



UKRAINIAN PARLIAMENT COMMISSIONER  
FOR HUMAN RIGHTS

# MONITORING PLACES OF DETENTION IN UKRAINE

State of Implementation of the  
National Preventive  
Mechanism

2014 Report

**Kyiv - 2015**

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## INTRODUCTION

The past year has become a true test for our country. The Revolution of Dignity, occupation of Crimea, the start of hostilities in Eastern Ukraine, and spread of terrorist threat across the country created new challenges for the national preventive mechanism that had to adapt quickly in rapidly changing environment.

For instance, during the Revolution of Dignity, the NPM made it possible to obtain up-to-date information about the fate of Maidan activists subjected to mass detentions by law enforcement officials. In close cooperation with the Department of Special Proceedings of the Secretariat of the Ukrainian Parliament Commissioner for Human Rights, representatives of the NPM Department were performing functions of urgent response regularly verifying information on human rights violations in different institution, responding to concrete complaints about torture and ill-treatment. **The first chapter** of the Report describes identified violations and acts of response of the Commissioner. An in-depth account is presented in the Special Report of the Commissioner for Human Rights titled “Violations of Human Rights in Ukraine during events of November 2013 – February 2014”.

Importantly, materials of the Special Report were used in preparation of submission to the International Criminal Court in The Hague by nongovernmental organizations in cooperation with the Secretariat of the Commissioner. The aim of the submission was to call for consideration of initiating proceedings into crimes against humanity committed during the Revolution of Dignity. In fact, the Commissioner’s report was the first official document with a systemized account of all human rights violations that took place during the Revolution of Dignity.

In addition, all materials of proceedings, including correspondence of the Commissioner for Human Rights with the Office of the Prosecutor General and the Ministry of Internal Affairs on the matter of investigation of human rights violations, were submitted to the International Advisory Panel (IAP) on Ukraine of the Council of Europe. The International Advisory Panel was constituted by the Secretary General of the Council of Europe to oversee the investigations into the violent incidents which took place in Ukraine during Maidan protests from 30 November 2013 to 21 February 2014. In his letter to the Commissioner for Human Rights, the IAP chairman and the former President of the European Court of Human Rights commended the expert level of materials collected in the framework of the Commissioner’s proceedings, as well as expressed gratitude for support to the investigation of violations during the Revolution of Dignity.

Occupation of the country's territory and subsequent active hostilities at Donbas called for immediate measures for the protection of life and health of persons in detention facilities in the area of an antiterrorist operation. Based on the findings of more than 20 monitoring visits, the Commissioner for Human Rights sent acts of response to the Prime Minister of Ukraine, heads of central executive bodies, Donetsk and Luhansk state regional administrations requiring immediate evacuation of social protection institutions, education and healthcare establishments, as well as penitentiaries, to other safe regions of the country. **Chapter two** of the Report reflects the response to Commissioner's submissions.

**Chapters three and four** are dedicated to general indices of the NPM performance in 2014, as well as the detailed account of violations of human rights and freedoms identified during monitoring visits to places of detention subordinate to different ministries and agencies. In addition, they contain information about the state of implementation of Commissioner's recommendations to the ministries and agencies provided based on the results of monitoring activities. **Chapter five** includes detailed recommendations based on the results of monitoring places of detention in 2014, including recommendations on improving legislative framework.

Importantly, regional representatives and regional public relations coordinators of the Commissioner for Human Rights provided valuable support to implementation of the national preventive mechanism in 2014 acting in the framework of the Memorandum of cooperation between the Commissioner for Human Rights and the Association of Ukrainian Human Rights Monitors on Law Enforcement (Association UMDPL).

Until 2014, regional coordinators visited various places of detention as monitors together with the staff of the Secretariat of the Commissioner or with the purpose of verifying specific information on human rights violations. However, given an extremely large number of places of detention and the subsequent need for increase in regularity and number of monitoring visits, in 2014 the Commissioner made a decision on vesting regional coordinators with the right to conduct independent visits to places of detention with public monitors who had undergone appropriate training and received the Commissioner's assignment.

I would like thank our international partners for their remarkable efforts to support and develop the national preventive mechanism during this extremely difficult time for our country, in particular: *International Renaissance Foundation* – for support and development of the network of public monitors, the conduct of monitoring visits, improvement of monitoring methodology; *the UN Development Program in Ukraine* – for support of monitoring visits conducted by regional coordinators; *the OSCE Project Co-ordinator in Ukraine* – for support to monitoring visits, and improvement of monitoring methodology; *the Council of Europe Office in Ukraine* – for support to the professional development of the NPM Department staff, and improvement of its material and technical base.

Finally, I would like to express particular gratitude to all public monitors, staff members of the NPM Department, regional coordinators and representatives of the Commissioner, members and observers of the NPM Expert Council for their active participation in this important task of preventing torture, cruel, inhuman, or degrading treatment and punishment in places of detention.

## CHAPTER 1. MONITORING OBSERVANCE OF HUMAN RIGHTS AND FREEDOMS DURING THE REVOLUTION OF DIGNITY

In relation to dramatic events that began in our country at the end of 2013 and escalated in 2014, the Department for Implementation of the NPM (hereinafter – NPM Department) in cooperation with the Department of Special Proceedings of the Secretariat of the Ukrainian Parliament Commissioner for Human Rights (hereinafter – Commissioner) were *de facto* performing functions of immediate response through urgent verification of information on human rights violations in different institutions, reactions to specific complaints on torture and ill-treatment of the activists of the Revolution of Dignity etc. Staff of the Secretariat of the Commissioner conducted round-the-clock visits to authorities and units of the Main Directorate of the MIA of Ukraine in Kyiv, Kyiv remand prison, as well as healthcare institutions to which injured detainees were brought. Darnytsya, Dniprovske, Desnyanske, Obolon, Podil and Shevchenkivske district police directorates were in the focus of attention, as well as the territorial department #1 of Obolon district police directorate. Majority of apprehended persons were brought to these internal affairs bodies (hereinafter – IAB). Secretariat staff visited some of the above police units several times per day. They conducted interviews with all apprehended persons in custody of these facilities, as well as recorded identified violations and undertook measures to ensure their rights to legal and medical assistance.

These activities revealed, in addition to violations of the right to life, multiple violations of human rights and freedoms that can only be viewed as torture or inhuman and degrading treatment in accordance with the case law of the European Court of Human Rights (ECHR).

All identified violations and responses of the Commissioner were included into the Special Report of the Commissioner for Human Rights “Violations of Human Rights in Ukraine during events of November 2013 – February 2014”. At the same time, considering particular gravity of human rights violations by law enforcement officials during this period, they will also be presented in this chapter.

We should note that information in the Special Report was also used during development of an official communication to the International Criminal Court in The Hague by non-governmental organizations in cooperation with the Secretariat of the Commissioner for the purposes of considering an investigation of crimes against humanity during the Revolution of Dignity.

