisions of Appendix 1 to the Rules of Conduct for prisoners on remand and sentenced prisoners held in pre-trial prisons, prisoners should be offered outdoor exercise for at least one hour a day.<sup>6</sup> Each building had its own exercise areas set aside for this purpose, designed in the form of an enclosure. The size of most of these yards (varying between 14m<sup>2</sup> and 64m<sup>2</sup>) was such that it was scarcely possible for the prisoners to exert themselves physically, particularly in view of the number of people who could use the yards at the same time. For example, yards of 14m<sup>2</sup> could be used by six people, twenty people took exercise together in yards of 42m<sup>2</sup>, and yards of 64m<sup>2</sup> could contain up to 60 prisoners. This situation is all the more regrettable given that the exercise period was the only out-of-cell activity.

Furthermore, the exercise yards were generally not sheltered against inclement weather, and some of them were located on the roofs of buildings and were therefore highly exposed. At the time of the visit it was difficult to move around the yards, since the ground resembled an ice rink. As a result, the prisoners tended to remain clustered alongside the walls.

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128. To sum up, the majority of prisoners were locked up for almost the whole of the day in overcrowded and insalubrious cells, without being offered any activities worthy of the name. Under such conditions, to be incarcerated at the Kharkiv Pre-trial Prison could only be a stultifying experience.

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<sup>6</sup> Two hours for pregnant women, women with children, minors, working sentenced prisoners and persons who are ill, with the permission of the doctor and the consent of those concerned.

129. The CPT is fully aware of the magnitude of the task facing the Ukrainian prison authorities in bringing the conditions in such institutions up to minimum European standards, and of the work already done or planned. That being said, **the intolerable situation observed at the Kharkiv SIZO only serves to highlight the importance of the recommendations already made in paragraphs 17 and 111.**

It is clear that eradicating overcrowding in the Kharkiv SIZO - as well as in other prison establishments - will take time. Nonetheless, immediate efforts must be made to palliate the most critical problems observed at the Kharkiv SIZO.

130. With regard to the material conditions of detention at SIZO No. 203 in Kharkiv, **the CPT recommends that the Ukrainian authorities:**

- **supply prisoners immediately with adequate quantities of essential personal hygiene products and cleaning products for their cells;**
- **take measures to ensure that the material conditions in all cells in buildings Nos. 1 and 2 are improved as quickly as possible, at least to the standard of those in building No. 6, in terms of cleanliness and hygiene, natural and artificial lighting, ventilation and equipment. Immediate steps should be taken to ensure that every prisoner in buildings Nos. 1 and 2 has a bed or sleeping place. Likewise, the devices covering the windows of the cells in buildings Nos. 1, 2 and 5 should be modified without delay, in order to improve access to natural light and air;**
- **pay particular attention to the partitioning of the in-cell toilets in the course of the establishment's renovation.**

**The CPT also very much hopes that the new prison building, with a capacity of 270 places, will be soon brought into service.**

With regard to activities, **the CPT recommends:**

- **that the use of the exercise yards and, if necessary, their lay-out be reviewed in the light of the remarks made in paragraph 127;**
- **that the possibility be explored of making use of the open areas within the establishment's perimeter and of the abandoned building on the SIZO's premises, for the purpose of organising sports and leisure activities.**

**It goes without saying that as overcrowding is reduced, fuller programmes of activities must be introduced. The aim should be to ensure that all prisoners are able to spend a reasonable part of the day (i.e. eight hours or more) outside their cells, engaged in purposeful activities of a varied nature (recreation/association; work, preferably with vocational value; education; sport). As regards more particularly juvenile prisoners, they should be offered a full programme of educational, recreational and other purposeful activities designed to bring out their potential for social integration or re-integration; physical education should constitute an important part of that programme.**

c. prisoners sentenced to death

131. Fifteen prisoners sentenced to death were housed on the ground floor of building No. 2 of SIZO No. 203 in Kharkiv.<sup>7</sup> The CPT must express at the outset its serious concerns about the conditions under which these prisoners were being held and the regime applied to them.

132. Prisoners sentenced to death were usually accommodated two to a cell, the cell measuring 6.5 - 7m<sup>2</sup>. The cells had no access to natural light, the windows being obscured by metal plates. As regards the artificial lighting, it was permanently on, and not always sufficiently strong, with the result that some cells were dim. To ventilate the cells, prisoners could pull a cord that opened a flap; despite this the cells were very humid. Further, the cells were quite cold.

The equipment was rudimentary: a metal bed and/or sleeping platform (equipped with a thin mattress, sheets of dubious cleanliness and a blanket which was manifestly insufficient to keep out the cold), a shelf and two narrow stools. Prisoners were supposed to be able to listen to radio programmes via a speaker built into the wall of the cell, but all those who spoke to the delegation reported that the radio only functioned sporadically.

All the cells had unpartitioned toilets which faced the living area; as a result, a prisoner using the toilet had to do so in full view of his cellmate.

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Both the Ministry of Justice and the Ministry of Internal Affairs gave assurances that, since 11 March 1997 - the date of the last execution in Ukraine - a *de facto* moratorium has been observed. Further, the Minister of Justice declared to the CPT's delegation her personal commitment to the abolition of the death penalty, in line with the commitments made by Ukraine at the time of its accession to the Council of Europe. In this connection, it should be noted that Ukraine signed Protocol No. 6 of the European Convention on Human Rights on 5 May 1997.

As regards the provision of personal hygiene products, prisoners sentenced to death were in a similarly difficult situation as many of the other inmates: items such as soap and toothpaste were rarities.

**The CPT recommends that the Ukrainian authorities take immediate action to remedy the shortcomings described above with regard to lighting, heating, bedding, and personal hygiene products (cf. also the recommendations made in paragraph 130).**

133. Prisoners sentenced to death had no form of activity outside their cells, not even an hour of open-air exercise; there can be no justification for such a situation. At best, they could leave their cells once a week to use the showers in the cell block, and for an hour once a month, if they were authorised to receive family visits.

As for in-cell activities, they consisted of reading and listening to the radio, when it worked. Apart from the monthly visits which some inmates received, human contact was limited essentially to the occasional visit by an orthodox priest or a member of the health-care staff; it is noteworthy that they spoke to the prisoners through a grille in the cell door.

134. In short, prisoners sentenced to death were locked up for 24 hours a day in cells which offered only a very restricted amount of living space and had no access to natural light and sometimes very meagre artificial lighting, with virtually no activities to occupy their time and very little opportunity for human contact. Most of them had been kept in such deleterious conditions for considerable periods of time (ranging from 10 months to over two years). Such a situation may be fully consistent with the legal provisions currently in force in Ukraine concerning the treatment of prisoners sentenced to death. However, this does not alter the fact that, in the CPT's opinion, it amounts to inhuman and degrading treatment.

135. As already indicated in paragraph 13, the delegation made an immediate observation, requesting that prisoners sentenced to death – not only in the Kharkiv SIZO but throughout Ukraine – be offered at least one hour of outdoor exercise per day.

By letters of 29 June and 16 September 1998, the Ukrainian authorities informed the CPT that a new Instruction had been issued on 20 April 1998 which provided for an improvement of the conditions of detention of prisoners sentenced to death, notably by enlarging and refurbishing the cells and allowing such prisoners one hour of open-air exercise every day. The CPT welcomes this development. **It would like to receive detailed information on the precise practical improvements made to the conditions of detention of persons sentenced to death, both at the Kharkiv SIZO and at other SIZOs. The CPT also re-iterates its request, pursuant to Article 8, paragraph 2(d), of the Convention that it be sent a copy of the above-mentioned Instruction.**

136. Any regime which denies appropriate mental and physical stimulation to prisoners is likely to have a detrimental effect on the health of the person concerned and, in particular, can lead to a gradual deterioration of mental faculties and social abilities.

The delegation's observations in the course of the visit indicated that many prisoners sentenced to death had been adversely affected by the harsh and impoverished regime to which they were subjected. This was confirmed by the establishment's head doctor, who stressed that the conditions under which these prisoners were being held had led to numerous somatic and psychological ailments.

**Consequently, the CPT recommends that the Ukrainian authorities urgently review the regime applied to prisoners sentenced to death held in Kharkiv SIZO n° 203, as well as in other prison establishments in Ukraine, in order to ensure that they are offered purposeful activities and appropriate human contact. If necessary, the relevant Instructions should be amended.**

137. The CPT has also noted with concern that prisoners sentenced to death were entitled to a limited number of visits (one hour of visiting time per month), with effect only from the date of confirmation of their sentence. Similar restrictions were placed on correspondence. As a result, some of these prisoners had had no contact with their families for a long time. The limit on correspondence of one letter per month also forced the prisoners to choose whom to write to if their families were dispersed. Further, they were not allowed to make or receive telephone calls.

**The CPT recommends that the Ukrainian authorities revise the relevant regulations so that prisoners sentenced to death in Ukraine are given significantly more opportunities for contact with the outside world.**

138. The delegation also received numerous complaints from prisoners sentenced to death about the fact that they lacked information with regard to their legal situation (the progress of their cases, follow-up to applications for cases to be reviewed, examination of their complaints etc). It was also alleged that petitions addressed to the European Commission of Human Rights were not being forwarded by the authorities until appeals for presidential pardon had been lodged and considered.

**The CPT would like to receive the Ukrainian authorities' comments on these remarks.**

139. Quite apart from the considerations set out above, the CPT questions the rationale of the system of permanently separating prisoners sentenced to death from the rest of the prison population. What justification can there be for such an approach, given that there is a moratorium on executions and that the formal abolition of the death penalty would appear to be imminent?

**The CPT would appreciate the Ukrainian authorities' comments on this matter.**

#### 4. Health-care services

##### a. introduction

140. At the time of the visit, health-care in prison establishments was provided by the Ministry of Internal Affairs' Department for Health Protection. As already noted, since April 1998 prison establishments have been placed under the authority of an independent State Department for the Execution of Sentences. In this connection, **the CPT would like to know whether this transfer of responsibilities also has involved the above-mentioned Department for Health Protection.**

141. The talks held with the Deputy Chief of the Department for Health Protection at the Ministry of Internal Affairs, and those held at the Ministry of Public Health, revealed that there is no direct link between these two authorities. The prison health-care services simply apply general health guidelines issued by the Ministry of Public Health; for the remainder, the interface is chiefly based on a 1993 regulation laying down the arrangements for hospitalising prisoners in need of urgent treatment in Ministry of Public Health establishments. It also emerged that in the Ministry of Public Health's view, given the division of responsibilities, the issue of health-care for prisoners lay outside its remit.

A similar situation is found in many other countries in Europe, where the provision of health-care is the responsibility of the authority in charge of prison establishments. However, the view is increasingly being held that the role of Ministries of Health should be strengthened in such matters as hygiene control, the assessment of health-care and the organisation of health-care services in prison. This approach is clearly reflected in Recommendation R (98) 7 of the Committee of Ministers to member States concerning the ethical and organisational aspects of health-care in prison.

142. The CPT is convinced that a greater involvement of Ministries of Health in this area will help to ensure optimum health-care for prisoners, as well as implementation of the general principle of the equivalence of health-care in prison with that in the outside community. Consequently, **the CPT would like to receive the views of the Ukrainian authorities as regards the possibility of giving increased responsibility to the Ministry of Public Health in the field of the provision of health-care in the Ukrainian prison system, including as regards the recruitment of health-care staff and the supervision of their work.**

**Furthermore, whatever institutional arrangements are made for the provision of health-care in prisons, it is essential that prison doctors' clinical decisions should be governed only by medical criteria and that the quality and effectiveness of their work should be assessed by a qualified medical authority.**

143. The Deputy Chief of the Department for Health Protection in charge of Ukraine's prison medical services was trying to establish new principles in the area of health-care (for example, by introducing the principle of the confidentiality of medical files, urging prison establishments to drop the practice of segregating HIV-positive prisoners, and drawing up health-care guidelines reflecting the specific nature of the prison environment).

The CPT cannot but encourage such efforts. In fact, it is essential to devise a comprehensive policy on health-care in prison establishments, based on a number of fundamental principles. In this context the Ukrainian authorities could usefully draw on two recent texts, the first produced by the CPT in 1993 and entitled "Health-care services in prisons"<sup>8</sup> and the second, the Committee of Ministers Recommendation R (98) 7.

**The CPT recommends that the Ukrainian authorities pursue their efforts to establish a comprehensive policy on health-care in prisons, in the light of the above remarks.**

b. staff and facilities

144. The medical team at the Kharkiv SIZO comprised seven doctors (a head doctor, three general practitioners, a penologist, a dermato-venereologist and a psychiatrist), a dentist and a radiologist, all working on a full-time basis. In addition, outside specialists (ENT, gynaecologist, a second psychiatrist, a general surgeon, a maxillo-facial surgeon, etc.) held regular consultations at the establishment, generally once a week. Further, in emergencies prisoners could be admitted to state hospitals within the system of the Ministry of Public Health. Nine feldschers with four years' training, likewise employed on a full-time basis, also formed part of the health-care team; two of them were assigned specific tasks, one as a laboratory worker and the other as an X-ray technician. The doctors and feldschers were assisted by ten auxiliaries with two to three years' training (two of whom were specialised in disinfection tasks), who were largely responsible for taking samples for tests. However, the health-care team did not include a psychologist.<sup>9</sup>

145. Such a team cannot be considered sufficient to provide adequate health-care in a SIZO of this capacity (i.e. nearly 4,000 prisoners), with a very high turnover in terms of both new arrivals and prisoners in transit. The shortage of feldschers and auxiliary staff was particularly striking. The delegation itself witnessed this shortage of staff and its detrimental effects on the quality of care, despite the staff's efforts and goodwill.

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<sup>8</sup> Document CPT/Inf(93)12, pp. 13-22 (distributed in the Ukrainian language at the information seminar on the CPT held in Kyiv in October 1997).

<sup>9</sup> According to the information gathered, this profession had only just been introduced in the prison system and four posts had been created, with establishments for sentenced prisoners being given priority.

146. The health-care service facilities at the Kharkiv SIZO also left a lot to be desired. The premises were modest and not large enough to meet the establishment's needs.

The main health-care unit comprised a number of offices where consultations and examinations took place (X-ray room, dentist's room, laboratory), as well as cells serving as sick-rooms. The general level of hygiene was satisfactory. However, the consultation/examination rooms were only modestly equipped, and the equipment tended to be timeworn; that said, it was almost always in working order.

As for the cells for sick prisoners in this main unit, they were in theory designed to accommodate 50 prisoners; however, at the time of the visit they held 84 prisoners. If only from the point of view of cleanliness and equipment (e.g. beds, clean and adequate mattresses/sheets), material conditions in these cells were better than those found in most other parts of the prison; the natural light, artificial lighting and the ventilation were also adequate. Nevertheless, the occupancy rate was much too high for the proper provision of care and, more generally, for a satisfactory health environment.

Moreover, the small capacity of this unit and the large number of prisoners suffering from various disorders (psychiatric conditions, sexually transmitted diseases or tuberculosis) had compelled the management to set up sanitary cells ("medical isolation units") scattered throughout the prison and holding several hundred sick prisoners. Conditions in these units varied from one building to another; in some cases - especially those for prisoners suffering from tuberculosis (cf. paragraph 155) - they could only be described as appalling. In addition, the fact that these cells were scattered around the establishment had adverse effects on the administration and supervision of health-care, including, as will be seen below, the taking of medicines.

147. In view of the remarks made in paragraphs 144 to 146, **the CPT recommends that the Ukrainian authorities:**

- **endeavour to increase the number of health-care staff;**
- **review the facilities and resources made available to the medical service, in order to ensure rational management of health-care for patients placed in sanitary cells, as well as material conditions meeting the standards of hygiene required in a health-care unit. This should include a more centralised location of the health-care facilities.**

148. The CPT is also concerned about the supply of appropriate medicines. Its delegation noted that the SIZO pharmacy produced about 10% of the simple medicines administered (ointments, cough syrups) and most of the drips. However, the standards of asepsis and general cleanliness of this local production of pharmaceutical products were inadequate.

As for the rest of the necessary medicines, which came from outside suppliers, the delegation noted that the available stocks were modest; the reserves of medicines for tuberculosis, for example, covered only two to three weeks' treatment. The health-care staff in fact identified the poor supply of medicines – with stocks sometimes running out – as a major problem. The talks held with the Deputy Chief of the Department for Health Protection at the Ministry of Internal Affairs revealed that this problem was not specific to the Kharkiv SIZO. It emerged in particular that prisoners depend largely on their families (and the latter's resources) to obtain the medicines prescribed.