In addition, all proceedings information, including relevant communication between the Commissioner for Human Rights and the Office of the Prosecutor General and the Ministry of Interior on investigation of human rights violations, were transferred to the International Advisory Group of the Council of Europe established by the decision of the CoE Secretary General for the purposes of monitoring investigation of violence during protests at Maydan from 30 November 2013 to 21 February 2014.

### **1.1. Violations of the right to life**

According to official statistics of the Ministry of Health of Ukraine, from 1 January – 22 February 2014, events at Maydan Nezalezhnosti in Kyiv resulted in 105 deaths (including

94 deaths during clashes at Instytutska Street). The majority of deaths was caused by gunshot wounds.

First victims who died from gunshot wounds were activists Serhiy Nihoyan and Mykhaylo Zhyznevsky.

To prevent perjury of the cause of death by law enforcement officials, the Commissioner tasked two NPM Department staff, experts in forensic medicine, with being present during autopsy of the deceased and record the correctness of forensic experts' actions.

Relevant acts of response to violations of the right to life were sent to the Office of the Prosecutor General of Ukraine and the Ministry of Internal Affairs of Ukraine.

The rampant course of events during 18-20 February 2014 led to a horrific tragedy. According to official data, more than 80 persons died, and hundreds were hospitalized with gunshot wounds.

On 20 February, the Commissioner issued a public statement urging to stop the bloodshed in the streets of Kyiv and cities of Ukraine and save human lives. The Commissioner also called out the criminal actions of law enforcement who had used firearms against protesters, and emphasized that no international standards allow for use of lethal force to stop mass riots.

## **1.2. Torture and cruel treatment**

During the Revolution of Dignity, the staff of the Secretariat of the Commissioner recorded multiple facts of bodily injuries to activists by law enforcement bodies, in particular Berkut special unit and the Internal Military Force.

The Secretariat established regular exchange of information with the department of health of Kyiv City State Administration for the purposes of recording instances of bodily injuries resulting from torture and cruel treatment, in particular in relation to persons who had come to healthcare institutions in Kyiv.

There were 2394 ambulance calls registered during mass protests in Kyiv. Inpatient healthcare institutions in Kyiv admitted 1890 persons.

Analysis of information provided by medical institutions shows that activists sought medical assistance or were brought to hospitals due to bodily injuries in the form of trauma from blunt object impact (craniocerebral trauma of different gravity level, bone fractures, damage to internal organs), firearms and explosives injuries (from explosions of specialized grenades – stun grenades, tear gas grenades), chemical and heat burns etc.

*We shall provide several examples of injuries sustained by persons brought to healthcare institutions in Kyiv on 18 February 2014:*

– Vitaliy Ihorevych D. sustained an open cerebrocranial injury with brain bruising from a rubber bullet during a clash with Berkut and internal military force officials;

– Mykola Ihorevych Ya. sustained a bullet injury to soft tissues of the back and fragmentation wounds of the soft tissues of the right shin during a clash with Berkut officials;

- Oleksiy Ihorevych R. sustained a bullet wound to the right hand with fractures of 5<sup>th</sup> metacarpal bone and proximal phalanx of the 5<sup>th</sup> finger of the left hand during the attack on Budynok Profspilok (the House of Trade Unions);

- Dmytro Anatoliyovych Ch. sustained a fracture to the collarbone, nose, and brain concussion inflicted by law enforcement officials at Instytutska Street;

- Vasyl Stepanovych K. sustained a brain injury with brain concussion, bruises to soft tissues of the head, as well as a gunshot wound of soft tissues of the left buttock inflicted by Berkut officials. The gunshot wound was inflicted by Berkut while the victim was on the ground unconscious;

- at approximately 2 p.m. at Instytutska Street, Volodymyr Mykhaylovych H. sustained a blind gunshot craniocerebral wound to the head and upper neck, an open craniocerebral injury, brain bruising, and fragmentation fracture of occipital bone resulting from the use of firearms by law enforcement officials;

- Valeriy Vasylyovych Sh. sustained craniocerebral wound, brain bruising with hemorrhage of the right temple, subarachnoid hemorrhage, linear cranial vault fracture on the left side spreading to the skull base, and bruising of postfrontal bone, and fracture of the lower jaw inflicted by law enforcement officials;

- Valeriy Petrovych F. sustained an open craniocerebral wound, brain bruising, and fracture of the skull base in the area of mesocranial fossa, fragmental fracture of the temple bone on the left side, pneumocephalus, and bruising wounds of soft tissues of the head resulting from assault by Berkut officials at Instytutska Street.

*On 19 February 2014, victims sustained injuries of no lesser gravity following the use of firearms, special gear and abuse of force:*

- Stepan Vasylyovych A. Sustained a craniocerebral injury, brain concussion, barotrauma, multiple bruising of soft tissues and bruises following the use of stun grenades by law enforcement officials;

- Mykola Petrovych P. sustained a chemical burn of respiratory ways of II-III degrees resulting from actions of law enforcement officials;

- Serhiy Anatoliyovych K. sustained II degree contusion and a non-perforating wound of the right-eye sclera, I degree contusion, and a bruising wound of the conjunctival with foreign body in the left eye as a result of stun grenades use by law enforcement officials at Hrushevskoho Street;

- Yuriy Yuriyovych A.-Sh. Sustained a brain concussion, a gunshot wound to the right hand, double fracture of the shinbone, vertebral dislocation, multiple bruises and hemorrhages resulting from the actions of law enforcement at Hrushevskoho Street.

In addition to bodily harm, there were multiple recorded instances of lengthy custody in specialized vehicles at subzero temperature with no access to drinking water and possibility to satisfy natural needs.

For instance, a monitoring visit to Darnytsya district police directorate on 20 January revealed the fact of detention of Radio Svoboda reporters Dmytro Barkar and Ivan Iskhakov who had been providing live coverage of events at Hrushevskoho Street near Lobanovsky stadium. Officers of Berkut special police unit apprehended the reporters at around 8 a.m. on 20 January and inflicted bodily injuries during apprehension. Following apprehension, they

were put into an “avtozak” and kept there for over 4 hours prior to arrival to Darnytsya district directorate of the Main MIA Directorate in Kyiv.

The Commissioner immediately informed the Office of the Prosecutor in Kyiv and the Office of the Prosecutor General of Ukraine Office of the Prosecutor General for appropriate response measure.

On 23 January 2014, a visit aimed at monitoring rights of apprehended persons by Obolon district directorate of the Main MIA Directorate in Kyiv revealed six persons who had been kept in specialized vehicles from 6 to 11 a.m. from the moment of actual apprehension to bringing them to the pre-trial investigation unit.

On 28 January 2014, a visit to Podil district directorate of the Main MIA Directorate in Kyiv revealed the fact of lengthy detention (approximately three hours) in “avtozak” at the territory of the district directorate of citizen M., juveniles L., D., and O. who had sustained bodily injuries caused by law enforcement officials.