Such haphazard arrangements for the supply of medicines are unsatisfactory in general, and particularly serious when it comes to the treatment of certain diseases like tuberculosis, to the extent it may cause the development of multi-resistance phenomena.

**The CPT recommends that the Ukrainian authorities take measures without delay to ensure the supply of appropriate medicines to the Kharkiv SIZO and, if necessary, to other prison establishments.**

c. medical screening on admission

149. The importance of medical screening of new arrivals - especially at establishments which, like the Kharkiv SIZO, represent points of entry into the prison system - cannot be over-emphasised. Such screening is indispensable, in particular in the interests of preventing the spread of transmissible diseases and suicides, and ensuring the timely recording of injuries.

150. At the Kharkiv SIZO, the procedure for medical screening on admission could be described as adequate. All newly arrived prisoners were immediately seen by a feldscher or a doctor who carried out a medical examination including checking for any injuries, skin diseases and/or infectious diseases, together with a targeted examination based on the patient's medical history. Prisoners were also given an X-ray and various other routine tests (such as screening for syphilis and stool tests to detect parasites). Other tests, such as screening for HIV and hepatitis B, were also offered to categories of prisoners considered at risk. During the screening, prisoners were given an information leaflet on HIV infection and certified in writing in their medical files that they had been informed of the modes of transmission and means of prevention of the infection.

Prisoners in transit were also medically screened on arrival – albeit in a more superficial manner – in the light of the medical file accompanying them. Those who had clinical complaints were given a more thorough medical examination.

151. However, the situation was less satisfactory as regards the recording of injuries observed on arrival. When such injuries were found, the medical staff recorded them in the prisoner's medical file, in principle with any allegations made or information given by the prisoner. In theory, the doctor had to inform the prison management of such cases, so that it could take the appropriate measures. However, it emerged that attention was paid only to serious injuries observed on newly arrived prisoners. Moreover, the data recorded in such cases (both in the medical file and in the special medical register for admissions) was of a summary nature (no indication of any allegations made, no medical conclusions). Lastly, prisoners in transit were not given this type of medical check at all.

The CPT considers that the file drawn up after the examination of a prisoner – whether newly arrived or in transit – who shows signs of injury should contain:

- i) an account of the statements made by the person concerned which are relevant to the medical examination (including the description of his/her state of health and any allegations of ill-treatment);
- ii) a list of objective medical findings based on a thorough examination;
- iii) the doctor's conclusions in the light of i) and ii).

In addition, if the prisoner so requests, the doctor should provide him/her with a certificate describing the injuries.

**Consequently, the CPT recommends that the Ukrainian authorities develop this aspect of medical screening on admission, in the light of the above remarks. The same approach should also be followed whenever a prisoner is medically examined following a violent episode in prison.**

d. transmissible diseases

152. Tuberculosis was identified as a major problem both by the Deputy Chief of Ukraine's prison medical services and by the health-care team at the Kharkiv SIZO. It was stressed by them that in recent years there had been a significant increase in the number of tuberculosis cases, attributed primarily to prison overcrowding and to the shortage of appropriate sanitary means to control the disease. It was also stated that the tuberculostatic medicines currently available on the market were costly, while the range available was decreasing. Also, the number of cases of multi-resistance to tuberculostatic medicines in Ukraine's prisons was said to be rising (though the prison medical services did not yet have more specific information on the exact scale of the trend). As regards the Kharkiv SIZO, for example, the doctor in charge of the health-care service estimated that about 20% of the prisoners registered at the establishment as suffering from tuberculosis had a serious form of tuberculosis, caused in particular by resistance to antibiotics.

The CPT fully shares the concerns voiced by the Deputy Chief of Ukraine's prison medical services and the Kharkiv SIZO health-care team. Unless adequately treated, tuberculosis is a life-threatening disease. The prison authorities therefore have a clear obligation to ensure adequate methods of prevention and detection, and to provide appropriate treatment.

153. As regards the procedure for medical screening, prisoners entering the prison system underwent an X-ray examination and subsequently, every six months, a radiophotography check (if the results were positive, patients were separated from the rest of the prison population and placed in the care of the pneumologist). In the Kharkiv SIZO, the Ziehl-Nielsen reaction was sometimes used, but only for prisoners exhibiting positive results.

It is currently widely acknowledged by the competent medical circles (see in particular the guidelines drawn up in respect of tuberculosis by the WHO and the ICRC) that in populations with a high tuberculosis prevalence, an X-ray examination cannot constitute in itself a satisfactory initial method for detecting infectious pulmonary tuberculosis cases. In such situations, it is first of all essential to assess the clinical symptoms of the disease during the initial medical screening – for example, persistent cough, sputum production and weight loss – and then to proceed to sputum smear microscopy for pulmonary tuberculosis suspects (regardless of whether they have undergone an X-ray examination) in order to detect the infectious cases. If necessary, this first stage could be followed by another diagnostic test.

In addition, in view of the high risk of transmission during custody in Militia establishments (where conditions are very conducive to airborne infection), it would be highly desirable to have the tuberculosis screening process carried out at the initial stage of a person's deprivation of liberty. Moreover, close co-operation with the Ministry of Public Health in this area is of crucial importance.

**The CPT recommends that the Ukrainian authorities review the manner in which prisoners are screened for tuberculosis, taking due account of the above remarks and drawing inspiration from the international principles recently developed to control and fight tuberculosis.**

154. Clearly, multi-resistant forms of tuberculosis give particular cause for concern in terms of public health. In-depth surveys must therefore be conducted as soon as possible to establish the nature and extent of the problem, both at the Kharkiv SIZO and, if necessary, in Ukraine's other prisons establishments. If the existence of these forms of tuberculosis is confirmed, suitable measures will have to be taken as a matter of urgency to curb the spread of the disease among prisoners and prison staff. For the purpose, inspiration could be drawn from the latest guidelines issued by the WHO and the ICRC.

**The CPT recommends that the necessary measures be taken in the light of the above considerations.**

155. The CPT is also seriously concerned about the care, at all levels, of prisoners suffering from tuberculosis in the Kharkiv SIZO.

Firstly, as already mentioned in paragraph 148 above, the supply of tuberculostatic medicines was not always ensured in an adequate manner.

Secondly, the delegation noted that there was a lack of monitoring of the treatment, which resulted in a high rate of non-compliance by prisoners who were complaining of the side effects of medicines (e.g. pains in the liver). On this point, a medical member of the delegation observed that these medicines were not combined with vitamins which should normally accompany the taking of such tuberculostatics. Moreover, medicines were distributed by a feldscher who handed a box containing all the tuberculostatics for the occupants of a cell through the opening in the cell door, without supervising the taking of the medicines. Health-care staff acknowledged that, given the current circumstances (scattering of patients throughout the SIZO, staff shortage), it was difficult to supervise the taking of medicines.

Thirdly, the distribution of tuberculosis patients within the establishment - according to the stage reached in the disease - appeared haphazard. In this connection, special reference should be made to tuberculosis patients' cell 64 in Building 2, which contained 44 persons who were at different stages in the disease or whose diagnosis had not yet been confirmed.

Fourthly, the conditions of detention of tuberculosis patients were inadequate, especially in terms of material conditions and possibilities for maintaining personal hygiene (which were identical to those for the general prison population). In the above-mentioned cell 64, the situation was totally unacceptable: forty-four patients were crammed together in an area of 56 m<sup>2</sup>, which was unhygienic and poorly ventilated - in other words, in conditions favouring the spread of the disease.

These different factors result in an unacceptable situation, not only from a humanitarian standpoint, but also because of the risk of contagion it indisputably entails. The conditions in cell 64 amounted to inhuman treatment.

156. **The CPT recommends that the Ukrainian authorities take the necessary measures in order to ensure at the Kharkiv SIZO:**

- **satisfactory conditions of hygiene and adequate ventilation in the cells for tuberculosis patients, with priority being given to cell 64. Care should also be taken to ensure that such prisoners are able to maintain a standard of personal hygiene consistent with the requirements of their state of health;**
- **accommodation for prisoners suffering from tuberculosis – irrespective of their category – based on strict diagnostic criteria;**
- **appropriate distribution and appropriate monitoring of the taking of tuberculostatic medicines.**

As regards the supply of tuberculostatic medicines, the CPT refers to the recommendation already made in paragraph 148.

e. food

157. The delegation heard many complaints from prisoners in the Kharkiv SIZO about the insufficiency of the food (particularly as regards animal proteins, such as meat and butter), though it was stressed that, since a few days before the visit, the diet had improved somewhat with the addition of butter and sugar. In practice, the prisoners relied to a great extent on parcels brought by their visitors. The six dietary norms used were based on an old instruction from the Ministry of Internal Affairs, which had not been renewed and continued to serve for catering and accounting operations (ranging from 2,726 calories per day for remand prisoners to 3,062.2 for sentenced prisoners; for tuberculosis patients this daily norm was raised to 3,144 calories and for pregnant women and nursing mothers to 3,284 calories). The weekly menus drawn up by the dietician for the head cook took account of the necessary requirements in calories, lipids and carbohydrates and were expressed in grams per person for each product (e.g. the norm established for sentenced prisoners provided for 80 g of meat per person per day).

However, it became apparent from the interviews with staff in charge of the provision of food that, despite their efforts, they could not comply with these norms. In particular, this was said to be the result of the prison's financial difficulties. Verification of the food stocks and food preparation by a medical member of the delegation confirmed this state of affairs. The checks revealed that of the 380 kg of meat scheduled on that day for a prison population of 3,760 people, it had only been possible to prepare 130 kg (i.e. 34.57g per person).

158. In addition, the conditions of hygiene in which meals were prepared in the kitchens left much to be desired. The same was true of food storage: the cold storage unit and freezers were not equipped with a temperature regulator (or where there was one, it did not work), some of the meat hooks were rusty and there was no means of checking the expiry date on tins. That is an unsatisfactory situation in health terms.

159. **The CPT recommends that the Ukrainian authorities:**

- **ensure without delay that the various norms laid down for the daily menus are strictly complied with;**
- **ensure that meals are prepared in appropriate hygiene conditions;**
- **remedy the deficiencies as regards the storage of food products (especially as regards cold storage/freezer units, control of the expiry date of tinned food).**

## 5. Other issues of relevance to the CPT's mandate

### a. prison staff

160. The CPT wishes to emphasise the great importance it attaches to the adequate recruitment and training of prison staff. There is no better safeguard against ill-treatment than properly recruited and trained prison staff who know how to adopt the appropriate attitude in their relations with prisoners. In this regard, developed interpersonal communication skills are an essential part of the make-up of such staff. Such skills will often enable them to diffuse situations which could otherwise turn into violence. More generally, they will help to reduce tensions and improve the quality of life in the prison concerned, to the benefit of all concerned.

It should be emphasised in this context that developing good relations between prison staff and prisoners will not only reduce the risk of ill-treatment but also enhance control and security.

161. It emerged from the delegation's interviews with prisoners that over the past few years, the general behaviour of staff towards prisoners has evolved in a positive direction. However, the delegation's on-the-spot observations at the Kharkiv SIZO suggested that there was still room for improvement in this area. In particular, there was no commitment on the part of staff to enter into a constructive dialogue with prisoners. Prison staff adopted a very militaristic attitude towards prisoners and kept their direct contact with them to a minimum; it should be noted that female staff – mainly allocated to women prisoners and minors – were more inclined to communicate. In fact, the dialogue between staff and prisoners seemed to have been substituted by a system under which the "duty" prisoner appointed for each cell (in line with the instructions in force) reported any problems to the staff. As a result, the staff's job was largely limited to opening and closing cell doors and monitoring the movement of prisoners. Only the staff in charge of sentenced prisoners and social activities (a total of 13 people for the whole prison) attempted to establish more personal contact with prisoners.

162. The training of prison staff was being carried out at local level at the time of the visit. The staff of the Kharkiv SIZO were required to undergo a one-year probationary period, followed by training at the Ministry of Internal Affairs' specialist school in Dnipropetrovsk. The training course emphasised the directives issued by the Ministry of Internal Affairs and combat techniques (e.g. methods of restraint, use of firearms, civil defence, etc.).

The CPT is aware that the Ukrainian authorities are presently striving to develop training for prison staff, particularly under the joint assistance programme of the European Commission and the Council of Europe on the reform of the prison system, which includes training courses in host European countries.

**The CPT recommends that a high priority be given to developing both initial and in-service vocational training of prison staff at all levels. In the course of such training, considerable emphasis should be placed on the acquisition and development of interpersonal communication skills. Building positive relations with prisoners should be recognised as a key feature of a prison officer's vocation.**

b. discipline and isolation

163. Disciplinary matters for remand prisons are regulated by Section 14 of the Law on detention on remand and Rule 17 of the Rules of conduct for remand and sentenced prisoners in remand prisons. The most severe disciplinary sanction is placement in a disciplinary cell, for up to ten days for adults (15 days for working sentenced prisoners) and up to five days for minors.<sup>10</sup>

Disciplinary sanctions are decided by the prison governor, after investigation and once the prisoner concerned has stated his/her point of view in writing. However, the Director of the Kharkiv SIZO indicated that in the event of a very serious disciplinary offence, he interviewed the prisoner concerned. The prisoner is notified of the sanction.

In the CPT's view, disciplinary procedures should ensure that the prisoner is heard in all cases on the subject of the offence he/she is supposed to have committed. **The CPT recommends that the Ukrainian authorities ensure that this is the case; if necessary, the relevant regulations should be amended accordingly. The CPT would also like to know whether prisoners have the right to appeal to a higher authority against disciplinary sanctions.**

164. Conditions of detention in the disciplinary unit of the Kharkiv SIZO were not acceptable. The cells were very small (3,8 m<sup>2</sup>) and had no access to daylight. In addition, with the exception of women and minors, prisoners placed in disciplinary cells received neither a mattress nor blankets at night. Moreover, with the exception of minors, they were not allowed outdoor exercise. The only positive point concerned artificial lighting and ventilation, which were adequate.

**The CPT recommends that the Ukrainian authorities immediately take the necessary measures to ensure that all prisoners placed in disciplinary cells:**

- are given a mattress and blankets for the night;
- are offered one hour of outdoor exercise per day.

**It also recommends that steps be taken to ensure that all such prisoners have access to reading matter.**

**Further, the CPT recommends that the Ukrainian authorities enlarge the disciplinary cells in the Kharkiv SIZO and provide them with access to natural light.**

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<sup>10</sup> Pregnant women and women with children cannot be placed in disciplinary cells.

165. The CPT has noted that Section 8 of the Law on detention on remand allows a remand prisoner to be placed in solitary confinement for various reasons, including that of keeping the investigation secret or preventing the commission of further offences, by decision of the authority in charge of the case or of the governor of the institution.

**The CPT would like to receive detailed information on the possible duration of such a solitary confinement measure and the existing procedural safeguards (for example, are prisoners placed in solitary confinement informed of the reasons for the measure taken against them? Are they allowed to present their views? Can they contest the measure before another authority?).**

c. contact with the outside world

166. It is very important for prisoners to be able to maintain good contact with the outside world. Above all, prisoners must be given the means of safeguarding their relationships with their families and close friends, and especially with their spouses or partners and their children. The continuation of such relationships is of crucial importance for all those concerned, particularly in the context of prisoners' social rehabilitation. The guiding principle should be to promote contact with the outside world; any restrictions on such contacts should be based exclusively on security concerns of an appreciable nature or considerations linked to available resources. That is the spirit underlying several recommendations in the 1987 European Prison Rules, especially Rule 43 (paragraph 1) and Rule 65 (point c).

167. According to the Law on Detention on Remand and the Rules of Conduct for Remand and Sentenced Prisoners in Remand Prisons, visits to remand prisoners from relatives and friends are subject to express authorisation by the competent authority (investigator, investigating authority or court with jurisdiction in the case). Where authorised, visits amount to one or two hours per month. Lawyers' visits may take place at all times, with no limits on duration, once either the remand prisoner or the competent authority has confirmed in writing that the lawyer is in charge of the case on the prisoner's behalf. The same rules concerning authorisation apply to correspondence. It should be pointed out here that the delegation met many remand prisoners in the Kharkiv SIZO who had spent long periods of time without being allowed to receive visits from their relatives and friends, or being entitled to correspond.

As for sentenced prisoners, those of them who worked were entitled to an annual quota of 24 four-hour visits. The other sentenced prisoners' visiting rights varied so widely – depending on the rules applying to them in establishments for sentenced prisoners and on the detention regime ordered by the trial court – that the delegation was not able to form a clear idea of all the distinctions in the matter. As to correspondence, it is not subject to restrictions after a person has been sentenced (except in the case of prisoners sentenced to death, cf. paragraph 137).

168. As far as visits to remand prisoners are concerned, the CPT recognises that it may sometimes be necessary, in the interests of justice, to place certain restrictions on visits for particular remand prisoners. However, these restrictions should be strictly limited to the requirements of the case and should apply for the shortest possible period. On no account should visits between a remand prisoner and his/her family be banned for a prolonged period. If there is considered to be an ongoing risk of collusion, it is preferable to authorise visits but under strict supervision. This approach should also cover correspondence with relatives.

**The CPT recommends that the question of remand prisoners' visits and correspondence be reviewed, in the light of the above remarks. It also would like to receive details (frequency, duration) of the visiting rights of sentenced prisoners other than those employed in the SIZOs. Further, the CPT would like to know whether the confidentiality of correspondence between prisoners (whether remand or sentenced) and their lawyers is guaranteed.**

169. In the Kharkiv SIZO, visits took place in eight narrow visiting booths equipped with glass screens. All visits to remand prisoners and all visits to sentenced prisoners, including workers, normally take place in such booths. At the time of the visit, however, work was in progress to introduce an additional visiting area comprising 12 booths and some rooms (the latter designed to allow working sentenced prisoners to enjoy visits in more open conditions).

The CPT fully understands that visits in closed booths may be necessary in some cases; however, **the Committee invites the Ukrainian authorities to review the conditions under which visits take place, in order to ensure that, as far as possible, not only working prisoners but also other inmates in remand prisons receive visits in relatively open conditions.**

d. complaints and inspection procedures

170. Effective complaints and inspection procedures are fundamental safeguards against ill-treatment in prisons. Prisoners should have avenues of complaint open to them, both within and outside the prison system, and be entitled to confidential access to an appropriate authority.

171. A remand prisoner can submit complaints to the prison governor and has confidential access to the public prosecutor. **The CPT invites the Ukrainian authorities to add the President of the CPT to the list of authorities with whom prisoners can communicate on a confidential basis.**

172. As regards the inspection of remand prisons, it is a matter for the public prosecutor, who is required to monitor compliance with the law in these establishments. According to the information gathered by the delegation, these inspections take place once a month and give rise to a report. The representatives of the Prosecutor General's Office of Ukraine indicated that public prosecutors inspecting prisons were entitled to visit the detention areas in order to inspect conditions of detention, to control disciplinary measures as well as compliance with legislation and regulations. In this context, **the CPT would like to receive copies of the reports drawn up by the public prosecutor responsible for inspecting the Kharkiv SIZO for the period June to October 1998.**

e. reception/transit facilities and waiting cubicles

173. The CPT's delegation was very concerned by the situation observed in the reception/transit facilities in the Kharkiv SIZO's admissions unit. In some cells the delegation noted an unacceptable occupancy rate, even if this was only for a few hours. For example, 12 men and minors were waiting, standing up, in a cell measuring some 8m<sup>2</sup>; a similar situation was found in the women's waiting cell, where up to 30 prisoners were crammed into a 16m<sup>2</sup> cell. These cells were so crowded that the prisoners could not even sit down. It is also noteworthy that some cells next to the above-mentioned cells were empty.

Admittedly, given the large number of arrivals and transfers with which the admissions unit had to cope, its task was far from easy and staff were obliged to improvise. However, situations such as that described above cannot be regarded as an acceptable manner of treating persons deprived of their liberty. **The CPT invites the Ukrainian authorities to review as soon as possible the conditions under which prisoners await their allocation/transfer in the admissions unit.**

174. In building No. 2, the delegation also saw two extremely small waiting cubicles (less than 1m<sup>2</sup>), which were totally dark. In terms of their size alone (not to mention the lack of lighting), these cubicles are entirely unsuited to accommodating a person for any length of time whatsoever. **The CPT recommends that they be immediately withdrawn from service.**

**C. Establishments under the authority of the State Security Service of Ukraine**

175. The CPT delegation visited one of the five pre-trial prisons under the authority of the State Security Service of Ukraine, namely the SIZO in Kyiv. Located in a building constructed some twenty years ago, the SIZO had a capacity of 120 places. However, at the time of the visit, only 35 people were detained there, as a result of which many cells were empty. Most of the inmates were awaiting trial, either for offences that came under the jurisdiction of the State Security Service or for complex offences investigated by the prosecutor's office or the investigation bodies of the Ministry of Internal Affairs. Six of the inmates were sentenced prisoners employed to carry out maintenance and repair work at the SIZO, and two other prisoners were awaiting extradition.

Generally speaking, periods of custody in the SIZO lasted for about four to five months; however, three remand prisoners had been held there for much longer: one since December 1994 and the other two since October 1996.

176. The delegation did not hear any allegations of ill-treatment of persons detained at the SIZO by staff working at the establishment and did not find any other evidence of such acts. More generally, the delegation observed that relations between prisoners and staff were, on the whole, satisfactory.

177. As regards material conditions of detention, it should be stressed at the outset that they contrasted sharply with those observed in the vast majority of the other places of detention visited in Ukraine.

Prisoners were accommodated in cells of an acceptable size for the number of occupants: two persons in cells of 10m<sup>2</sup> and three in cells of 14m<sup>2</sup>. All the cells had access to natural light; however, this was restricted by external covers which obscured the windows up to halfway. Artificial lighting and ventilation were adequate.

The cell equipment could be described as satisfactory. Cells contained beds with full bedding, which was clean and in good condition; further, prisoners had access to radio and television in their cells. The cells were also equipped with a toilet and a washbasin. However, it is regrettable that the toilets were not partitioned off, which meant that prisoners were forced to comply with the needs of nature in full view of their cell-mates. The CPT has already criticised this state of affairs.

The state of repair and the level of cleanliness in cell blocks were satisfactory. Further, prisoners had access to the necessary means of ensuring an adequate level of personal hygiene; it should also be noted that, contrary to the situation in most of the other places of detention that were visited, prisoners with no financial resources were provided with basic products enabling them to maintain their personal hygiene. Moreover, prisoners were able to take a shower once a week.

178. The CPT has noted with satisfaction the positive observations made by the delegation as regards material conditions of detention. Nevertheless, **it recommends that the Ukrainian authorities:**

- **improve access to natural light in the cells (for example, by removing the external metal covers obscuring the windows);**
- **find a way of partitioning off the toilets in the cells.**

179. As regards outdoor exercise, the situation was less satisfactory. Admittedly, all prisoners were allowed one hour of outdoor exercise per day. However, the eight exercise yards of about 13 m<sup>2</sup> each were not large enough to enable prisoners to exert themselves physically.

**The CPT recommends that the Ukrainian authorities review the outdoor exercise facilities.** For example, they could be enlarged by merging together several exercise yards, thereby increasing the space available. The larger areas thus provided could also be used for sporting activities.

180. With regard to activities, the situation was similar to that observed at the SIZO in Kharkiv. Apart from the working sentenced prisoners, the rest of the inmates did not have access to any out-of-cell activities, except for the daily outdoor exercise period. In-cell activities essentially comprised reading (the SIZO had a library) and watching television or listening to the radio.

In this connection, the CPT wishes to re-iterate that prisoners should benefit from a programme of purposeful activities of a varied nature (association/recreation; work, preferably with vocational value; education; sport, etc.), enabling them to spend a reasonable part of the day (i.e. at least 8 hours) outside their cells. This is of even greater importance for prisoners deprived of their liberty for months, even years, as was the case at the SIZO of the State Security Service in Kyiv. **The CPT recommends that measures be taken to this effect.**

181. Health-care was provided by a general practitioner and a feldscher, both working full-time; bearing in mind the number of prisoners at the time of the visit, this health-care staffing provision was adequate. The health-care service premises were reasonably well-equipped and the level of cleanliness was satisfactory. Further, the prison pharmacy was well stocked at the time of the visit.

182. All prisoners underwent a medical screening on arrival, which could be described as adequate. It should be emphasised in this connection that if any signs of injury were observed at this stage, a medical report was drawn up; this report was countersigned by the prisoner, who could receive a copy of it at the request of his/her lawyer and with the public prosecutor's permission. In this context, **the CPT recommends that steps be taken to ensure that this aspect of the medical screening on arrival meets all the requirements set out in the recommendation made in paragraph 151.**

183. During their time in custody, prisoners could request a medical examination, which in principle took place on the same day. Further, specialist and dental appointments were organised wherever necessary and, in the event of an emergency, prisoners were rapidly transferred to a nearby public hospital, a prison hospital or the Security Service's polyclinic. The delegation heard hardly any complaints about access to medical care, except that the provision of non-emergency external medical care took a considerable period of time, since it required the approval of the authority in charge of the particular case. **The CPT would like to receive the comments of the Ukrainian authorities on this matter.**

184. Prisoners could be subjected to disciplinary sanctions. These were governed by the same rules as those described in paragraph 163. In this connection, **the recommendation and the request for information made by the CPT in paragraph 163, concerning safeguards for prisoners against whom disciplinary measures are taken, also apply to the present context.**

The SIZO of the State Security Service possessed one cell used for disciplinary sanctions, which was of an acceptable size (some 7m<sup>2</sup>) and was adequately equipped (with a wooden platform, a table and a chair). The cell had no access to natural light; however, the artificial lighting was satisfactory. **The CPT recommends that the Ukrainian authorities provide access to natural light in the 7m<sup>2</sup> disciplinary cell. It would also like to know whether prisoners placed in punishment cells are provided with a mattress and blankets at night, have access to reading matter and are guaranteed outdoor exercise.**

185. It should also be noted that adjacent to the disciplinary cell, the delegation saw a padded cell measuring some 11 m<sup>2</sup>; the cell was completely dark, bare, and lacking ventilation. **The CPT recommends that the cell in question is not used in its current state.**

186. According to information provided by the management of the SIZO, the above-mentioned cells were only rarely used. However, given the lack of register recording their use, the delegation was not in a position to verify this situation. **The CPT recommends that this lacuna be remedied.**

187. As regards contact with the outside world, the *de jure* situation of remand and sentenced prisoners held at the SIZO of the State Security Service was identical to that described in paragraph 167. Consequently, **the recommendation and requests for information made in paragraph 168 apply here, *mutatis mutandis*.**

It is noteworthy that working sentenced prisoners were allowed to telephone their family and/or close friends two to three times a month. **It would be very desirable for such a possibility to be extended to prisoners in general throughout Ukraine, including those on remand.**

188. The delegation also observed that the SIZO contained several waiting cubicles of between 0.68m<sup>2</sup> and 1m<sup>2</sup>. As mentioned earlier in the report (cf. paragraph 174), the very size of such cubicles renders them unsuitable for detaining people for any length of time whatsoever. Consequently, **the CPT recommends that they be withdrawn from use.**

189. During its visit to the Kyiv SIZO of the Security Service of Ukraine, the delegation also had the opportunity to examine a prison van. This vehicle contained three compartments with benches. The artificial lighting was very poor and the ventilation was non-existent. In addition, one of the compartments was extremely small (0.50m<sup>2</sup>). According to the staff in charge of the vehicle, this type of van was used only for short journeys within the city. However, the delegation heard allegations from prisoners that vehicles of this kind were sometimes used for longer journeys.

**The CPT would like to receive a copy of any regulations which might exist concerning the characteristics of vehicles used for transporting prisoners. In addition, it recommends that the Ukrainian authorities verify the lighting and ventilation in prison vans, and cease placing prisoners in compartments as small as 0.50m<sup>2</sup>.**

## D. Psychiatric establishments

### 1. Preliminary remarks

190. The CPT's delegation visited the National High Security Psychiatric Hospital in Dnipropetrovsk and the Kyiv City Centre for forensic psychiatric assessment.

The delegation also had a general discussion on the organisation of psychiatry in Ukraine at the Scientific Research Institute of Social and Forensic Psychiatry in Kyiv. In the course of that discussion, reference was made to a draft Mental Health Act which had been submitted to the Ukrainian Parliament. **The CPT would appreciate further information on the draft Act.**

191. The National High Security Psychiatric Hospital in Dnipropetrovsk is located in one of the central residential areas of the city of Dnipropetrovsk. Originally built as a prison in 1912, the establishment was subsequently turned into a hospital. Since 1988, the hospital has been placed under the authority of the Ministry of Public Health. It provides treatment to three categories of mentally ill patients: persons found to be criminally irresponsible for their acts, remand prisoners who develop a mental illness in the period after committing a crime, but prior to the court sentence, and sentenced prisoners in need of mental health-care. On the grounds of their mental health condition and/or the gravity of the crime committed, the persons referred to the hospital are considered to be particularly dangerous and are the subject of a high security regime. In this respect, the hospital is the only establishment of its type in Ukraine.

At the time of the visit, the hospital had an overall capacity of 1,040 beds divided between thirteen wards (nine for men, two for women, one for patients with TB and one for patients with somatic diseases). On 16 February 1998, it was accommodating 907 patients, of whom 68 were women.

There were 57 patients of non-Ukrainian nationality in residence.<sup>11</sup> The delegation was told that in 1997 an agreement had been signed between Ukraine and other States of the CIS envisaging the transfer of such patients to their respective countries. However, problems of an organisational and financial nature had apparently prevented this from happening. **The CPT would like to receive the Ukrainian authorities' comments on this issue.**

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<sup>11</sup> During the period of the Soviet Union, the hospital used to have a Union-wide vocation. It continues to cater for a number of patients from various other States of the CIS (Armenia, Belarus, Moldova, Russia, etc.). It should be noted that some of these patients had been certified as no longer requiring to be held under a high security regime.

192. The Kyiv City Centre for forensic psychiatric assessment is situated within the confines of Kyiv Clinical Psychoneurological Hospital No 1, where it occupies a distinct building surrounded by a secure perimeter. Since 1 January 1998, the Centre has been functioning as an independent legal entity, subordinated to the Kyiv City Department for Health Protection. The Centre performs the function of forensic psychiatric assessment of persons referred to it by an investigator, a public prosecutor or a court, with a view to determining their criminal responsibility. Most of the assessments are performed on an out-patient basis. However, in cases of diagnostic difficulty, persons can be admitted for in-patient assessment. Such persons are committed to the Centre for an initial period of 30 days, renewable once for a further 30 days in complicated cases which require a longer assessment.

At the time of the visit, the Centre was in the process of refurbishment, as a result of which its capacity had been reduced to 60 beds. On the day of the visit, 16 men were in residence (women in need of forensic psychiatric assessment being held in general psychiatric wards elsewhere).

## **2. Ill-treatment**

193. The CPT's delegation heard no allegations, and gathered no other evidence, of deliberate ill-treatment of patients by staff employed at the Kyiv City Centre for forensic psychiatric assessment. Further, no allegations of ill-treatment of patients by health-care staff working at the National High Security Psychiatric Hospital in Dnipropetrovsk were received.

However, some patients at the Dnipropetrovsk Hospital complained about ill-treatment by the so-called "controllers" - Ministry of Internal Affairs' staff working at the hospital and responsible for order and security on the wards, as well as for guarding the hospital's perimeter.<sup>12</sup> The allegations concerned in particular patients being treated in a rough way when their dormitories were being searched for prohibited objects. Isolated allegations were also heard of patients having been hit by "controllers"; apparently, such acts could occur when a patient was agitated or aggressive and needed to be restrained before being administered a sedative. It should be mentioned in this connection that several health-care staff members expressed concern about the general attitude of "controllers" towards patients, whom the former apparently tended to consider as primarily "criminals" rather than mentally ill persons.

**The CPT recommends that it be made clear to staff of the Ministry of Internal Affairs assigned to security tasks at the High Security Psychiatric Hospital in Dnipropetrovsk, as well as at other psychiatric hospitals in Ukraine, that the ill-treatment of patients is not acceptable and will be dealt with severely.**

<sup>12</sup>

At the time of the visit, there were some 100 security staff (including 10 women) at the hospital, who were provided by the Penitentiary Service of the Ministry of Internal Affairs.

194. Working with mentally ill persons will always be a difficult task for all categories of staff involved. Bearing in mind the challenging nature of their work, it is of crucial importance that staff assigned to security-related tasks in a psychiatric hospital be carefully selected and that they receive appropriate training before taking up their duties as well as in-service courses. Further, during the performance of their tasks, they should be closely supervised by - and subject to the authority of - qualified health-care staff.