On 19 February 2014, there were 11 apprehended persons found at Dniprovske district directorate of the Main MIA Directorate in Kyiv who had been kept for a long period (over 5 hours) in special vehicles in the governmental quarter with no appropriate clothing for the season.

On 19 February 2014, citizen T. was found at Desnyanske district directorate of the Main MIA Directorate in Kyiv. He had been kept in “avtozak” for 7 hours prior to being brought to the directorate.

On 19 February 2014, there were 12 apprehended persons found in Obolon district directorate of the Main MIA Directorate in Kyiv who had been held in special vehicles in governmental quarter for over 5 hours with no access to drinking water, possibilities to satisfy natural needs, no clothes necessary for the season. In addition, some of them had injuries and required medical assistance.

Relevant acts of response to instances of cruel treatment by law enforcement were sent to the Office of the Prosecutor General of Ukraine and the Ministry of Internal Affairs of Ukraine

### **1.3. Violations of the right to medical assistance**

According to the ECHR case law, deprivation of the right to access to medical care can only be viewed as torture, or inhuman or degrading treatment.

Staff of the Secretariat of the Commissioner discovered multiple violations of the right to medical assistance during the Revolution of Dignity. These violations including, in majority of cases, failure to provide medical care to persons in need thereof, as well as untimely notification of healthcare institutions on injured apprehended persons.

For instance, on 19 February 2014 at Dniprovske district directorate of the Main MIA Directorate in Kyiv there were 11 persons found with bodily injuries. On following intervention by the staff of the Secretariat of the Commissioner, some of them were

hospitalized by an ambulance. Lengthy denial of medical care posed a serious threat to the life and health of apprehended P. who was also hospitalized upon demand of the Secretariat staff.

On 19 February 2014, there were 13 persons with bodily injuries found at Desnyanske district directorate of the Main MIA Directorate in Kyiv, including six persons in need of urgent qualified medical care. Following a request by the staff of the Secretariat of the Commissioner, they were hospitalized by ambulances. During a brief conversation with T., it turned out that he was held in an “avtozak” for several hours with bone fractures of left hand and right foot.

On 19 February 2014, at Darnytsya district directorate of the Main MIA Directorate in Kyiv, there were reported instances of untimely provision of medical assistance to persons brought to the directorate with bodily injuries who allegedly had sustained them during apprehension.

On 19 February 2014, in Obolon district directorate of the Main MIA Directorate in Kyiv there were 12 apprehended persons found with injuries of varying gravity who did not receive medical assistance during a long period following apprehension (over 5 hours).

Relevant acts of response by the Commissioner on violations of the right to medical care reported by the staff of the Secretariat of the Commissioner were sent to the Office of the Prosecutor General of Ukraine and the Ministry of Internal Affairs of Ukraine.

#### **1.4. Violations of the right to defense**

On 23 January 2014, during a visit to Obolon district directorate of the Main MIA Directorate in Kyiv, the staff of the Secretariat of the Commissioner reported multiple violations of the right of apprehended activists to defense. Instead of immediate notification on apprehension to the authority (institution) providing free legal aid in accordance with the law, such notifications took a long time, in particular:

- The Center for Free Legal Aid was notified on apprehension of A.S.V. 13 hours 45 minutes following actual apprehension;
- The Center for Free Legal Aid was notified on apprehension of S.V.V. 9 hours 30 minutes following actual apprehension;
- The Center for Free Legal Aid was notified on apprehension of M.V.M. 9 hours 10 minutes following actual apprehension.

The time of notification of the Center for Free Legal Aid on apprehension of S.S.V. is not indicated at all. It was only noted that the attorney arrived 10 hours 40 minutes following actual apprehension

In the above cases, both investigators and officers on duty at Obolon district directorate of the Main MIA Directorate in Kyiv committed violations of the right to legal assistance. They did not follow requirements of paragraph 6.6.2 of the Instruction approved by the order #181 of the MIA of Ukraine on 28.04.2009 whereby an investigator shall verify whether the Center for Free Legal Aid was notified on apprehension of the person, and in case such notification is missing, notify the Center himself.

On 28 January 2014, a visit to Pechersk district directorate of the Main MIA Directorate in Kyiv revealed instances of systematic concealment of apprehensions and failures to notify the Center for Free Legal Aid.

Examination of the registry on reception and transfer of duty suggests that from 10 January 2014 to 28 January 2014 there were 20 persons apprehended on the suspicion of committing crimes, as well as 44 persons apprehended for administrative offences. However, there was no notification to the Center for Free Legal Aid on their apprehension. This fact is confirmed by the absence of records in the Registry of notifications of free legal aid centers. At the same time, the Registry of persons taken into custody, visitors and invited persons there were no records on persons apprehended or taken into custody during this period. Instead, apprehended persons were accounted for as “invitees” or those who arrived “upon request”, or not accounted for at all.

A submission by the Commissioner, along with 8 letter to the Office of the Prosecutor in Kyiv, was sent to the MIA of Ukraine for the purposes of effective investigation of each violation and appropriate response.

### **1.5. Violations of children’s’ rights and freedoms**

Children also took part in confrontations at Maydan Nezalezhnosti in Kyiv. In particular, on 24 January 2014, the Commissioner for Human Rights launched proceedings upon notification from Euromaidan SOS civic platform on delivery of minors with bodily injuries to the National specialized children’s hospital “OKHMATDYT”. The minors sustained these injuries during apprehension by military personnel of the military unit #3057 and officials of Berkut special unit.

The proceedings included visiting and interviewing of the children. During interviews, the minors talked about apprehension and assault by law enforcement officials at the corner of Instytutska and Shovkovychna Streets in Kyiv.

In addition, the minors were brought to Podil district police directorate only 5 hours following their apprehension, and hospitalized following additional 6 hours.

According to the doctors, the children were admitted in moderately severe condition. All of them received necessary medical assistance. Medics also informed their parents on the children’s whereabouts.

In the framework of proceedings by the Commissioner, the staff of the Secretariat of the Commissioner visited Podil district directorate of the Main MIA Directorate in Kyiv where the children were brought following apprehension. The staff discovered violations of children’s rights by the said district police department. In particular, the minors were held in a special vehicle with no medical care at subzero temperatures. The Center for Free Legal Aid was notified only 6 hours 15 minutes after the actual apprehension. The authorities launched criminal cases in relation to the children on criminal offences under part 3 of Article 296 of the Criminal Code of Ukraine (hereinafter – the CC of Ukraine).

On 29 January 2014, the Commissioner for Human Rights sent a request to the Office of the Prosecutor in Kyiv for the purposes of immediate elimination of reasons and conditions of violations of children’s rights.

The response to the Commissioner’s request included information about dismissal of criminal proceedings in relation to the minors.