The CPT considers that the current arrangements at the Dnipropetrovsk Hospital do not facilitate meeting the above requirements. **The Committee recommends that the Ukrainian authorities consider the possibility of security staff working inside psychiatric establishments being recruited directly by the Ministry of Public Health, and subordinated to the hospital's Director. In all cases, such staff should be trained by the Ministry of Public Health.**

195. It should be added that the relations between health-care staff and patients at the High Security Psychiatric Hospital in Dnipropetrovsk seemed on the whole to be good. The CPT wishes to place on record the commitment of the management team to improving conditions at the establishment and the dedication to patient care observed among the overwhelming majority of the hospital's health-care staff. This is all the more commendable given the paucity of resources at the staff's disposal and the difficulties arising from the ongoing refurbishment programme at the establishment (cf. also paragraph 199).

196. More generally, and in order to enable the CPT to obtain a nation-wide view of the situation, **it would like to receive, in respect of 1997 and 1998, the following information:**

- **the number of complaints of ill-treatment lodged against health-care and security staff members in psychiatric establishments in Ukraine;**
- **an account of sanctions imposed following complaints of ill-treatment by such staff members.**

### **3. National High Security Psychiatric Hospital in Dnipropetrovsk**

197. The CPT has noted that Order 225 of 1988 on the "Temporary situation of the High Security Psychiatric Hospital" stipulates that "the accommodation, regime and observation of patients in the psychiatric hospital should offer conditions which promote in the best possible way the patients' treatment and social and occupational rehabilitation, do not affront their personal dignity and do not suppress their independence and positive initiative" (Section 23). The delegation's observations made during the visit suggest that, despite the efforts made by the hospital's management and staff to meet this requirement, there was much room for improvement.

a. patients' living conditions

198. Both staff members and patients interviewed by the delegation stressed that tangible improvements had taken place at the establishment following the appointment of a new Director some 1½ years prior to the CPT's visit. These concerned, in particular, the provision of better food, new beds and bed linen, and the regular supply of appropriate medication. The delegation's observations confirmed these positive aspects of the conditions at the hospital.

199. At the time of the visit, the hospital was in the throes of reconstruction, which involved the replacement of the heating, sewerage and electrical installations. Despite these extensive structural works, the establishment nevertheless continued to function at full capacity, and patients remained resident in the wards where refurbishment was being pursued. This was obviously the source of serious inconveniences to both patients and staff (cf. paragraph 202). **The CPT would like to be informed as to whether the reconstruction work has now been completed.**

200. Despite the efforts of the hospital management to improve the material environment, living conditions of patients left much to be desired.

Patient accommodation was provided in two buildings: a larger one on four levels, composed of two wings and containing 11 of the wards, and a smaller one, which accommodated the remaining 2 wards. The latter building was only partly used by the hospital; three of its floors had been leased to the Ministry of Internal Affairs and were accommodating a prisoner health-care facility belonging to the neighbouring SIZO. This arrangement limited the attempts of the hospital's management to reduce the overcrowding observed in the wards currently occupied by the establishment.

The wards varied in terms of capacity: some accommodated 120-140 patients (e.g. the general male wards 2, 4, 5), while others catered for 30-40 patients (e.g. the women's wards 9 and 12, ward 10 for patients with TB, ward 13 for chronic patients). In the bigger wards, patients were accommodated in large dormitories. The delegation observed that up to 14 patients could be held in a 28m<sup>2</sup> dormitory, and up to 20 patients in a 48m<sup>2</sup> dormitory. Such high occupancy rates are not conducive to a therapeutic environment. Further, the fact that the majority of the patients were obliged to spend most of the day locked in their dormitories exacerbated the situation (cf. also paragraphs 206-208).

The situation was slightly better - albeit far from ideal - in the smaller wards, where the dormitories were designed for fewer patients. For example, dormitories measuring 15m<sup>2</sup> accommodated five patients, those of 20m<sup>2</sup>, seven patients, and those of 36m<sup>2</sup>, eleven patients.

201. All dormitories benefited from adequate access to natural light, artificial lighting and ventilation. The premises on the whole were clean and maintained in good order, which, given the ongoing refurbishment, was an impressive achievement. Likewise, the patients' bedding and clothes were generally clean, although in some cases worn out.

The material environment in the wards was austere and impersonal. Beds usually comprised the only piece of furniture in the dormitories, and were frequently placed so closely together that there was hardly any space to pass between them. Walls tended to be bare, and there were few personal possessions in evidence. Given the absence of lockers, such possessions were usually kept under the patients' pillows or beds. In this connection, it should be stressed that a failure to provide patients with lockable space for their belongings can impinge upon their sense of security and autonomy.

The material environment was somewhat less austere in the women's wards, which had benefited from some decoration. Female patients were also allowed to keep a larger number of personal possessions (including their own clothes and make-up). Further, the presence of plants in one of the men's wards, No 4, also contributed to more cheerful surroundings.

202. Each ward had a sanitary annexe comprising a number of WCs and sinks. However, at the time of the visit the toilet and washing facilities in many wards were out of use, owing to the ongoing refurbishment, and patients had to make use of buckets. In the wards where the refurbishment had not yet started, the sanitary annexes were in a very poor state of repair.

Patients had access to the hospital's bathroom once a week, and their underwear and bedding was changed every ten days. Further, patients received an allowance provided by the State which they could use to purchase personal hygiene products.

203. Throughout their stay in the hospital, the majority of patients were dressed in pyjamas, and received grey uniform overcoats during periods of outdoor exercise. In this connection, it should be stressed that the practice of continuously dressing patients in pyjamas is not conducive to strengthening personal identity and self-esteem; individualisation of clothing should form part of the therapeutic process.

204. In order for the requirements of Order 225 of 1988 to be met, **the CPT recommends that further steps be taken to improve material conditions in the hospital's wards, having regard to the remarks made in paragraphs 200 to 202. The overriding objective should be to provide a positive therapeutic environment for patients. This involves, in the first place, having sufficient living space per patient. Efforts should be made to offer a more congenial and personalised surrounding for patients, in particular by providing them with lockable space and allowing a reasonable number of personal belongings. Steps should also be taken to ensure that an individualised approach is followed as regards patients' clothing.**

**The CPT also invites the Ukrainian authorities to consider the possibility of modifying the large-capacity dormitories found in the hospital; such facilities are scarcely compatible with the norms of modern psychiatry.** Provision of accommodation structures based on small groups is a crucial factor in preserving/restoring patients' dignity, and also a key element of any policy for the psychological and social rehabilitation of patients. Structures of this type also facilitate the allocation of patients to relevant categories for therapeutic purposes.

b. treatment

205. According to the above-mentioned Order 225 of 1988, "each patient will be guaranteed a thorough examination of his psychic, neurological and somatic state and, depending on his illness, all modern methods of treatment and social and occupational rehabilitation".

At the time of the visit, this objective was far from being met. The treatment given to patients was limited essentially to pharmacotherapy, and some of the patients displayed signs of being substantially medicated. On a more positive note, there were currently no problems with the availability of appropriate medication.

206. The hospital's management and doctors spoken to by the delegation stressed the importance of occupational therapy as part of the rehabilitation process. The hospital possessed three workshops (for sewing, cardboard-making, and electrical toy assembly) which could provide activity for up to 40% of the patients. However, as a consequence of the economic crisis and falling demand, the workshops were currently not in use. An "alternative" to occupational therapy was being offered to a small number of patients on each ward who performed simple tasks, such as cleaning the floors of the dormitories and corridors, distributing food, and changing the bedding. The ongoing refurbishment work was also used as a way of providing occupation to a limited number of patients.

As for psychotherapy, only a limited number of patients (around 10 at the time of the visit) due shortly to leave the hospital were attending the so-called "psycho-correction" sessions. These were performed by the three psychologists employed in the hospital's medico-social centre.

The hospital possessed a library (5,000 books), and each ward had a recreation room equipped with a TV set (unfortunately, the latter were out of order in several of the wards at the time of the visit). Further, all dormitories were fitted with radio.

207. Patients were offered outdoor exercise on a daily basis; however, the conditions in which it took place were not satisfactory. The two exercise yards were bare and cage-like, and consequently had an oppressive feel to them. The delegation also observed that the smaller of the two yards could become very crowded at exercise times, thereby restricting the patients' possibility to exert themselves physically.

208. To sum up, the psycho-social and rehabilitative treatment offered to patients at the High Security Psychiatric Hospital in Dnipropetrovsk was underdeveloped. The great majority of the patients were not involved in therapeutic and psychosocial rehabilitation activities of any kind. In fact, most patients only left their dormitories for the purpose of using the sanitary facilities, having outdoor exercise and eating in the wards' dining rooms.

The CPT is aware that a significant improvement in the range of therapeutic and other activities offered at the hospital will have to await more favourable economic circumstances. However, in the light of the facts found during the visit, **the CPT recommends that the Ukrainian authorities persevere in their efforts to improve the activities offered to patients at the High Security Psychiatric Hospital in Dnipropetrovsk. In particular, steps should be taken to re-introduce occupational therapy as an important part of the rehabilitation process. Efforts should also be made to involve more patients in group therapy and individual psychotherapy. The CPT also recommends that the Ukrainian authorities take the necessary steps to improve the conditions under which patients take outdoor exercise.**

**The long-term objective should be to move away from an environment primarily based on the custody of patients and the use of medication, and to create a therapeutic milieu which also includes occupational therapy and psycho-social intervention.**

c. staff

209. The hospital's medical team at the time of the visit consisted of 48 full-time doctors, 38 of whom were psychiatrists, while the rest possessed various other specialisations (dentist, neuropathologist, surgeon, ophthalmologist, etc.). A further 5 doctors were employed in the hospital's clinical and diagnostic laboratory. In addition, a number of consulting medical specialists paid visits to the establishment on a periodic basis.

As regards the staff qualified to provide therapeutic activities, the hospital had 4 psychologist posts, of which 3 were filled. No occupational therapists were employed at the time of the visit (although the hospital had 6 posts for "occupational inspectors").

There were 216 posts for "middle rank staff"<sup>13</sup>, of which 166 were filled; these included 149 nurses. As regards the qualifications of the nursing staff, 55 of the nurses were of "superior category", 28 of "first category" and one of "second category". However, the delegation was unable to gain a precise idea of the proportion of nurses who had benefited from specialised psychiatric training.

There were also 252 posts for "junior rank staff"<sup>14</sup>, of which 192 were filled.

210. The delegation was told that the standards in force in Ukraine provide for a psychiatrist/patient ratio of at least 1:40. The actual staffing levels at the time of the visit met this standard.

However, the very limited number of psychologists and the absence of other staff qualified to provide therapeutic activities clearly precluded the emergence of a therapeutic milieu based on a multidisciplinary approach. As regards the nursing staff, it should be noted that the current resources are far from sufficient for meeting the needs of a hospital which could cater for up to 1,000 patients.

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<sup>13</sup> This category of staff includes nurses, laboratory assistants, physiotherapists, pharmacists, etc.

<sup>14</sup> This category includes orderlies, staff in charge of distributing the food, the bed linen, etc.

211. **The CPT recommends that the Ukrainian authorities take steps to:**

- **fill all vacant nursing posts and strive to increase the nursing staff/patient ratio;**
- **reinforce substantially the team of specialists qualified to provide therapeutic and rehabilitation activities.**

More generally, **the CPT would like to be informed of the existing arrangements for specialised psychiatric nursing training in Ukraine.**

#### **4. Kyiv City Centre for forensic psychiatric assessment**

212. The CPT's delegation gained an overall positive impression of living conditions at the Kyiv City Centre for forensic psychiatric assessment. Persons committed to the Centre were accommodated in ten rooms situated on the first floor of the building. Each room measured some 30m<sup>2</sup> and contained six beds; such an occupancy rate can be considered as adequate. The rooms had large windows fitted with bars, benefited from sufficient artificial lighting and ventilation, and were very clean. However, the absence of any furniture apart from the beds, and in particular the virtual lack of any personal belongings, gave the accommodation a rather austere appearance.

The sanitary facilities located in close proximity to the rooms were very clean and in a good state of repair. Further, patients had ready access to the toilets at any time.

213. As for the daily regime in the Centre, it can only be described as impoverished. There were no activities of an organised nature, and patients spent their time in a state of idleness. Although the Centre possessed a pleasant recreation room, there were few if any activities which could be performed there. The delegation was told that it used to contain a TV set; however, it had broken down and been removed.

The CPT was concerned to learn that persons held at the Centre were not guaranteed regular outdoor exercise. The Centre had a spacious inner courtyard which apparently was used as an outdoor exercise area in the summer; however, in the winter the outdoor exercise arrangements varied in relation to the weather. Several persons interviewed by the delegation claimed that they had not been out of the building throughout their stay in the Centre.

214. Persons undergoing assessment only received psycho-pharmacological medication in case of emergency and were not offered any therapeutic activities.

In this connection, it should be stressed that the provision of therapeutic activities to persons undergoing observation would not interfere with the assessment process. On the contrary, it could facilitate the gathering of valuable information for that purpose.

215. The Centre's staff could be described as adequate for the number of persons held there. It consisted of 9 psychiatrists, 4 psychologists, 11 full-time nurses and 1 part-time, 16 orderlies, and 11 auxiliary staff. Each shift comprised 2 nurses and 3 orderlies (including at night). The psychiatrist/patient ratio provided for under the Ukrainian standards was one psychiatrist for 10 patients.

The forensic psychiatric assessment of persons admitted to the Centre was performed by a panel of three psychiatrists, who each examined the person concerned. If necessary, a psychologist could also be invited to interview the person being assessed. The joint opinion of the panel was submitted to the investigator or the court who had requested the assessment.

216. Reference should also be made to two extremely small cubicles (each measuring 1.3m<sup>2</sup>) situated in the reception area on the ground floor of the Centre. The cubicles were fitted with a bench. However, they were not properly ventilated and were not equipped with lighting (though a small window in the door let in some light). The delegation was told that a person being admitted to the Centre could spend up to an hour in such a cubicle while awaiting to be assigned to a room.

In the CPT's opinion, a cubicle of such a size, even if properly lit and ventilated (which was not the case) is too small for even the shortest term of detention of anyone, let alone someone who may be mentally ill.

217. In the light of the remarks made in paragraphs 212 to 216, **the CPT recommends that steps be taken immediately to:**

- **ensure that all patients are offered outdoor exercise on a daily basis;**
- **take out of service the two cubicles in the reception area.**

Further, **the Committee recommends that the Ukrainian authorities make efforts to:**

- **develop psycho-social therapeutic activities for persons held at the Centre;**
- **provide a more congenial and personalised environment for patients, in particular by allowing them a reasonable number of personal belongings.**

## 5. Means of restraint

218. In any psychiatric facility, the restraint of agitated and/or violent patients may on occasion be necessary. This is a subject of particular concern to the CPT, given the potential for abuse and ill-treatment.

219. The CPT's delegation was informed that seclusion was not practised at the National High Security Psychiatric Hospital in Dnipropetrovsk. As regards instruments of physical restraint, the only restraint applied in respect of patients displaying disturbed or aggressive behaviour was the so-called "soft fixation". It involved the tying of the patient's wrists and ankles to the bed frame with the help of strips of bandage. This form of restraint was applied on doctor's orders and could be followed by the administration of a sedative via an intramuscular injection. Although in principle patients were restrained by "soft fixation" for short periods of time (e.g. 15-30 min), staff intimated that the restraint could continue for a number of days if the patient was particularly agitated. The resort to "soft fixation" was recorded in the patient's file and the nurses' book; however, there was no special register for recording such events.

220. Similarly to the situation in Dnipropetrovsk, seclusion was not applied at the Kyiv City Centre for forensic psychiatric assessment. Further, staff indicated that no instruments of physical restraint were used to immobilise patients; apparently, agitated patients could be administered an injection with a sedative on the order of a doctor. However, in one of the nurses' rooms, the delegation found textile straps and received conflicting information about their use. The administration of injections was recorded in the nurses' book, but not in a special register.

221. The CPT welcomes the approach followed at the two establishments to refrain from the seclusion of patients. Indeed, there is a clear trend in modern psychiatric practice in favour of avoiding the seclusion of violent or otherwise unmanageable patients.

As regards other means of restraint, **the CPT recommends that a detailed policy on their use be drawn up. Such a policy should make clear that initial attempts to restrain aggressive behaviour should, as far as possible, be non-physical (e.g. verbal instruction) and that where physical restraint is necessary, it should in principle be limited to manual control.** Further, **the CPT recommends that health-care staff in psychiatric establishments receive training in both non-physical and manual control techniques vis-à-vis agitated or violent patients.** The possession of such skills will enable staff to choose the most appropriate response when confronted by difficult situations, thereby significantly reducing the risk of injuries to patients and staff.