## **1.6. State of response to the acts of Ukrainian Parliament Commissioner for Human Rights by the prosecution authorities and the MIA**

On 2 December 2013, due to the scale of human rights violations and on the basis of analysis of information obtained in the course of public proceedings, a submission was sent to the Office of the Prosecutor General of Ukraine on illegal termination of a peaceful assembly the police officials on 30 November 2013 and excessive use of force on 1 December 2013. The submission was sent for the purposes of comprehensive, objective and unbiased investigation in accordance with the ECHR case law.

In the submission, the Commissioner emphasized gross violations of articles 12, 13, 14 of the Law of Ukraine “On Militsiya” (Police) and the current “Regulations on the use of special gear for securing public order” (approved by the decree#49 of the USSR Council of Ministers on 27 February 1991). In addition, the Commissioner noted that the ECHR has repeatedly emphasized that the use of force by law enforcement has to meet the criteria of necessity, lawfulness and proportionality. In accordance with the ECHR case law, every instance of the use of force has to be investigated effectively so that all circumstances are examined and, in case of human rights violations, the perpetrators are prosecuted.

On 25 December 2013, in response to the submission of the Commissioner, the Office of the Prosecutor General of Ukraine informed the Commissioner on initiation of criminal proceedings on the count of abuse of power, i.e. a criminal offense under part two of Article 365 of the CC of Ukraine.

On 27 December 2013, the Commissioner openly addressed the Office of the Prosecutor General of Ukraine and the Ministry of Internal Affairs of Ukraine and emphasized the need for effective, objective and transparent investigation of all cases of attacks on journalists and participants of protests, damage to their property and vehicles, as well as prosecution of perpetrators

During 2014, the staff of the Secretariat of the Commissioner conducted monitoring visits to the bodies of internal affairs and units of the Main MIA Directorate in Kyiv. Following these visits, letters indicating reported violations and requests for effective and unbiased investigation of every violation were sent to the Office of the Prosecutor in Kyiv and the Office of the Prosecutor General of Ukraine.

On 29 January 2014, the Commissioner for Human Rights sent a submission on protection of rights and freedoms of apprehended persons to the Minister of Internal Affairs. The submission drew the Minister’s attention to unacceptability of violations by law enforcement officials reported by the staff of the Secretariat of the Commissioner. First of all, these included torture and cruel treatment, deprivation of the right to defense and medical assistance.

On 30 January 2014, the Commissioner transferred generalized information on reported violations of human rights and freedoms by law enforcement officials and fighters of special units of the MIA of Ukraine in Kyiv to the Office of the Prosecutor General of Ukraine. The following violations were included:

- Lengthy detention of apprehended protest participants in “avtozak” at subzero temperatures with no access to drinking water and satisfy natural needs;

- Disproportionate use of force by law enforcement during apprehension, as well as use of force towards apprehended persons showing no resistance to law enforcement officers;
- Failure to provide medical assistance to apprehended persons with visible injuries in a timely manners;
- Failure to inform/inform in a timely manner center for free secondary legal aid on apprehension of persons;
- Failure to inform apprehended persons on their rights following apprehension;
- Failure to inform close relatives, family member or other persons in accordance with the person's choice on the fact of apprehension and whereabouts;
- Ill-treatment of journalists.

On 6 February 2014, a letter was sent to the Ministry of Internal Affairs of Ukraine on informing the Commissioner on the results of internal investigation of the fact of ill-treatment of Maydan activist Mykhaylo Havrylyuk by police on 22 January 2014 at Hrushevskoho Street in Kyiv.

During 2014, due to several replacements of the Prosecutor General of Ukraine, the Commissioner sent three sets of materials on violations of human rights and freedoms during the Revolution of Dignity for proper investigation.

In early February 2015, a working meeting took place with participants including the head of the Special Proceedings Directorate of the Main Directorate of Investigations of the Office of the Prosecutor General of Ukraine and a representative of the Commissioner, investigators and staff of the Department of Special Proceedings of the Secretariat of the Commissioner. The meeting included identification of cooperation mechanisms and provision of generalized information on pre-trial investigation in criminal proceedings.

### ***State of response to the Commissioner's acts by the prosecution authorities***

On 17 February 2015, the Office of the Prosecutor General of Ukraine informed the Commissioner that information on illegal and excessive use of force and special gear by Berkut special unit officials on 30 November and 1 December 2013 at Maydan Nezalezhnosti and Bankova Street in Kyiv was recorded into the Integrated registry of pre-trial investigations (hereinafter - ERDR) on 2 December 2013 under article 365§2 of the CC of Ukraine.

In addition, on 3 December 2013 information on illegal actions by law enforcement officials accompanied by physical force and aimed at obstructing lawful activities of the media on 1 December 2013 during public gatherings in the center of Kyiv was included into the ERDR under article 171§1 of the CC of Ukraine.

On 5 December 2013, information on physical injuries inflicted by Berkut officials to citizen Z. at Bankova Street on 1 December 2013 was included into the ERDR.

Currently, the Office of the Prosecutor General of Ukraine is conducting pre-trial investigation into the above events.

In the framework of pre-trial investigation, the prosecution presented notices on suspicion to 19 law enforcement officials.

For instance, during pre-trial investigation in criminal proceedings #42014100020000046 under Article 364§1 of the CC of Ukraine on entering knowingly false data into administrative protocols on violations of Traffic regulation, 12 DAI (State Traffic Inspection) officials were presented notices of suspicion.

In the framework of pre-trial investigation in criminal proceedings #42014100000000066 on abuse of power by officials of Berkut specialized unit during apprehension of A.B. Shmyndyuk, I.H. Kobzar, O.V. Frolov, D.M. Saydakov, M.A. Horsky and D.Yu. Rubtsov, accompanied by violence, use of special gear, pain-inflicting and degrading actions, and bringing them to the duty station of Darnytsya district directorate of the Main MIA Directorate in Kyiv, the head of operational squadron #1 of Berkut special unit major M.V. Dobrovolsky (squadron #1 commander) was presented with a notice of suspicion.

In the framework of pre-trial investigation in criminal proceedings #12014100060000228 of mass murders from November 2013 to February 2014 at Maydan Nezalezhnosti in Kyiv, the following persons were presented with notices of suspicion:

- Inspector of platoon #2 of squadron #5 of the special regiment of the Main Directorate of the MIA major D.M. Sadovnyk;
- Officer of platoon #3 of squadron #5 of the public security special regiment of the Main MIA Directorate sergeant P.M. Abroskin;
- Officer of platoon #3 of squadron #5 of the public security special regiment of the Main MIA Directorate sergeant S.P. Zinchenko.

In the framework of pre-trial investigation in criminal proceedings #42013110000001053 on abuse of power by police officials on 30 November 2013 during public assemblies at Maydan Nezalezhnosti in Kyiv the following persons were presented with notices of suspicion:

- Commander of the public security special regiment of the Main MIA Directorate colonel A.V. Dydyuk;
- Commander of squadron #3 of the public security special regiment of the Main MIA Directorate major S.F. Antonov;
- Former chief of staff of Berkut special regiment of the MIA Directorate colonel M.M. Tyahnyryadno.