As regards more particularly the High Security Psychiatric Hospital in Dnipropetrovsk, **the CPT wishes to stress that health-care staff must have the main responsibility for the restraint of agitated and/or violent patients. Any assistance by "controllers" in such cases should only be provided at the request of health-care staff and must comply with the instructions given by such staff.**

222. Resort to instruments of physical restraint can only very rarely be justified and must always be either expressly ordered by a doctor or immediately brought to the attention of a doctor with a view to seeking his approval. If, exceptionally, recourse is made to instruments of physical restraint, they should be removed at the earliest opportunity; they should never be applied, or their application prolonged, as a punishment.

In this connection, the CPT was concerned to learn that the restraint by "soft fixation" of patients at the Dnipropetrovsk Hospital could on occasion continue for days. The CPT considers that to apply "soft fixation" for a period of days cannot have any therapeutic justification and amounts, in its view, to ill-treatment. Consequently, **the CPT recommends that the Ukrainian authorities take appropriate steps to ensure that such situations do not occur in the future.**

223. Finally, **the CPT recommends that every instance of the physical restraint of a patient be recorded in a specific register established for that purpose. The entry should include the times at which the measure began and ended, who ordered the measure, the circumstances of the case, the reasons for resorting to the measure and an account of any injuries sustained by patients or staff.** This will greatly facilitate both the management of such incidents and the oversight into the extent of their occurrence.

## **6. Safeguards in the context of involuntary hospitalisation**

224. Mentally ill and mentally handicapped persons are particularly vulnerable, and hence should benefit from safeguards in order to prevent any form of conduct - or avoid any omission - contrary to their well-being. It follows that involuntary admission/placement in a psychiatric facility should always be surrounded by appropriate safeguards, and that the need for such a placement should be reviewed at regular intervals. Further, the admission of a person to a psychiatric facility on an involuntary basis should not be construed as authorising treatment without the patient's consent. Other safeguards should deal with such matters as effective complaints procedures, the maintenance of contact with the outside world, and external supervision of psychiatric establishments.

225. The Ukrainian Criminal Code contains the legal grounds for compulsory medical measures in respect of persons found to be criminally irresponsible for their acts or who develop a mental illness in the period after committing a crime. Section 13 of the Code provides that the placement of such persons in a psychiatric establishment is decided by a court which also specifies the type of regime (general, reinforced or strict) to which the person concerned is to be subjected. The Code of Criminal Procedure provides for an obligatory forensic psychiatric assessment (Section 204), a court hearing (Section 419) and a periodic review of the court's decision on the basis of a recommendation made by a panel of psychiatrists appointed by the Ministry of Public Health (Section 422). The court's decision can be appealed by the patient, his relatives or legal representative.

In this connection, **the CPT would like to be informed of the practical procedures to ensure that patients' placements are reviewed objectively and in sufficient detail.**

The delegation was not able to obtain a clear picture of the legal procedures applied in the case of civil commitment to a psychiatric hospital. **The CPT would like to receive a full account of those procedures, and in particular detailed information on the medical opinions required for involuntary hospitalisation, the role of the courts in the decision to hospitalise involuntarily, patients' rights of appeal against their involuntary hospitalisation, and procedures for the review at regular intervals of whether involuntary hospitalisation remains necessary.**

226. Patients should, as a matter of principle, be placed in a position to give their free and informed consent to treatment. Every competent patient, whether voluntary or involuntary, should be given the opportunity to refuse treatment or any other medical intervention. Any derogation from this fundamental principle should be based upon law and only relate to clearly and strictly defined exceptional circumstances. **The CPT would like to receive full information on the legal position in Ukraine concerning consent to treatment.**

Of course, consent to treatment can only be qualified as free and informed if it is based on full and accurate information about the patient's condition and the treatment which is proposed. In this connection, **the CPT recommends that all patients be provided systematically with relevant information about their condition and the treatment which it is proposed to prescribe for them. Relevant information should also be provided to patients following treatment (results, etc.).**

227. Neither of the psychiatric establishments visited possessed a clearly defined internal arrangement for the reception of complaints. The CPT considers that specific arrangements enabling patients to lodge formal complaints with a clearly-designated body and to communicate on a confidential basis with an appropriate authority outside the establishment, are essential safeguards. **It accordingly recommends that the Ukrainian authorities take the necessary measures to introduce such arrangements, which should include the provision of information to patients on the possibility of making a complaint.**

**More generally, the CPT recommends that an introductory brochure setting forth the hospital routine and patients' rights be devised and issued to each patient on admission, as well as to their families. Any patients unable to understand this brochure should receive appropriate assistance.**

228. The maintenance of patients' contact with the outside world is essential, not only for the prevention of ill-treatment but also from a therapeutic standpoint. Patients should be able to send and receive correspondence, to have access to the telephone, and to receive visits from their family and friends. Confidential access to a lawyer should also be guaranteed.

229. Patients at the High Security Psychiatric Hospital in Dnipropetrovsk were allowed to receive an unlimited number of visits and parcels, and to send and receive letters without restriction. However, the delegation was informed that all letters were subject to censorship by the treating doctor. **The CPT would like to be informed whether this rule applies also to correspondence between a patient and his lawyer.**

Visits took place in a recently fitted, spacious room, which was equipped with two long tables and benches.

230. As regards the Kyiv City Centre for forensic psychiatric assessment, **the CPT would like to receive information on the current arrangements for patients' visits (including by a lawyer) and correspondence.**

231. The CPT also attaches considerable importance to psychiatric establishments being visited on a regular basis by an independent outside body, responsible for the inspection of patients' care.

The High Security Psychiatric Hospital in Dnipropetrovsk received periodic visits by a public prosecutor responsible for overseeing the conclusions of the panel of psychiatrists performing the periodic review of the patients' placement in the hospital. He was authorised to talk privately with patients, to receive any complaints they might have and make any necessary recommendations. Every six months he submitted a report on the results of his inspections to the Ministry of Public Health. **The CPT would like to receive a copy of the last report drawn up by the public prosecutor. Further, it would like to be informed whether the High Security Psychiatric Hospital in Dnipropetrovsk receives visits from any other outside body.**

**The CPT would also like to receive information on the system for external supervision of the Kyiv City Centre for forensic psychiatric assessment.**

232. Finally, it must be stressed that staff in psychiatric establishments have to fulfil a difficult task. External stimulation and support are necessary to ensure that staff of such institutions do not become too isolated. In this connection, it is highly desirable for such staff to be offered training possibilities outside their establishment as well as secondment opportunities. Similarly, the presence in psychiatric institutions of independent persons (e.g. students and researchers) and external bodies should be encouraged. **The CPT invites the Ukrainian authorities to take appropriate measures in this area.**

**E. Other establishments**

**1. Detention facilities of the State Committee for the Protection of National Borders**

233. The delegation visited the detention facilities of the State Committee for the Protection of National Borders at Boryspil Airport (Kyiv) and a detention centre located some 2 km away from the Airport.

234. The State Committee for the Protection of Borders is responsible for controlling entry into and exit from the national territory. For this purpose, staff of the Committee can apprehend and detain any person (of foreign or Ukrainian nationality) who does not possess the documents required for entry or exit.

According to information provided to the delegation by senior officials of the Committee, a person may be detained for administrative reasons for a period of up to 10 days. If a person is suspected of a criminal offence, staff of the State Committee can detain him under their own authority for a period of 72 hours, following which the person concerned is either released or transferred to the custody of the Militia or the State Security Service.

An examination of the relevant registers at the airport detention facilities and the detention centre showed that the length of detention was relatively short (ranging from a few hours to several days at the centre). However, the registers did not contain any information concerning the destination of persons who had left the detention facilities (e.g. whether they had been released, sent back, transferred to a Militia establishment, etc.). **The CPT recommends that this deficiency be rectified (in this connection, cf. also the recommendation made in paragraph 54).**

235. More generally, **the CPT would like to receive detailed information, including copies of the relevant texts, on the cases in which staff of the State Committee for the Protection of National Borders can deprive a person (of foreign or Ukrainian nationality) of his liberty, the periods of time during which such a person may be detained, as well as the formal safeguards which apply to such persons (right to inform a close relative or another third party of the fact of detention, right of access to a lawyer/doctor, contact with the consular authorities, etc.). It would also like to be informed of the precise procedure followed in cases of asylum applications made by foreign nationals.**

236. The facilities for persons detained at Boryspil Airport were used for short stays (for example, the time necessary to remove a person by the next plane). The material conditions offered in these facilities were adequate. There were two rooms of satisfactory size (21m<sup>2</sup> for three beds), which were adequately equipped, lit (including access to natural light) and ventilated. Further, next to the interview rooms, there were waiting facilities equipped with armchairs, where detained persons could spend several hours.

237. The material conditions in the centre designed for prolonged detention (which occupied a pre-fabricated building) can also be described as adequate. There were two rooms of 12m<sup>2</sup> each, equipped with two to three beds, benefiting from satisfactory lighting and ventilation, and fitted with a separate sanitary annexe (W.C., sink and shower) which was accessible at all times. It should also be noted that the centre possessed an exercise yard measuring some 45m<sup>2</sup> to which detainees in principle had access two hours a day. **The CPT would like to be informed of any other activities offered to persons detained at the centre (reading matter, recreation activities, TV, etc.).**

238. During its discussions with senior officials from the State Committee, the delegation was informed that the budget allocated for the purposes of detention was insufficient and that, in particular at the airport, the costs of the stay and subsistence of detained foreign nationals were covered by the air company with which they had travelled before reaching the Ukrainian border. **The CPT wishes to receive the comments of the Ukrainian authorities on this point, as well as information on the practical arrangements to ensure the provision of food to persons deprived of their liberty by the State Committee for the Protection of National Borders.**

## **2. Dnipropetrovsk Treatment and Labour Detention Centre for the compulsory treatment of alcoholics**

239. The delegation paid a brief visit to the Dnipropetrovsk Treatment and Labour Detention Centre for the compulsory treatment of alcoholics. It received no allegations of ill-treatment in this establishment.

At the outset of the visit, the delegation was informed of the pending transformation of this type of establishment. According to the Centre's director, the system of compulsory confinement and treatment of alcoholics had become an anachronism, and was in the process of being reformed; this involved changing the legislative basis and transferring the responsibility for such establishments from the Ministry of Internal Affairs to the Ministry of Public Health. **The CPT would like to receive further information on this subject.**

240. With a capacity of 650, on the day of the delegation's visit the Centre was holding 584 men. Persons with alcohol addiction who had repeatedly violated public order were committed to the Centre on the basis of a court decision. The length of stay at the Centre varied between 6 months and 1 year (however, in case of repeated alcohol abuse, it could be prolonged to 2 years). During this time, persons committed to the Centre underwent compulsory treatment for alcohol abuse, including pharmacotherapy, psychotherapy and occupational therapy. For this purpose, the Centre employed numerous health-care staff (21 doctors and 9 nurses) and possessed a reasonably-equipped medical facility.

241. Occupational therapy formed an integral part of the treatment programme, and all persons committed to the Centre who were fit had to work. The Centre possessed a large production complex which offered a variety of jobs (production of copper wires, wire fencing, shoes, soap, pasta, egg powder, packaging, milling, etc.). Further, some 50% of the persons committed to the Centre were employed at outside production facilities. Apart from treatment and work, the Centre offered a range of recreational activities (sports, TV, cinema, library).

242. Material conditions at the Centre were satisfactory, and do not call for detailed comments. Persons committed to the Centre were accommodated in dormitories which were of an adequate size for the numbers concerned, were well-lit and ventilated, and were equipped with beds, lockers, stools, and a TV-set.

243. However, conditions in the establishment's disciplinary unit, which comprised six cells (five for multiple occupancy and one single cell), are a source of concern for the CPT. First of all, the temperature within the unit was very low at the time of the visit. Further, although the multiple-occupancy cells measured a mere 9m<sup>2</sup>, an examination of the register recording the use of the disciplinary cells revealed that they had been used to accommodate up to five persons. Such an occupancy level is totally unacceptable; a cell measuring 9m<sup>2</sup> should not be used to accommodate more than two persons overnight.

As for the single cell, it was apparently used for detainees who became violent and presented a risk of self-harm. It was equipped with a bed and table, and had a sink and a W.C. in one corner. The cell's equipment had sharp metal protuberances, rendering it inappropriate for holding persons thought to present a risk of self-harm.

**The CPT recommends that the Ukrainian authorities take steps to improve conditions of detention in the disciplinary unit, having regard to the above remarks.**

### **3. Secure ward at Kyiv Emergency Hospital**

244. The CPT's delegation visited the secure ward for detained persons at Kyiv Emergency Hospital in Bratislava Street. The ward, which was separated from the civil part of the hospital, consisted of two rooms with 5 beds each, and a small reception area. At the time of the visit, the ward was accommodating eight detainees.

Persons taken into pre-trial custody who had grave injuries and/or were in need of specialised surgery and emergency care were transferred from Militia establishments and SIZOs to this secure ward. It had been set up some six months prior to the CPT's visit, in recognition of the need to centralise and improve the provision of specialised treatment to detainees, as well as to achieve a more efficient utilisation of staff and resources.

In principle, the setting up of such a ward is a most welcome development. However, the CPT has strong reservations as regards one aspect of the security arrangements within the ward.

245. The patients' rooms had iron doors and barred windows. Further, detainees were under the constant surveillance of four armed officers of the Ministry of Internal Affairs; one such officer was posted inside each room, and the remaining two officers were located in the unit's reception area. Despite these arrangements, it had been felt necessary to chain patients continuously by one hand to their bed frames, the chain being long enough to allow them to sit up in their beds or stand by them.

The CPT fully recognises the need for appropriate security arrangements in cases when persons in custody are committed to a civil hospital. However, such persons should not be physically attached to their beds or other items of furniture for custodial reasons. Other means of meeting security needs satisfactorily can and should be found. The creation of a custodial unit in a civil hospital is one possible solution, and this is precisely the approach which had been followed at the Kyiv Emergency Hospital. The material conditions and staffing arrangements within the establishment's secure ward were more than sufficient to meet all legitimate security concerns without going a step further and chaining people to their beds. Consequently, **the CPT recommends that the practice of chaining detainees to hospital beds at Kyiv Emergency Hospital be discontinued.**

246. Apart from the above-mentioned issue, the material conditions under which sick detainees were being accommodated in the secure ward and their medical treatment appeared on the whole to be of an acceptable standard. However, the delegation was informed that whilst held in the secure ward, detainees were not allowed any visits from their relatives and lawyers, and could not receive food parcels. Further, they were not offered any outdoor exercise, and had no access to newspapers, books, radio or TV.

**The CPT recommends that the Ukrainian authorities take appropriate steps to ensure that sick detainees at Kyiv Emergency Hospital are able to receive visits - including from their lawyers - and are offered outdoor exercise on a daily basis, unless medically inappropriate.**

Further, **the CPT invites the Ukrainian authorities to provide appropriate means of recreation to sick prisoners held in the secure ward of Kyiv Emergency Hospital (e.g. access to books and newspapers; radio/TV).**

Moreover, **the CPT would like to be informed of the reasons for not allowing patients in the secure ward to receive food parcels.**



### **III. RECAPITULATION AND CONCLUSIONS**

247. At the time of the CPT's visit, Ukraine was encountering serious economic and social problems in the course of systemic transition. This was borne in mind by the Committee when this visit report was drawn up. The CPT trusts that international efforts to assist Ukraine will continue and intensify, and hopes that its visit report will make it possible to distinguish priorities in the fields falling within the Committee's competence.

The priority of priorities must be – through one means or another – to tackle the endemic overcrowding which blights both Militia establishments and establishments run by the prison service. If this is not done, all attempts to improve conditions of detention will inevitably founder.

The CPT has also stressed that economic and social difficulties can never excuse the deliberate ill-treatment of persons deprived of their liberty.

#### **A. Militia establishments**

248. The CPT's delegation received numerous allegations of physical ill-treatment of detained persons by officers in district commands of the Militia, in different parts of the country. In certain cases, the severity of the ill-treatment alleged could be considered to amount to torture.

In contrast, only few allegations were received of physical ill-treatment by staff working in Militia central holding facilities (ITT). Further, the delegation received no allegations of physical ill-treatment by staff working at the centres for the reception and allocation of vagrants, for administrative detention and for the reception and allocation of minors which it visited.