### ***State of response to the Commissioner's acts by the Ministry of Internal Affairs of Ukraine***

In the letter #10271/ Ч6 from 28 February 2015, the Deputy Minister of Internal Affairs of Ukraine informed the Commissioner on the following measures based on review of information on violations of the rights and freedoms of persons during events from November 2013 to February 2014 in Kyiv.

An internal investigation was initiated in relation to events of 30 November 2013 at Maydan Nezalezhnosti in Kyiv on the same day by the MIA order for verification of lawfulness of police actions towards participants of Euromaidan protest held in support of signing the Association Agreement with the European Union.

The head of the Main MIA Directorate in Kyiv Koryak V.V. was temporarily dismissed for the period of internal investigation by the order of the MIA dated 1 December 2013.

Considering results of the internal investigation, a decision was taken to impose disciplinary punishments on individual senior officials of the Main MIA Directorate in Kyiv upon final procedural decision in the criminal proceedings initiated by the Office of the Prosecutor General of Ukraine in relation to this event.

Conclusion of the internal investigation was sent to the Office of the Prosecutor General of Ukraine for consideration during pre-trial investigation.

Following internal investigations, pursuant to an order #59o/c by the Main MIA Directorate in Kyiv dated 30 January 2015, 41 officials of internal affairs bodies were dismissed under disreputable circumstances, including 37 DAI inspectors. In addition, the inspector of platoon #2 of squadron #5 of the special regiment of the Main Directorate of the MIA major D.M. Sadovnyk was dismissed by the order of the Main MIA Directorate in Kyiv #33o/c dated 20 January 2015 for disciplinary violations.

Conclusion of internal investigation was also sent to the Office of the Prosecutor General of Ukraine for decision in accordance with the legislation of Ukraine.

## CHAPTER 2. MONITORING PLACES OF DETENTION IN THE ZONE OF THE ANTI-TERRORIST OPERATION IN EASTERN UKRAINE

The Commissioner for Human Rights conducts monitoring of observance of the rights and freedoms of persons in places of detention in the ATO territory both through dialogue with relevant state authorities, and also through direct visits to these institutions (including in the framework of the national preventive mechanism), telephone interviews with heads of institutions, information from representatives of central executive authorities, local governance, international, voluntary and human rights organizations, and analysis of complaints, statements and information in the media.

In particular, on 26 and 30 September 2014 the Commissioner for Human Rights initiated working meetings and inter-agency meeting with representatives of the Office of the Prosecutor General of Ukraine, the Ministry of Internal Affairs, the Ministry of Justice, the State Penitentiary Service, the Ministry of Health, the Ministry of Social Policy, the Ministry of Education and Science. The meetings included discussion of issues related to safeguarding human rights in penitentiary facilities of different format on the territories not subject to control by Ukrainian government in Eastern Ukraine.

The Commissioner for Human Rights has repeatedly drew attention of the said authorities to the need for urgent radical measures for evacuation of population outside of the armed conflict territory, particularly, for most vulnerable groups of population and persons in penitentiary institutions and remand prisons. In addition, personal responsibility of the leadership of relevant authorities for the life and health of citizens on the territory of anti-terrorist operation in the East of Ukraine, was highlighted,

The following institutions were visited in **Luhansk region** during 2014:

Kreminna general education boarding school of I-II tiers;

Kreminna regional general education health care boarding school;

Kreminna regional specialized general education boarding school;

Novoaydar general education health care boarding school for children with respiratory diseases;

Starobilsk neuropsychiatric residence;

Starobilsk remand prison;

Teple neuropsychiatric residence.

**In Donetsk region:**

Artemivsk penitentiary facility (#6);

Artemivsk central district hospital #2;

Artemivsk neuropsychiatric residence;

Dzerzhynsk general education boarding school #1;

Kramatorsk general education health care boarding school of I–II tiers for children with minor and declining forms of tuberculosis;

Kramatorsk specialized general education boarding school I–II tiers #18 for children with severe speech impairments;

Kramatorsk specialized children’s home “Antoshka”;

Krasny Lyman specialized general education boarding school № 1;

Krasny Lyman residence for elderly citizens and citizens with disabilities;

Krasny Lyman center for social and psychological rehabilitation of children;

Mariupol remand prison;

Regional health care resort facility “Perlyna Donechchyny” in Svyatohorsk;

Health care resort facility for social rehabilitation of orphaned children and children without parental care “Smarahdove mistechko” (“Emerald City”) in Svyatohorsk;

Slovyansk specialized general education boarding school # 21;

Slovyansk neuropsychiatric residence;

Stationary units of Dzerzhynsk territorial service center.

During monitoring, along with traditional analysis of observance of rights and freedoms of residents, assessment of risks for life and health of these persons in relation to anti-terrorist activities in Donetsk and Luhansk regions received particular attention.

#### *Monitoring of educational, health care, and social protection institutions*

There are 62 in-patient social protection institutions for the elderly and persons with disabilities in Donetsk and Luhansk regions, including some of them in the territory of active military actions. By the end of last year, 39 out of 553 health care institutions terminated their activities.

There is 21 residence for elderly citizens and citizens with disabilities on the territory temporarily outside of control of Ukrainian government (11 institutions in Donetsk and 10 institutions in Luhansk) with over 4.5 thousand residents.

As of 20 February 2015, there were 119 children with disabilities and 61 persons with childhood disabilities resident at institutions in the territory of active anti-terrorist operations (children’s unit of Rovenky regional residence for people with disabilities, Krasnodon regional childcare residence of Luhansk region and Shakhtarsk childcare residence).

On the territory controlled by Ukraine and in the zone of military action there are 16 educational institutions in Luhansk (1854 children) and 54 institutions in Donetsk regions (7659 children).

As noted above, position of the Commissioner for Human Rights, expressed back in June 2014, included the need for evacuation of these facilities to safe regions or districts controlled by Ukraine within these regions. Further monitoring confirmed that relocation of facilities of regional jurisdiction within one region is not always a solution of the issue since the threat for life and health of residents remains high due to instability of situation at Donbas.

For instance, residents of Popasne neuropsychiatric residence were transferred to Dmytrivka neuropsychiatric residence (Novoaydar district, Luhansk region) located less than 30km away from Shchastya where active hostilities take place periodically.

Residents of Slovyansk neuropsychiatric residence were evacuated to seven other residential facilities in Donetsk region. Later, some of them returned, however, part of residents stayed in residences in Snizhne and Makiyivka that had been targeted by shootings.

Transfer of residents within one region also leads to overload of institutions' capacity. For instance, the number of children residents in Druzhkiv childcare residence almost doubled after the transfer of children from Shakhtarsk childcare residence.

During the visit of the monitoring group of the Secretariat of the Commissioner on 2 February 2015, there were 575 people with mental disabilities, including 365 temporarily transferred from Torez neuropsychiatric residence, in Slovyansk neuropsychiatric residence with a capacity to accommodate 320 people. As a result, living rooms are extremely overcrowded; beds are located back-to-back, which does not contribute to a proper therapeutic environment. In addition, the workload for the personnel has increased significantly.

During interviews with directors of these facilities, it turned out that majority of personnel is ready to move to other regions with the care recipients. Results of surveys of relocated residents who got used to the staff and workers also support feasibility of such evacuation.

There has been no discussion of evacuation of facilities under the jurisdiction of local governance. For instance, in Dzerzhynsk, which was under fire, residents of the center for social and psychological rehabilitation of children of Donetsk regional council were only evacuated upon the Commissioner's intervention. Nobody is organizing evacuation of 70 elderly persons with disabilities in in-patient units of the territorial service center since they are under the jurisdiction of Dzerzhynsk city council, and the latter cannot provide for evacuation of these people outside the city. In addition, there has been no heat or water supply in the city since 27 January and, according to municipal authorities, it was impossible to restore supply due to shootings.

The general education boarding school I–III tiers #1 is also under the same authority's jurisdiction. At the time of the monitoring visit, the school was in a distance-learning mode due to direct hit to the neighboring building on 21 January 2014. The city council cancelled classes and thereby relieved itself of responsibility for the life of 327 children, majority of them coming from dysfunctional families. These children are left adrift and face constant danger.

Throughout the year, the Commissioner for Human Rights has received multiple addresses from directors of children's facilities and structural units of state regional administrations asking to prevent illegal transfer of children to Russian Federation, as well as provide support in relocating children to safe places on the territory of Ukraine. Since June 2014, representatives of the so-called DPR (Donetsk People's Republic) and LPR (Luhansk People's Republic) demanded that local authorities provide information about orphaned children and children without parental care, their health certificates and written consent of directors for the children's transfer to Russian Federation.

For example, state authorities and directors of children's facilities of Donetsk regions received an order from the so-called DPR Council of Ministers #17 dated 25 June 2014 (see

photo 6 and 7 in Annexes) prohibiting transfer of children outside of the region. The same order allows relocation of children exclusively to the Russian Federation.

During the year, separatists undertook several attempts to take the children outside of Ukraine.

For instance, on 12 June 2014, armed people illegally took 16 children from Snizhne children's home of Donetsk region to Russia through Dolzhanske checkpoint. At the Ukrainian-Russian border, the children had no documents confirming the right to enter the Russian Federation. Due to consolidated efforts of the Ombudsman of the Russian Federation, the Ministry of Foreign Affairs of Ukraine and Donetsk State Regional Administration, the children returned to Ukraine by the end of the following day on a charter flight.

On 26 July 2014, there was an attempt at illegal removal of 61 orphaned children, the chief physician and 12 staff of a children's home in Luhansk to the Russian Federation. On 27 July 2014, children returned to Ukraine due to joint actions.

On 8 August 2014, the Ukrainian Parliament Commissioner for Human Rights received information from the Ministry of Foreign Affairs about abduction of 8 Ukrainian children of the above children's home aged 8 months – 2 years old by an armed terrorist group. The children were undergoing inpatient treatment in a hospital in Luhansk.

In a coercive and illegal manner, these children with disabilities were transferred through Izvaryne border checkpoint in Luhansk region to Rostov region of the Russian Federation with no medical supervision or documentation.

On 13 August 2014, the children were transferred to representatives of the Ukrainian side – the Ukrainian Parliament Commissioner for Human Rights and the chief physician of the children's home.

Importantly, following lengthy negotiations with the leaders of the so-called DPR with participation of the public, officials, as well as due to personal intervention by the Commissioner for Human Rights, it was possible to move children from Amvrosiyivka, Maryinka and Donetsk boarding schools that were under the control of the so-called DPR for a long period.

In addition, 33 children under the age of three were transferred from Kramatorsk children's home "Antoshka", over 80 children from Donetsk city and regional children's homes, 52 children – from Makiyivka children's home, and 19 children from Torez city children's home.

We should note that, apart from organization of the evacuation, the problem lies in overlapping authority over these facilities requiring for decisions by the Cabinet of Ministers of Ukraine. Evacuated persons can be placed only in vacant premises of institutions under the jurisdiction of other agencies, in particular, liquidated schools and vocational schools of social rehabilitation, boarding schools of the educational system etc.

For this reason, on 9 February 2015 the Commissioner for Human Rights sent a letter to the Prime Minister of Ukraine requesting the following:

Urgent measures for developing the system for evacuation of the said facilities from Donetsk and Luhansk regions to safe region taking into consideration the need to protect the interests of children, care recipients and staff;

Ensure redistribution of funding for evacuated facilities from Donetsk and Luhansk regional budgets to the regional budgets of transfer destinations.

In response to the abovementioned letter from the Commissioner, on 16 February 2015, the Prime Minister of Ukraine instructed the leadership of Donetsk and Luhansk State Regional Administrations, the Ministry of Social Policy, the Ministry of Education and Science, and the State Emergency Service to undertake relevant response. In addition, the Ministry of Finance of Ukraine received an instruction for redistribution of funding.

### *Penitentiary institutions*

There are 27 facilities on the territory temporarily outside of control of Ukrainian government:

In Donetsk region – 14 facilities with approximately 8.7 thousand persons in custody thereof;

In Luhansk – 14 facilities (3 demolished) with approximately 4 thousand persons in custody thereof.

In addition, there are 47 units of criminal executive inspection in the anti-terrorist operation zone.

Visits to Starobilsk remand prison in Luhansk region and Artemivsk and Mariupol remand prison in Donetsk region revealed a number of problems.

In particular, there are breaches of the Law of Ukraine “On delivery of justice and criminal proceedings in relation to the anti-terrorist operation” dated 12.08.2014 and an instruction by the Higher Specialized Court of Ukraine for Civil and Criminal Cases #27/0/38-14 dated 02.09.2014 on amendments to territorial jurisdiction of criminal proceedings (cases) of detainees and their transfer from the courts of appeal of Donetsk and Luhansk regions to courts of appeal of Zaporizhzhya and Kharkiv regions accordingly. The breach leads to arbitrary increase in length of detention and violates their right to access to justice.

In particular, this situation affects persons in relation to whom criminal proceedings have been transferred to court and are conducted under the 1961 Criminal Procedure Code of Ukraine (there are approximately 200 persons who became hostages of these violations).

There are also systemic violations towards persons in detention who are not able to take part in court hearings due to the lack of convoy to courts and court decisions on extension of detention in their absence in violation of the Criminal Procedure Code of Ukraine.

Monitoring visits showed that the lack of convoy to correctional colonies for serving the punishment following the convictions’ entry into force led to continued detention in remand prisons beyond legally established time limits. For instance, during the visit to Mariupol remand prison, it was established that the issue of transfer of 161 convicts to correctional colonies was not solved for a long period, and only 48 convicted persons were transferred to penitentiary facilities.