249. The allegations of ill-treatment related to both the time of apprehension and subsequent questioning by members of the criminal Militia. They mainly concerned slaps, punches, kicks and blows with a truncheon. Some allegations were also heard of even more severe forms of ill-treatment, such as: asphyxiation by placing a gas mask or a plastic bag over the detainee's face; beating detainees while they are handcuffed and suspended by the legs and/or arms or maintained in an hyperextended position; squeezing and twisting detainees' genitals; beating of the soles of the feet; sexual humiliation of women.

In the light of all the information at its disposal, including medical information gathered during the visit, the CPT has been led to conclude that persons deprived of their liberty by the Militia in Ukraine run a significant risk of being ill-treated at the time of their apprehension and/or while in the custody of the Militia (in particular when being interrogated), and that on occasion resort may be had to severe ill-treatment/torture.

250. To combat the problem of ill-treatment, the CPT has first and foremost stressed the fundamental importance of the provision of adequate professional training (integrating human rights principles) to Militia officers of all ranks and categories. Further, the Committee has recommended that the relevant national authorities as well as senior officers make it clear to officers of the Militia that the ill-treatment of persons in their custody is not acceptable and will be dealt with severely. As regards more specifically allegations of ill-treatment at the time of apprehension, the CPT has recommended that Militia officers be reminded that no more force than is strictly necessary should be used when apprehending suspects, and that once apprehended persons have been brought under control, there can never be any justification for their being struck.

251. Investigators and public prosecutors are in a position to make a significant contribution to the prevention of ill-treatment. The Committee has recommended that investigators and public prosecutors be given instructions concerning the approach to be adopted when they receive allegations of ill-treatment by the Militia, or observe that a criminal suspect brought before them may have suffered such treatment. Investigators and public prosecutors should, *inter alia*, be encouraged to order, in appropriate cases, an immediate forensic medical examination of the person concerned. In this connection, the Committee has also recommended that all criminal suspects taken into the custody of the Militia be systematically brought before the public prosecutor responsible for taking a decision on their remand in custody or release.

Further, the CPT has stressed that, to be fully effective from the standpoint of preventing ill-treatment, the visits regularly made by public prosecutors to Militia establishments should be unannounced and include an inspection of the establishment's cellular facilities, as well as direct contact between the public prosecutor and detained persons.

252. The CPT has proposed some strengthening of formal safeguards against ill-treatment of persons deprived of their liberty by the Militia. In particular, it has recommended that persons apprehended by the Militia have the right to inform, without delay, a close relative or a third party of their choice of their situation, either directly or through a police officer. Any possibility exceptionally to delay the exercise of this right should be clearly circumscribed in law, made subject to appropriate safeguards and strictly limited in time.

As regards access to a lawyer, neither the existing legal provisions nor those of the new draft Code of Criminal Procedure are satisfactory. The CPT has stressed that, in its experience, it is during the period immediately following deprivation of liberty that the risk of intimidation and ill-treatment is greatest; consequently, the possibility for persons taken into custody by the Militia to have access to a lawyer during that period is a fundamental safeguard against ill-treatment. The Committee has therefore recommended that steps be taken to ensure that all persons apprehended by the Militia have, as from the very outset of their deprivation of liberty, a right of access to a lawyer, and that the exercise of this right is not made subject to the authorisation of an investigator.

Other recommendations have been made concerning the right of persons deprived of their liberty by the Militia to have access to a doctor, and the prompt provision of information to such persons about their rights. The CPT has also recommended that a code of conduct for interviews be drawn up; the existence of such guidelines will, *inter alia*, help to underpin the lessons taught during training of Militia officers.

253. Conditions of detention in the **District Commands of Internal Affairs** left a great deal to be desired. The shortcomings observed related principally to overcrowding, poor lighting, ventilation and hygiene, inadequate access to toilet facilities, and the absence of mattresses or blankets for persons held overnight. Further, there were no clearly-defined arrangements for supplying detained persons with food and drinking water.

The CPT has identified a number of specific measures which need to be taken in order to tackle the most urgent problems observed. Further, the Committee has recommended that the necessary measures be taken to ensure that the detention facilities at the District Commands of Internal Affairs are used exclusively for the initial 72-hour period of custody by the Militia.

254. The CPT has expressed serious concern about the situation observed in the **Militia central holding facilities (ITT)** visited. The conditions of detention prevailing at the ITT in Kyiv amounted to inhuman and degrading treatment and, in addition, represented a considerable risk to the health of the persons held there. Although better than those at the ITT in Kyiv, the conditions at the ITT in Dnipetrovsk still left much to be desired as regards the vast majority of the persons detained.

The CPT has recommended that the Ukrainian authorities take the necessary measures to ensure that the length of time spent in an ITT does not exceed the maximum period of 10 days stipulated by the Code of Criminal Procedure, and has identified a number of steps which need to be taken immediately to palliate the current unacceptable situation. However, the CPT has also made a more far-reaching recommendation, to the effect that the existing law and practice relating to custody pending trial be reviewed. This is a *sine qua non* for remedying the present state of affairs in ITT facilities (and pre-trial prisons).

255. By contrast, the CPT's delegation was favourably impressed by the conditions of detention at the Centre for the reception and allocation of minors in Kyiv. They were satisfactory as regards both material conditions and the activities offered to the minors.

## **B. Establishments under the authority of the State Department for the Execution of Sentences**

256. The CPT's delegation heard very few allegations of ill-treatment inflicted on persons at the Kharkiv SIZO No 203. However, reference has been made in the report to the practice of obliging prisoners to face the wall when staff or visitors passed by. Such a practice serves no security purpose and is hardly likely to promote positive staff-prisoner relations; it should cease.

257. The CPT has called upon the Ukrainian authorities to give high priority to the implementation of the **whole range** of measures designed to reduce the serious overcrowding which currently afflicts the prison system. Further, it has recommended that the standard on living space to be provided per prisoner be increased as soon as possible.

Another problem concerns the lack of work for prisoners. The provision of appropriate work to sentenced prisoners is a fundamental part of the rehabilitation process; it follows that the employment situation within the prison system should not be dictated exclusively by market forces. Consequently, the CPT has recommended that the Ukrainian authorities introduce special measures to create more work for prisoners.

258. At the Kharkiv SIZO No 203, a large number of prisoners were subjected to a combination of negative factors – overcrowding, appalling material conditions and levels of hygiene, and practically non-existent activity programmes – which could easily be described as inhuman and degrading treatment. The CPT has made a series of concrete recommendations designed to improve material conditions and the programme of activities for prisoners at that establishment.

259. The CPT has expressed serious concern about the conditions under which fifteen prisoners sentenced to death were being held at the Kharkiv SIZO. They were locked up for 24 hours a day in overcrowded cells which were deprived of natural light and sometimes had very meagre artificial lighting, with virtually no activities to occupy their time and very little opportunity for human contact.

After the visit, the Ukrainian authorities informed the CPT of measures taken to improve the material conditions of detention of prisoners sentenced to death and to allow them one hour of outdoor exercise per day. Whilst welcoming this development, the CPT has recommended that the Ukrainian authorities urgently review the regime applied to prisoners sentenced to death in the Kharkiv SIZO, as well as in other prison establishments in Ukraine, in order to ensure that they are offered purposeful activities and appropriate human contact.

260. The CPT has addressed a number of specific issues concerning prison health-care services (staff and facilities, medical screening on admission, transmissible diseases, food) and, more generally has recommended that the Ukrainian authorities pursue their efforts to develop a comprehensive policy on health-care in prisons.

Tuberculosis was identified as a major problem both by the Ukrainian prison medical services and the health-care team at the Kharkiv SIZO. The CPT fully shares their concerns, and has proposed concrete measures designed to improve the manner in which prisoners are screened for tuberculosis, and to ensure the provision of appropriate care to prisoners suffering from the disease.

261. The CPT has made a number of recommendations and comments about a variety of other issues of relevance to the CPT's mandate (prison staff; discipline and isolation; contact with the outside world; complaints and inspection procedures). Particular mention should be made of the recommendation that a high priority be given to developing both initial and in-service vocational training of prison staff at all levels; building positive relations with prisoners should be recognised as a key feature of a prison officer's vocation.

**C. Establishments under the authority of the State Security Service of Ukraine**

262. The delegation did not hear any allegations of ill-treatment of persons detained at the SIZO of the State Security Service of Ukraine in Kyiv and did not find any other evidence of such acts. More generally, the delegation observed that relations between prisoners and staff were, on the whole, satisfactory.

263. Material conditions of detention in this establishment were far better than those observed in the vast majority of the other places of detention visited in Ukraine. However, with regard to activities, the situation was similar to that observed at the SIZO in Kharkiv. The CPT has recommended that measures be taken to ensure that prisoners benefit from a programme of purposeful activities of a varied nature, enabling them to spend a reasonable part of the day (i.e. at least 8 hours) outside their cells.

The report also makes certain recommendations and comments concerning the provision of health-care to prisoners, disciplinary sanctions and prisoners' contact with the outside world.

**D. Psychiatric establishments**

264. The CPT's delegation heard no allegations, and gathered no other evidence, of deliberate ill-treatment of patients by staff employed at the Kyiv City Centre for forensic psychiatric assessment. Further, no allegations of ill-treatment of patients by health-care staff working at the National High Security Psychiatric Hospital in Dnipropetrovsk were received.

However, some patients at the Dnipropetrovsk Hospital complained about ill-treatment by the so-called "controllers" - Ministry of Internal Affairs' staff working at the hospital and responsible for order and security on the wards, as well as for guarding the hospital's perimeter. The allegations concerned in particular patients being treated in a rough way when their dormitories were being searched for prohibited objects. Isolated allegations were also heard of patients having been hit by "controllers"; apparently, such acts could occur when a patient was agitated or aggressive and needed to be restrained before being administered a sedative. The CPT has recommended that it be made clear to staff of the Ministry of Internal Affairs assigned to security tasks at the High Security Psychiatric Hospital in Dnipropetrovsk, as well as at other psychiatric hospitals in Ukraine, that the ill-treatment of patients is not acceptable and will be dealt with severely.

More generally, the Committee has recommended that the Ukrainian authorities consider the possibility of security staff working inside psychiatric establishments being recruited directly by the Ministry of Public Health, and subordinated to the hospital's Director. In all cases, such staff should be trained by the Ministry of Public Health.

265. The management at the National High Security Psychiatric Hospital in Dnipropetrovsk was making serious efforts to improve the living conditions of patients; nevertheless, at the time of the visit they still left much to be desired. As to the treatment provided to patients, it was limited essentially to pharmacotherapy; the great majority of patients were not involved in therapeutic and psychosocial rehabilitation activities of any kind.

The CPT has made a number of specific recommendations designed to improve patients' living conditions and the activities offered to them. The long-term objective should be to move away from an environment primarily based on the custody of patients and the use of medication, and to create a therapeutic milieu which also includes occupational therapy and psycho-social intervention.

As regards staff, the CPT has in particular made recommendations with a view to strengthening the nursing contingent at the hospital and reinforcing the team of specialists qualified to provide therapeutic and rehabilitation activities.

266. The CPT's delegation gained an overall positive impression of living conditions and staffing levels at the Kyiv City Centre for forensic psychiatric assessment. However, the daily regime in the Centre can only be described as impoverished. The CPT has recommended in particular that steps be taken immediately to ensure that all patients are offered outdoor exercise on a daily basis.

267. The CPT has also made a number of observations concerning the use of means of restraint and safeguards in the context of involuntary hospitalisation.

As regards more particularly the High Security Psychiatric Hospital in Dnipropetrovsk, the CPT has stressed that health-care staff must have the main responsibility for the restraint of agitated and/or violent patients; any assistance by "controllers" in such cases should only be provided at the request of health-care staff and must comply with the instructions given by such staff. The Committee has also emphasised that if, exceptionally, recourse is made to instruments of physical restraint, they should be removed at the earliest opportunity.

#### **E. Other establishments**

268. The short-term detention facilities of the State Committee for the Protection of National Borders at Boryspil Airport, as well as the centre for prolonged detention located some 2 km away, offered material conditions which could be described as adequate.

Material conditions and the programme of activities at the Dnipropetrovsk Treatment and Labour Detention Centre for the compulsory treatment of alcoholics were also satisfactory. However, the CPT has recommended that steps be taken to improve conditions of detention in the establishment's disciplinary unit.

269. The CPT has welcomed the setting up of a secure ward for detained persons at Kyiv Emergency Hospital in Bratislava Street. However, the Committee has recommended that the practice followed in the ward of chaining patients continuously to their beds be discontinued. The material conditions and staffing arrangements within the ward were more than sufficient to meet all legitimate security concerns without taking any additional precautions.

Aside from the above-mentioned issue, the material conditions under which sick detainees were being accommodated in the secure ward and their medical treatment appeared on the whole to be of an acceptable standard.

**F. Action on the CPT's recommendations, comments and requests for information**

270. The various recommendations, comments and requests for information formulated by the CPT are summarised in Appendix I.

271. As regards more particularly the CPT's recommendations, having regard to Article 10 of the Convention, the CPT requests the Ukrainian authorities:

- i. to provide within six months an interim report giving details of how it is intended to implement the CPT's recommendations and, as the case may be, providing an account of action already taken (N.B.: the Committee has indicated the urgency of certain of its recommendations);
- ii. to provide within twelve months a follow-up report providing a full account of action taken to implement the CPT's recommendations.

The CPT trusts that it will also be possible for the Ukrainian authorities to provide in the above-mentioned interim report reactions to the comments formulated in this report which are summarised in Appendix I as well as replies to the requests for information made.



## **APPENDIX I**

### **SUMMARY OF THE CPT'S RECOMMENDATIONS, COMMENTS AND REQUESTS FOR INFORMATION**

#### **A. Militia establishments**

##### **1. Preliminary remarks**

###### recommendations

- the law and practice relating to custody pending trial to be reviewed, in the light of the principles set out in Committee of Ministers' Recommendation R (80) 11 (paragraph 17).

###### requests for information

- the comments of the Ukrainian authorities on the findings referred to in paragraph 16 (paragraph 16);
- whether the rule set out in Section 11 of the Law on the Militia applies to all persons under the age of 16 detained by the Militia, whatever the reason for the detention (paragraph 19).

##### **2. Torture and other forms of physical ill-treatment**

###### recommendations

- a very high priority to be given to professional training for officers of the Militia of all ranks and categories, taking into account the remarks made in paragraph 29; experts not belonging to the Militia to be involved in this education and training (paragraph 30);
- an aptitude for interpersonal communication to be a major factor in the process of recruiting officers of the Militia and, during the training of such officers, considerable emphasis to be placed on acquiring and developing interpersonal communication skills (paragraph 30);
- the relevant national authorities as well as senior officers to make it clear to officers of the Militia that the ill-treatment of persons in their custody is not acceptable and will be dealt with severely (paragraph 30);
- officers of the Militia to be reminded that no more force than is strictly necessary should be used when apprehending a person and that once apprehended persons have been brought under control, there can never be any justification for Militia officers striking them (paragraph 31);

- the necessary measures to be taken to ensure that tear gas not be sprayed inside cells in response to detainees being too noisy or troublesome (paragraph 32);
- investigators and public prosecutors to be given instructions concerning the approach to be adopted when they receive allegations of ill-treatment by the Militia, or observe that a criminal suspect brought before them may have suffered such treatment. Investigators and public prosecutors, *inter alia*, to be encouraged, in appropriate cases, to order an immediate forensic medical examination of the person concerned (paragraph 34);
- appropriate steps to be taken as of now to ensure that all criminal suspects taken into the custody of the Militia are brought before the public prosecutor responsible for taking a decision on their remand in custody or release (paragraph 35);
- the return of prisoners to Militia premises only to be sought and authorised when it is absolutely unavoidable, and such a measure to require the express authorisation of the competent public prosecutor (paragraph 36).

#### comments

- non standard-issue items capable of being used for inflicting ill-treatment – such as the item described in paragraph 25 – ought not to be held on Militia premises (paragraph 25).

#### requests for information

- the outcome of the proceedings referred to in paragraph 23 (paragraph 23);
- confirmation that the metal rings fixed to the door in the corridor of the detention area at Zaliznichne District Command of Internal Affairs in Kyiv have been removed (paragraph 26);
- in respect of 1997 and 1998:
  - the number of complaints of ill-treatment made against officers of the Militia and the number of criminal/disciplinary proceedings which were instituted as a result;
  - an account of criminal/disciplinary sanctions imposed following complaints of ill-treatment (paragraph 33);
- detailed information on the disciplinary procedures applied in cases involving allegations of ill-treatment by Militia staff, including the safeguards incorporated to ensure their objectivity (paragraph 33).