We should emphasize that the situation of penitentiary facilities on the uncontrolled territory is critical. The state funding for their functioning has been practically unwound.

For a long period, the State Penitentiary Service of Ukraine has not been solving the issue of centralized food supply to these facilities. For instance, at the time of monitoring visit, supplies of potatoes, cabbage, beetroots, carrots and onions in Artemivsk remand prison constituted 20% of the need, and the facility’s debt for food products constituted over 70 thousand hryvnia. The situation with medical and water supplies was the same.

Considering the lack of reaction by the State Penitentiary Service of Ukraine towards supporting facilities in the anti-terrorist operation zone, the Commissioner sent multiple acts of response to the Office of the Prosecutor General and the Ministry of Justice of Ukraine.

Despite the Decree of the President of Ukraine #875 dated 14.11.2014 “On urgent measures for stabilization of social and economic situation in Donetsk and Luhansk regions”, none of the facilities of the State Penitentiary Service of Ukraine have been transferred to the territory controlled by Ukrainian government, including those in close proximity with hostilities. Therefore, staff and detainees are under constant threat at these facilities.

This negligence of behalf of officials led to, for instance, tragic events at Chornukhyne correctional colony (#23) in Luhansk region. According to available information, 380 convicts had to leave the facility due to constant fire from the so-called LPR. As a result, some convicted person died, and only 83 of them returned to the facilities. Another 23 persons arrived at Ukrainian checkpoints. They are currently in Artemivsk remand prison.

***Information from ministries and agencies, state regional administrations on measures in response to recommendations from the Commissioner for Human Rights on protection of rights and freedoms of persons in places of detention in ATO zone***

Unfortunately, a large number of people in penitentiary facilities, institutions of the systems of education, health care, and social protection, stayed on the temporarily occupied territory due to delay in fulfillment of the Commissioner’s recommendations on evacuation. For example, the Ministry of Social Policy explained that it is impossible to evacuate care recipients without their consent and physical possibility of transferring bedridden patients.

According to boarding facilities of the social protection system, as of 1 February 2015, there were 1 596 vacant places in boarding facilities. Information on their location was transferred to social protection departments of Donetsk and Lugansk regional state administrations.

Donetsk Regional State Administration transferred 1.5 thousand residents of boarding facilities from the zone of active ATO hostilities to boarding facilities for veterans and persons with disabilities of the social protection system in the region and Ukraine. The transfer took place pursuant to personal applications of the citizens.

According to the letter to the Commissioner for Human Rights from the Ministry of Education and Science of Ukraine #1/10-3676 dated 10.11.2014, residents of Makarenko vocational training school of social rehabilitation in Makiyivka were relocated to Balakhiv school of social rehabilitation. All students are provided with proper conditions for living, studies and upbringing. Children have sufficient supply of food, warm clothing and footwear, as well as medical care. There is heating in premises of educational institutions.

In addition, according to the letter from the Ministry of Education and Science of Ukraine #1/10-3676 dated 25.12.2014, children from Yasynuvata general education health care boarding school of I-II tiers #14 for children with scoliosis (Donetsk region) were transferred to Oleksiyev-Druzhkivka general education health care boarding school of I-III tiers of the same profile. Children have sufficient supply of food, warm clothing and footwear, as well as medical care.

In response to the letter to the Prime Minister of Ukraine from 9 February 2015, the Inter-Agency Cooperation Headquarters for Social Protection of Ukrainian citizens relocating

form the temporarily occupied territories and anti-terrorist operation regions informed the Commissioner for Human Rights that as of 22 February 2015, there were 749 262 persons resettled directly from the territory of the anti-terrorist operation in Donetsk and Luhansk regions, including 135 891 children and 337 395 persons with disabilities and elderly people.

According to information from the Regional headquarters in Donetsk region, there were 19 children transferred from Dzerzhynsk center for social and psychological rehabilitation of children (CSPRC) with subsequent placement of 14 children with Slovyansk CSPRC and 5 with Kramatorsk shelter for children. There were 45 children transferred from Artemivsk regional children's home to Kharkiv children's home #3 and 3 children – to Kharkiv regional clinical children's hospital.

Following undertaken measures, 54 residents of youth units of Druzhkivka residence facility requested transfer to residence facilities in Dnipropetrovsk, Kyiv, Mykolayiv, Ternopil, Kharkiv, and Cherkasy region.

Relevant documentation for referrals to residence facilities for the youth unit residents were sent to social protection units in these regions accordingly.

Upon receiving referrals, the residents will be transferred to residence facilities of the said regions.

Following recommendations of the Commissioner for Human Rights, the bed-capacity system of boarding facilities on the territories controlled by Ukrainian government in Donetsk regions was rearranged, forecast indices for 2015 budget were increased, as well as the work conducted on increasing staff capacity of residence facilities.

According to the regional headquarters in Luhansk region, there were 186 care recipients transferred from Popasne neuropsychiatric residence, including 53 person evacuated outside of Luhansk region (24 persons to Kharkiv region, 29 persons to Kirovohrad region), and 133 persons temporarily located within Luhansk region (14 women in cities of Svatove and Kreminna, 77 persons – in Dmytrivka neuropsychiatric residence, and 42 persons in Druzhkivka facility). These include persons who had not agreed to leave the territory, as well as bedridden patients and persons with restricted mobility with medical contraindications for long-distance transfers.]

On 16 February 2015, the Cabinet of Ministers of Ukraine submitted a draft Law of Ukraine “On Amendments to the Law of Ukraine ‘On the State Budget of Ukraine for 2015’” that followed recommendations by the Commissioner for Human Rights from the letter to the Prime Minister of Ukraine on 9 February 2015. In particular, it relates to redistribution of funds from Luhansk and Donetsk regional budgets to local budgets and funding for care recipients and staff of evacuated facilities on the territories of their actual transfer destinations.

The bill suggests including Article 29 into the Law of Ukraine ‘On the State Budget of Ukraine for 2015’ whereby the Cabinet of Ministers receives powers for distribution and redistribution of educational, medical, and vocational training subventions to ensure servicing citizens who relocated from the temporarily occupied territory and regions of the anti-terrorist operation.

In addition, the Ministry of Finance developed and submitted for the government's review a draft resolution of the Cabinet of Ministers of Ukraine “On the Procedure of inter-budget transfers for local budgets in localities of Donetsk and Luhansk regions on the territory of anti-terrorist operation”.

The Procedure provides for redistribution of withheld inter-budget transfers from the state budget to local budgets of localities on the temporarily occupied territory through increase of inter-budget transfers to local budgets of destination localities of end-service users from localities on the temporarily occupied territory.

The state of observance of rights and freedoms of persons in places of detention on the territory of anti-terrorist operations is under constant supervision by the Commissioner. Regular visit to these facilities will continue in 2015 and serve as basis for the *Special Report of the Commissioner for Human Rights “State of Observance of Rights and Freedoms of Persons in Places of Detention in the Zone of Anti-Terrorist Operation”*.