### 3. Safeguards against the ill-treatment of persons deprived of their liberty

#### recommendations

- the necessary steps to be taken to ensure that:
  - persons apprehended by the Militia have the right to inform, without delay, a close relative or a third party of their choice of their situation, either directly or through a Militia officer;
  - any possibility exceptionally to delay the exercise of this right is clearly circumscribed in law, made subject to appropriate safeguards (e.g. any delay to be recorded in writing with the reasons therefor and to require the approval of a court or a public prosecutor) and strictly limited in time (paragraph 41);
- steps to be taken to ensure that all persons apprehended by the Militia have, as from the very outset of their deprivation of liberty, a right of access to a lawyer as defined in paragraph 44. Moreover, the exercise of that right not to be made subject to the authorisation of an investigator (paragraph 45);
- the right of persons deprived of their liberty by the Militia to have access to a doctor to be expressly guaranteed. The relevant provisions to stipulate that:
  - all medical examinations are to be conducted out of the hearing and - unless the doctor concerned expressly requests otherwise in a given case - out of the sight of Militia officers;
  - the results of every examination, as well as any relevant statements by the detained person and the doctor's conclusions, are to be formally recorded by the doctor and made available to the detainee and his lawyer (paragraph 48);
- a form setting out in a straightforward manner the rights of persons deprived of their liberty by the Militia to be systematically given to such persons at the very outset of their custody. The form to be available in an appropriate range of languages (paragraph 50);
- a code of conduct for interviews to be drawn up. In addition to reiterating the total prohibition of ill-treatment, the code to deal, *inter alia*, with the following: the systematic informing of the detained person of the identity (name and/or number) of those present at the interview; the permissible length of an interview; rest periods between interviews and breaks during an interview; places in which interviews may take place; whether the person detained may be required to remain standing while being questioned; the questioning of persons who are under the influence of drugs, alcohol or medicine, or who are in a state of shock. It should also stipulate that a systematic record be kept of the times at which interviews start and end, the persons present during each interview and any request made by the detained person during the interview. The position of specially vulnerable persons (for example, the young, those who are mentally disabled or mentally ill) to be subject to specific safeguards (paragraph 52);

- steps to be taken immediately to ensure that whenever a person is detained in a Militia establishment, for whatever reason or length of time, the fact of his detention is recorded without delay (paragraph 53).

#### comments

- the fundamental safeguards offered to persons in the custody of the Militia would be reinforced if a single and comprehensive custody record were to be kept for each person detained, in which would be recorded all aspects of his custody and all the action taken in connection with it (time of and reason(s) for the arrest; time of arrival on the Militia premises; when informed of rights; signs of injury, mental disorder, etc.; contact with and/or visits by a relative, lawyer, doctor or consular officer; when offered food; when interviewed; when brought before a public prosecutor; when remanded in custody or released, etc.) (paragraph 54);
- to be fully effective from the standpoint of preventing ill-treatment, visits by public prosecutors to Militia establishments should be unannounced and should include an inspection of the establishment's cellular facilities, as well as direct contact between the public prosecutor and detained persons (paragraph 56).

#### requests for information

- information concerning the right of access to a lawyer for persons detained on suspicion of being vagrants (paragraph 45);
- whether a system of legal aid for detained persons exists in Ukraine (paragraph 46);
- whether visits by public prosecutors to Militia establishments result in reports and, in the affirmative, a copy of the most recent report drawn up in respect of the largest District Command of Internal Affairs in Kyiv (paragraph 56).

#### **4. Conditions of detention**

##### **a. District Commands of Internal Affairs**

#### recommendations

- the necessary measures to be taken to ensure that the detention facilities of the district commands of Internal Affairs are used exclusively for the initial 72-hour period of custody by the Militia (paragraph 67);
- detained persons to be guaranteed access to drinking water (paragraph 68);
- improvements to be made to the state of cleanliness and repair of the sanitary facilities (paragraph 68);

- detained persons to be provided with essential personal hygiene products (soap, towel, sanitary towels/protection, etc.) (paragraph 68);
- all persons held in custody overnight to be provided with a clean mattress and blankets (paragraph 68);
- lighting to be improved in the cells (as far as possible, there should be access to natural light, and artificial lighting should be sufficient to allow detainees to read, sleeping periods excluded) and the in-cell ventilation be checked to ensure that it is adequate (paragraph 68);
- the possibility to be explored of offering persons held in custody for more than 24 hours genuine outdoor exercise (i.e. in an area sufficiently large to allow them to exert themselves physically) for at least one hour a day (paragraph 69).

b. Militia central holding facilities (ITT)

recommendations

- the necessary measures to be taken to ensure that the length of time spent in an ITT does not exceed the maximum period stipulated by Section 155 of the Code of Criminal Procedure, i.e. ten days (paragraph 85);
- immediate steps to be taken to ensure that all persons detained in ITTs are:
  - each provided with a clean mattress and blankets;
  - supplied with essential personal hygiene products (soap, towel, sanitary towels/protection, etc.) and have the opportunity to wash every day, with sufficient quantities of water;
  - enabled to take a warm shower on arrival and entitled to a warm shower at least once a week during their period of detention;
  - given the necessary products to keep their cells clean and hygienic (paragraph 86);
- immediate steps to be taken to:
  - ensure that the food provided to detained persons is of an appropriate quality and quantity;
  - ensure that effective methods are used for fighting parasites;
  - improve the in-cell lighting and ventilation;
  - find ways of partitioning off the toilets in the cells;

- ensure that detained persons are provided with reading matter;
  - review the possibilities for detained persons to maintain contact with the outside world, in order to ensure that such contact is not being restricted unjustifiably (paragraph 86);
- as a matter of priority, the possibility to be examined of offering to persons detained in ITTs genuine outdoor exercise (i.e. in an area sufficiently large to allow them to exert themselves physically) for at least one hour per day (paragraph 86);
  - all-newly arrived detainees to be appropriately examined upon arrival by a qualified member of the health-care service (paragraph 86);
  - regular attendance by a doctor to be envisaged at large ITTs, such as the ones in Dnipropetrovsk and Kyiv. In addition to providing medical examinations, such a doctor could be responsible for the health-care service and supervising the work of the rest of the health-care staff (paragraph 86).

#### comments

- all persons detained at the ITT in Kyiv, and not merely those who have been held there for over ten days, should benefit from one hour of outdoor exercise per day (paragraph 80);
- in ITTs the aim should be to provide material conditions comparable to those observed in the group of cells at the ITT in Dnipropetrovsk described in the first sub-paragraph of paragraph 71, and to ensure daily access to an open exercise yard large enough to enable detained persons to exert themselves physically (paragraph 86).

c. centre for the reception and allocation of minors in Kyiv

#### recommendations

- steps to be taken to ensure that:
  - children placed in the isolation rooms (for whatever reason) are guaranteed at least one hour of outdoor exercise every day and are provided with reading matter;
  - a full record is kept of the use of the isolation rooms (paragraph 93).

#### comments

- the Ukrainian authorities are invited to verify that boys held at the centre can have access to the toilet facilities whenever needed, including at night (paragraph 88);
- the Ukrainian authorities are invited to take measures to provide sufficient outdoor clothing for the children held in the centre (paragraph 90).

d. Other Militia detention facilities

recommendations

- the recommendations made in paragraph 86 concerning ITT facilities to be read as applying *mutatis mutandis* to the holding facility for criminal suspects and the centre for the reception and allocation of vagrants at Kyiv Central Railway Station, as well as to the centres for the reception and allocation of vagrants and for administrative detention in Dnipropetrovsk (paragraph 106);
- steps to be taken to ensure that persons detained at the centre for vagrants in Dnipropetrovsk are evenly distributed throughout the available accommodation (paragraph 106);
- the possibility to be explored of providing day rooms in centres for administrative detention and for the allocation and reception of vagrants (paragraph 107).

requests for information

- confirmation that the refurbishment of the "filtration room" at the Central Railway Station Division of the Transport Militia in Kyiv has now been completed, as well as information on conditions of detention in the refurbished detention facility (paragraph 96).

**B. Establishments under the authority of the State Department for the Execution of Sentences**

**1. Preliminary remarks**

recommendations

- a high priority to be given to the implementation of the whole range of measures designed to reduce overcrowding (paragraph 111);
- the standard on living space to be provided per person in pre-trial prisons – and, if need be, in other types of prison establishment – to be increased as soon as possible. The standard should be at least 4m<sup>2</sup> per person (and any cells measuring less than 6m<sup>2</sup> to be taken out of service as prisoner accommodation) (paragraph 112);
- special measures to be introduced to provide more work for prisoners (paragraph 113).

requests for information

- detailed information on the organisation and duties of the State Department for the Execution of Sentences (paragraph 108).

## **2. Ill-treatment**

### recommendations

- the anachronistic practice of obliging prisoners to face the wall when staff or visitors pass by to cease (paragraph 116).

### requests for information

- information regarding the alleged incident to which reference is made in paragraph 114 (paragraph 114);
- for 1997 and 1998:
  - the number of complaints of ill-treatment lodged against the staff of establishments under the authority of the State Department for the Execution of Sentences;
  - an account of disciplinary and/or criminal sanctions imposed following such complaints (paragraph 115).

## **3. Pre-trial Prison (SIZO) No. 313/203 in Kharkiv**

- a. conditions of detention for the general prison population

### recommendations

- prisoners to be immediately supplied with adequate quantities of essential personal hygiene products and cleaning products for their cells (paragraph 130);
- measures to be taken to ensure that the material conditions of all cells in buildings Nos. 1 and 2 are improved as quickly as possible, at least to the standard of those in building No. 6, in terms of cleanliness and hygiene, natural and artificial lighting, ventilation and equipment. Immediate steps to be taken to ensure that every prisoner in buildings Nos. 1 and 2 has a bed or sleeping place. Likewise, the devices covering the windows of the cells in buildings Nos. 1, 2 and 5 to be modified without delay, in order to improve access to natural light and air (paragraph 130);
- in the course of the establishment's renovation, particular attention to be paid to the partitioning of the in-cell toilets (paragraph 130);
- the use of the exercise yards and, if necessary, their lay-out to be reviewed, in the light of the comments made in paragraph 127 (paragraph 130);
- the possibility to be explored of making use of the open areas within the establishment's perimeter and of the abandoned building on the SIZO's premises for the purpose of organising sports and leisure activities (paragraph 130);

comments

- the intolerable situation observed at the Kharkiv SIZO serves to highlight the importance of the recommendations already made in paragraphs 17 and 111 (paragraph 129);
- the CPT very much hopes that the new prison building, with a capacity of 270 places, will be soon brought into service (paragraph 130);
- as overcrowding is reduced, fuller programmes of activities must be introduced. The aim should be to ensure that all prisoners are able spend a reasonable part of the day (i.e. eight hours or more) outside their cells, engaged in purposeful activities of a varied nature (recreation/association; work, preferably with vocational value; education; sport). As regards more particularly juvenile prisoners, they should be offered a full programme of educational, recreational and other purposeful activities designed to bring out their potential for social integration or re-integration; physical education should constitute an important part of that programme (paragraph 130).

b. prisoners sentenced to death

recommendations

- having regard to the recommendations made in paragraph 130, immediate action to be taken to remedy the shortcomings described in paragraph 132 with respect to lighting, heating, bedding, and personal hygiene products (paragraph 132);
- the regime applied to prisoners sentenced to death held in Kharkiv SIZO No. 203, as well as in other prison establishments in Ukraine, to be urgently reviewed in order to ensure that they are offered purposeful activities and appropriate human contact. If necessary, the relevant Instructions to be amended (paragraph 136);
- the relevant regulations to be revised in order that prisoners sentenced to death in Ukraine are given significantly more opportunities for contact with the outside world (paragraph 37).

requests for information

- detailed information on the precise practical improvements made to the conditions of detention of persons sentenced to death, both at the Kharkiv SIZO and at other SIZOs, together with a copy of the relevant Instruction of 20 April 1998 (paragraph 135);
- the comments of the Ukrainian authorities on the provision of information to prisoners sentenced to death with regard to their legal situation and on their access to the machinery established under the European Convention on Human Rights (paragraph 138);
- the comments of the Ukrainian authorities on the rationale of the system of permanently separating prisoners sentenced to death from the rest of the prison population (paragraph 139).

#### 4. Health-care services

##### recommendations

- concerted efforts to be made to establish a comprehensive policy on health-care in prisons, in the light of the remarks made in paragraph 143 (paragraph 143);
- in respect of Kharkiv SIZO, the Ukrainian authorities to:
  - endeavour to increase the number of health-care staff;
  - review the facilities and resources made available to the medical service, in order to ensure rational management of health-care for patients placed in sanitary cells, as well as material conditions meeting the standards of hygiene required in a health-care unit. This should include a more centralised location of the health-care facilities (paragraph 147);
- measures to be taken without delay to ensure the supply of appropriate medicines – including tuberculostatic medicines - to the Kharkiv SIZO and, if necessary, to other prison establishments (paragraphs 148 and 156);
- medical screening on admission to be developed in the light of the remarks made in paragraph 151. The same approach to be followed whenever a prisoner is medically examined following a violent episode in prison (paragraph 151);
- the manner in which prisoners are screened for tuberculosis to be reviewed, taking due account of the remarks in paragraph 153 and drawing inspiration from the international principles recently developed to control and fight tuberculosis (paragraph 153);
- the necessary measures to be taken to establish the nature and extent of the problem of multi-resistant forms of tuberculosis at the Kharkiv SIZO and, if necessary, in Ukraine's other prison establishments. Should the existence of these forms of tuberculosis be confirmed, urgent prophylactic measures to be adopted, drawing inspiration from the latest guidelines issued by the WHO and the ICRC (paragraph 154);
- at the Kharkiv SIZO, the necessary measures to be taken in order to ensure:
  - satisfactory conditions of hygiene and adequate ventilation in the cells for tuberculosis patients, with priority being given to cell 64. Care also to be taken to ensure that such prisoners are able to maintain a standard of personal hygiene consistent with the requirements of their state of health;
  - accommodation for prisoners suffering from tuberculosis – irrespective of their category – based on strict diagnostic criteria;
  - appropriate distribution and appropriate monitoring of the taking of tuberculostatic medicines (paragraph 156);

- the Ukrainian authorities to:
  - ensure without delay that the various norms laid down for the daily menus are strictly complied with;
  - ensure that meals are prepared in appropriate hygiene conditions;
  - remedy the deficiencies as regards the storage of food products (especially as regards cold storage/freezer units, control of the expiry date of tinned food) (paragraph 159).

#### comments

- whatever institutional arrangements are made for the provision of health-care in prisons, it is essential that prison doctors' clinical decisions should be governed only by medical criteria and that the quality and effectiveness of their work should be assessed by a qualified medical authority (paragraph 142).

#### requests for information

- whether the transfer of responsibility for prison establishments has also included the Department for Health Protection (paragraph 140);
- the views of the Ukrainian authorities as regards the possibility of giving increased responsibility to the Ministry of Public Health in the field of health-care provision in the Ukrainian prison system, including the recruitment of health-care staff and the supervision of their work (paragraph 142).

### **5. Other issues of relevance to the CPT's mandate**

#### recommendations

- a high priority to be given to developing both initial and in-service vocational training of prison staff at all levels. In the course of such training, considerable emphasis to be placed on the acquisition and development of interpersonal communication skills. Building positive relations with prisoners to be recognised as a key feature of a prison officer's vocation (paragraph 162);
- disciplinary procedures to ensure that a prisoner is heard in all cases on the subject of the offence he/she is supposed to have committed; if necessary, the relevant regulations to be amended accordingly (paragraph 163);
- the necessary measures to be taken immediately to ensure that all prisoners placed in disciplinary cells:
  - are given a mattress and blankets for the night;
  - are offered one hour of outdoor exercise per day (paragraph 164);

- steps to be taken to ensure that all prisoners placed in disciplinary cells have access to reading matter (paragraph 164);
- the disciplinary cells in the Kharkiv SIZO to be enlarged and provided with access to natural light (paragraph 164);
- the approach adopted to remand prisoners' visits and correspondence to be reviewed in the light of the remarks made in paragraph 168 (paragraph 168);
- the two extremely small waiting cubicles in building No. 2 of Kharkiv SIZO to be immediately withdrawn from service (paragraph 174).

#### comments

- the Ukrainian authorities are invited to review the conditions under which visits take place, in order to ensure that, as far as possible, not only working prisoners but also other inmates in remand prisons receive visits in relatively open conditions (paragraph 169);
- the Ukrainian authorities are invited to add the President of the CPT to the list of authorities with whom prisoners can communicate on a confidential basis (paragraph 171);
- the Ukrainian authorities are invited to review as soon as possible the conditions under which prisoners await their allocation/transfer in the admissions unit at Kharkiv SIZO (paragraph 173).

#### requests for information

- whether prisoners have the right to appeal to a higher authority against disciplinary sanctions (paragraph 163);
- detailed information on the possible duration of the measure of solitary confinement of remand prisoners and the existing procedural safeguards (for example, are prisoners placed in solitary confinement informed of the reasons for the measure taken against them? Are they allowed to present their views? Can they contest the measure before another authority?) (paragraph 165);
- details (frequency, duration) of the visiting rights of sentenced prisoners other than those employed in the SIZOs (paragraph 168);
- whether the confidentiality of correspondence between prisoners (whether remand or sentenced) and their lawyers is guaranteed (paragraph 168);
- copies of the reports drawn up by the public prosecutor responsible for inspecting the Kharkiv SIZO for the period June to October 1998 (paragraph 172).

### **C. Establishments under the authority of the State Security Service of Ukraine**

#### recommendations

- at the State Security SIZO in Kyiv:
  - access to natural light to be improved in the cells (for example, by removing the external metal covers obscuring the windows) (paragraph 178);
  - a way of partitioning off the toilets in the cells to be found (paragraph 178);
  - the outdoor exercise facilities to be reviewed (paragraph 179);
  - measures to be taken to provide prisoners with a programme of purposeful activities of a varied nature (association/recreation; work, preferably with vocational value; education; sport, etc.), enabling them to spend a reasonable part of the day (i.e. at least 8 hours) outside their cells (paragraph 180);
- steps to be taken to ensure that medical screening on arrival is conducted in a manner consistent with the recommendation made in paragraph 151 (paragraph 182);
- the recommendation made in paragraph 163, concerning safeguards for prisoners against whom disciplinary measures are taken, also to be applied in respect of persons held in establishments under the authority of the State Security Service (paragraph 184);
- access to be provided to natural light in the 7 m<sup>2</sup> disciplinary cell at the SIZO of the State Security Service in Kyiv (paragraph 184);
- the unlit, unventilated padded cell referred to in paragraph 185 not to be used in its current state (paragraph 185);
- every placement in a disciplinary cell to be recorded in an appropriate register (paragraph 186);
- the recommendation made in paragraph 168 concerning contact with the outside world to be applied, *mutatis mutandis*, to the situation of remand prisoners held in establishments under the authority of the State Security Service (paragraph 187);
- the waiting cubicles measuring between 0.68m<sup>2</sup> and 1m<sup>2</sup> at the SIZO of the State Security Service in Kyiv to be withdrawn from use immediately (paragraph 188);
- the lighting and ventilation in prison vans to be verified, and the placement of prisoners in compartments as small as 0.50 m<sup>2</sup> to cease (paragraph 189).

#### comments

- it would be very desirable for prisoners in general throughout Ukraine, including those on remand, to be able to telephone their family and/or close friends (paragraph 187).

requests for information

- the comments of the Ukrainian authorities as regards the adequacy of the provision of non-emergency medical care (paragraph 183);
- the request for information made in paragraph 163 concerning safeguards for prisoners against whom disciplinary measures are taken also to be applied in respect of persons held in establishments under the authority of the State Security Service (paragraph 184);
- whether prisoners placed in punishment cells are provided with a mattress and blankets at night, have access to reading matter and are guaranteed outdoor exercise (paragraph 184);
- the requests for information made in paragraph 168 concerning contact with the outside world also to be applied, *mutadis mutandis*, to the situation of remand and sentenced prisoners held in establishments under the authority of the State Security Service (paragraph 187);
- a copy of any regulations which might exist concerning the characteristics of vehicles used for transporting prisoners (paragraph 189).

**D. Psychiatric establishments**

**1. Preliminary remarks**

requests for information

- further information on the draft Mental Health Act (paragraph 190);
- the comments of the Ukrainian authorities on the issue of the transfer of patients between Ukraine and other States of the CIS (paragraph 191).

**2. Ill-treatment**

recommendations

- it to be made clear to staff of the Ministry of Internal Affairs assigned to security tasks at the High Security Psychiatric Hospital in Dnipropetrovsk, as well as at other psychiatric hospitals in Ukraine, that the ill-treatment of patients is not acceptable and will be dealt with severely (paragraph 193);
- consideration to be given to the possibility of security staff working inside psychiatric establishments being recruited directly by the Ministry of Public Health, and subordinated to the hospital's Director. In all cases, such staff should be trained by the Ministry of Public Health (paragraph 194).

requests for information

- in respect of 1997 and 1998:
  - the number of complaints of ill-treatment lodged against health-care and security staff members in psychiatric establishments in Ukraine;
  - an account of sanctions imposed following complaints of ill-treatment by such staff members (paragraph 196).

**3. National High Security Psychiatric Hospital in Dnipropetrovsk**

recommendations

- further steps to be taken to improve material conditions in the hospital's wards, having regard to the remarks made in paragraphs 200 to 202. The overriding objective to be to provide a positive therapeutic environment for patients. This involves, in the first place, having sufficient living space per patient. Efforts to be made to offer a more congenial and personalised surrounding for patients, in particular by providing them with lockable space and allowing a reasonable number of personal belongings. Steps also to be taken to ensure that an individualised approach is followed as regards patients' clothing (paragraph 204);
- concerted efforts to be made to improve the activities offered to patients at the hospital. In particular, steps to be taken to re-introduce occupational therapy as an important part of the rehabilitation process. Efforts also to be made to involve more patients in group therapy and individual psychotherapy (paragraph 208);
- the necessary steps to be taken to improve the conditions under which patients take outdoor exercise (paragraph 208);
- steps to be taken to fill all vacant nursing posts and efforts to be made to increase the nursing staff/patient ratio (paragraph 211);
- the team of specialists qualified to provide therapeutic and rehabilitation activities to be substantially reinforced (paragraph 211);

comments

- the Ukrainian authorities are invited to consider the possibility of modifying the large-capacity dormitories found in the hospital; such facilities are scarcely compatible with the norms of modern psychiatry (paragraph 204).
- the long-term objective should be to move away from an environment primarily based on the custody of patients and the use of medication, and to create a therapeutic milieu which also includes occupational therapy and psycho-social intervention (paragraph 208);

requests for information

- whether the reconstruction work underway at the High Security Psychiatric Hospital in Dnipropetrovsk has now been completed (paragraph 199);
- information on the existing arrangements for specialised psychiatric nursing training in Ukraine (paragraph 211).

**4. Kyiv City Centre for forensic psychiatric assessment**

recommendations

- steps to be taken immediately to:
  - ensure that all patients are offered outdoor exercise on a daily basis;
  - remove from service the two cubicles in the reception area (paragraph 217);
- efforts to be made to:
  - develop psycho-social therapeutic activities for persons held at the Centre;
  - provide a more congenial and personalised environment for patients, in particular by allowing them a reasonable number of personal belongings (paragraph 217).

**5. Means of restraint**

recommendations

- a detailed policy on the use of means of restraint to be drawn up. Such a policy to make clear that initial attempts to restrain aggressive behaviour should, as far as possible, be non-physical (e.g. verbal instruction) and that where physical restraint is necessary, it should in principle be limited to manual control (paragraph 221);
- health-care staff in psychiatric establishments to receive training in both non-physical and manual control techniques vis-à-vis agitated or violent patients (paragraph 221);
- appropriate steps to be taken to ensure that situations of the nature to which reference is made in paragraph 222 do not recur (paragraph 222);
- every instance of the physical restraint of a patient to be recorded in a specific register established for that purpose. The entry to include the times at which the measure began and ended, who ordered the measure, the circumstances of the case, the reasons for resorting to the measure and an account of any injuries sustained by patients or staff (paragraph 223).

comments

- health-care staff must have the main responsibility for the restraint of agitated and/or violent patients. Any assistance by "controllers" in such cases should only be provided at the request of health-care staff and must comply with the instructions given by such staff (paragraph 221).

**6. Safeguards in the context of involuntary hospitalisation**

recommendations

- all patients to be provided systematically with relevant information about their condition and the treatment which it is proposed to prescribe for them. Relevant information also to be provided to patients following treatment (results, etc.) (paragraph 226);
- measures to be taken to introduce specific arrangements enabling patients to lodge formal complaints with a clearly-designated body and to communicate on a confidential basis with an appropriate authority outside the establishment. These arrangements to include the provision of information to patients on the possibility of making a complaint (paragraph 227);
- an introductory brochure setting forth the hospital routine and patients' rights to be devised, and issued to each patient on admission, as well as to their families. Any patients unable to understand this brochure to receive appropriate assistance (paragraph 227).

comments

- the Ukrainian authorities are invited to take appropriate measures to offer external stimulation and support to staff in psychiatric establishments (paragraph 232).

requests for information

- information on the practical procedures which ensure that patients' placements are reviewed objectively and in sufficient detail (paragraph 225);
- a full account of the legal procedures applied in the case of civil commitment to a psychiatric hospital and, in particular, detailed information on the medical opinions required for involuntary hospitalisation, the role of the courts in the decision to hospitalise involuntarily, patients' rights of appeal against their involuntary hospitalisation, and procedures for the review at regular intervals of whether involuntary hospitalisation remains necessary (paragraph 225);
- full information on the legal position in Ukraine concerning consent to treatment (paragraph 26);

- whether the rule according to which all letters are subject to censorship by the treating doctor applies also to correspondence between a patient and his lawyer (paragraph 229);
- information on the current arrangements for patients' visits (including by a lawyer) and correspondence at the Kyiv City Centre for forensic psychiatric assessment (paragraph 230);
- a copy of the last report drawn up by the public prosecutor in respect of the High Security Psychiatric Hospital in Dnipropetrovsk (paragraph 231);
- whether the High Security Psychiatric Hospital in Dnipropetrovsk receives visits from an outside body other than the public prosecutor (paragraph 231);
- details of the system for external supervision of the Kyiv City Centre for forensic psychiatric assessment (paragraph 231).

## **E. Other establishments**

### **2. Detention facilities of the State Committee for the Protection of National Borders**

#### recommendations

- information regarding the destination of persons leaving the Boryspil Airport detention facilities and detention centre (whether released, sent back, transferred to a Militia establishment, etc.) to be recorded in the relevant registers (paragraph 234).

#### requests for information

- detailed information, including copies of the relevant texts, on the cases in which staff of the State Committee for the Protection of National Borders can deprive a person (of foreign or Ukrainian nationality) of his liberty, the periods of time during which such a person may be detained, as well as the formal safeguards which apply to such persons (right to inform a close relative or another third party of the fact of detention, right of access to a lawyer/doctor, contact with the consular authorities, etc.) (paragraph 235);
- information on the precise procedure followed in cases of asylum applications made by foreign nationals (paragraph 235);
- information on the activities offered to persons held at the detention centre (reading matter, recreation activities, TV, etc.) (paragraph 237);
- the comments of the Ukrainian authorities on the financing of the stay and subsistence of detained foreign nationals, as well as information on the practical arrangements to ensure the provision of food to persons deprived of their liberty by the State Committee for the Protection of National Borders (paragraph 238).

**2. Dnipropetrovsk Treatment and Labour Detention Centre for the compulsory treatment of alcoholics**

recommendations

- steps to be taken to improve conditions of detention in the disciplinary unit, having regard to the remarks made in paragraph 243 (paragraph 243).

requests for information

- further information on the pending transformation of this type of establishment (paragraph 239).

**3. Secure ward at Kyiv Emergency Hospital**

recommendations

- the practice of chaining detainees to hospital beds to be discontinued (paragraph 245);
- appropriate steps to be taken to ensure that sick detainees are able to receive visits - including from their lawyers - and are offered outdoor exercise on a daily basis, unless medically inappropriate (paragraph 246).

comments

- the Ukrainian authorities are invited to provide appropriate means of recreation to sick prisoners held in the secure ward (e.g. access to books and newspapers; radio/TV) (paragraph 246).

requests for information

- the reasons for not allowing patients in the secure ward to receive food parcels (paragraph 246).



## **APPENDIX II**

### **LIST OF THE NATIONAL AUTHORITIES AND NON-GOVERNMENTAL ORGANISATIONS WITH WHICH THE CPT'S DELEGATION HELD CONSULTATIONS**

#### **National authorities**

##### **Ministry of Internal Affairs**

Mr Oleksandr TERESHCHUK	Deputy Minister for Internal Affairs
Mr Ivan SHTANKO	Director of the Execution of Sentences Directorate
Mr Oleksandr PTASHYNSKI	First Deputy Director of the Execution of Sentences Directorate
Mr Valery KUZMIN	Deputy Head of Department, the Execution of Sentences Directorate
Mr Georgiy SVYSLOTSKIY	Chief of the Foreign Relations Department
Mr Olexandr GUNCHENKO	Deputy Chief of the Health Protection Department
Mr Anatoliy TOPIKHA	Deputy Chief of the Juvenile Delinquency Criminal Police Department
Mr Victor OVSYANNIKOV	Deputy Chief of the Principal Administrative Police Department
Mr Vasyl GRYSCHUK	Chief of the Special Police Establishments Division

##### **Ministry of Defence**

Mr Vasyl SOBKOV	Deputy Minister for Defence
Mr Victor GUDYM	Chief of the Ground Forces Headquarters

##### **Ministry of Public Health**

Mrs Lyubov NEKRASOVA	Deputy Minister for Public Health
Mr Valeri PISHCHYKOV	Chief of the Principal Civil Medical Assistance and Preventive Measures Department
Mr Oleksandr KVASNEVSKY	Head of the Mental Health Division of the Principal Civil Medical Assistance and Preventive Measures Department

##### **Ministry of Justice**

Mrs Suzana STANIK	Minister for Justice
Mr Sergiy VASELYNA	Deputy Chief of the International Legal Assistance and Co-operation Department
Mr Sergiy POLOZHIY	First Deputy Chief of the Legislation for Justice, Public Order and Defence Department
Ms Valeriya LUTKOVSKA	Deputy Chief of the International Legal Assistance and Co-operation Department
Mr Dmytro KORBUT	Principal Adviser

Ministry of Foreign Affairs

Mr Oleksandr KUPCHISHYN	Head of Department
Mr Oleksandr SAVENKO	Attaché

Prosecutor General's Office

Mr Ivan VERNYDUBOV	Deputy Prosecutor General
Mr Sergiy MIROSHNYCHENKO	Chief of the Constitutional Rights and Freedoms Supervision Department
Ms Nataliya SHESTAKOVA	Chief of the Law Maintenance on Minors Rights Supervision Department
Mr Victor TANTSURA	Chief of the Department for the Supervision of Investigations Conducted by the Prosecutor General's Office
Mr Oleg BROUN	Head of the Department for the Supervision of Criminal Investigations Conducted by the Prosecutor General's Office
Mr Oleg PROTSOUK	Head of the Department for the Supervision of Law Maintenance by the Law Enforcement Authorities Conducting Operative and Search Activity, Pre-trial and Inquiry Investigations
Mr Vitaliy FRYTCH	Head of the Department for the Supervision of Law Maintenance by Bodies of the State Security Service of Ukraine, State Customs and Border Guard Services Conducting Operative and Search Activities and Inquiry Investigations
Mr Victor KUDRIAVTSEV	Head of the Department for State Prosecution Support in Trials
Mr Mykola DOTSENKO	Head of the Department for the Supervision of Law Maintenance of Trial Decisions' Execution in Criminal Cases
Mr Oleksiy TSERELLENKO	Chief of the International and Legal Relations Department
Mr Stanislav MALKIN	Deputy Chief of the Statistical Department

State Security Service

Mr Anatoliy BELYAEV	Deputy Director
Mr Volodymyr PRYSTAIKO	Deputy Director
Mr Petro MELNYK	Head Inspector

State Committee for the Protection of National Borders of Ukraine

Mr Victor ZAYARNIY	Deputy Director
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**Non-governmental organisations**

Helsinki-90

Donetsk Memorial

Kharkiv Group for Human Rights Protection

Sebastopol Human Rights Group

Ukrainian Psychiatric Association

Ukrainian-American Bureau for the Protection of Human Rights