## CHAPTER 3. KEY PERFORMANCE INDICATORS FOR THE NATIONAL PREVENTIVE MECHANISM IN UKRAINE IN 2014

### **3.1. Number and typology of places of detention in Ukraine. Dynamics of monitoring visits during 2012-2014**

The total number of institutions that can be formally classified as places of detention in Ukraine is fluctuating. For instance, the number of military units decrease by twofold due to cancellation of draft – from 386 in 2013 to 158 in 2014. There has been a threefold decrease in number of shelters for children under the Ministry of Social Policy of Ukraine – from 42 in 2013 to 12 in 2014. At the same time, other types of facilities came in sight of the national preventive mechanism (NPM) in 2014 – narcological clinics and hospices that can also be considered places of detention.

There is a separate formal questionnaire for each type of places of detention to be filled out by each member of a monitoring group. During 7 working days following the visit, a detailed report is prepared containing description of identified violations of rights and freedoms and recommendations for mitigation.

All reports are necessarily sent to the head of the relevant ministry or agency for appropriate response measures. Further, the NPM Department monitors implementation of recommendations provided based on visit findings.

In addition to general visits, there are also thematic visits for the purposes of detailed examination of a particular issue. For instance, the staff of the NPM Department in cooperation with experts of the Association of Independent Monitors and Kharkiv Institute for Social Research with the support from UN Children’s Fund (UNICEF) visited all 6 juvenile correctional facilities of the State Penitentiary Service of Ukraine (SPSU). Following monitoring visits, a Special report of the Commissioner for Human Rights on the rights of children in detention facilities of the SPSU was developed.

Table 1 provides official statistic on the number of places of detention obtained by the Secretariat of the Commissioner for Human Rights from relevant ministries and agencies, as well as qualitative data for monitoring visits during the past three years.

**Typology and overall number of places of detention in Ukraine**

№	Subordination	Type of institution	Number of institutions			Visited during the year				
			2012	2013	2014	2012	2013	2014		Total
								Total	Including repeat visits	
1	State Migration Service	Temporary accommodation centers for foreigners and stateless persons who are staying in Ukraine illegally	2	2	2		1	1		2
2	State Fiscal Service of Ukraine (Ministry of Revenue and Duties)	Territorial units of the State Fiscal Service	160	56	26					
3	State Border Guard Service of Ukraine	Temporary detention facilities	10	11	10	2	4	1		7
		Special premises for temporary custody of offenders apprehended under	75	75	53	1	4	2		7

		administrative law.								
		Places of custody for persons denied entry to Ukraine		3				2	1	2
4	State Penitentiary Service of Ukraine	Correctional colonies (maximum level of security)	9	9	8	2	4	2		8
		Correctional colonies (medium level of security)	76	76	60	11	13	5		29
		Correctional colonies (minimum level of security)	27	27	22	5	3	1		9
		Correction center	23	24	21	1	1			2
		Juvenile correctional facility	8	7	6	1		7	1	8
		Remand prisons "SIZO" (penitentiary facilities)	33	33	29	11	17	10		38
		Specialized health institutions	6	6	4					
5	State Court Administration of Ukraine	Courts	489	692	637		22	7		29
6	Ministry of Internal Affairs of Ukraine	"Avtozaks"	922	674	649	2	9	1		12
		Special rail cars (vagonzak)	29	29	27			1		1

		Special wards at medical institutions	587	587	508			2		2
		Temporary holding facilities (THF)	462	437	393	26	30	16	1	72
		Premises for apprehended and detained persons at the duty units of the bodies of internal affairs	1303	1175	1089	45	53	28	4	126
		Reception centers for juveniles	18	13	12	1	2			3
		Special reception centers for persons under administrative arrest	27	26	18	8	2	1	1	11
7	Ministry of Social Policy of Ukraine	Childcare residences	55	55	49	10	11	8	5	29
		Residence and retreat facilities	117	117	97	4	6	6	2	16
		Neuropsychiatric residences	152	152	144	8	21	10	1	39
		In-patient units of territorial centers of social services	348	355		2	6	4		12
		Centers for social and psychological rehabilitation of children	58	86	82	1		1		2
		Shelters for children	58	42	12	1				1

8	Ministry of Health of Ukraine	Children's homes	46	45	46	4	3	4		11
		Psychiatric (neuropsychiatric) hospitals and centers of forensic psychiatric examination	98	86	84	12	17	10	3	39
		Narcological clinics			40			3	1	3
		Healthcare institutions providing palliative care, hospices			60			8		8
9	Ministry of Education and Science of Ukraine	General education boarding schools, including schools for orphans and children deprived of parental care	72	64	47	1	3			4
		General education schools of social rehabilitations	6	6	4	2	2			4
		Vocational training school of social rehabilitation	3	2	2	2				2
		General education health	66	71	71	1	7	1		9

		care boarding schools								
		General education boarding schools	359	334	338	3	12	6	2	21
		Children's homes	104	94	64		1			1
10	Ministry of Defense of Ukraine	Guardhouses	4	2	1	1	2	1	1	4
		Disciplinary battalions	1	1	1	1	2			3
		Psychiatric clinics of military hospitals	4	4	4		1	1	1	2
		Rooms for temporarily detained	18	32	30		2			2
		Special wards of military hospitals	14	8	6		1			1
		Military units	337	386	158		1	2		3
11	Security Service of Ukraine	Specially designated areas for temporary detention (temporary holding facilities) of the Security Service of Ukraine	1	1	1	1				1
Total			6187	5902	4915	170	263	152	24	585

According to data in Table 1, number of monitoring visits in 2014 is significantly lower than the number of 2013 (152 and 263 accordingly). The discrepancy is related, first of all, to dramatic events that started in 2013 and exacerbated during last year. As noted above, during first months of last year the NPM Department was performing uncharacteristic functions – urgent

verification of information on human rights violations in different institutions, response to concrete complaints about torture and ill-treatment of activists of the Revolution of Dignity etc.

As a result, the Department resumed full-scale monitoring visits only in May 2014. Figure 3 and Table 2 provide statistical breakdown by ministry (agency) and region of Ukraine.

**Number of visits to places of detention in Ukraine by region (2014)**

Region	SMS <sup>1</sup>	SBGS <sup>2</sup>	SPS <sup>3</sup>	SCA <sup>4</sup>	MIA <sup>5</sup>	MSP <sup>6</sup>	MOH <sup>7</sup>	MOES <sup>8</sup>	MD <sup>9</sup>	Total
Kyiv		2	1	3	2		7	1		2
Vinnytsya region							1			0
Volyn region			1				2			
Dnipropetrovsk region			1				1			
Donetsk region			2							
Zhytomyr region			2				1			
Zakarpattia region							2	1		
Zaporizhzhya region			4							
Kyiv region			1	1			1	1		0
Kirovohrad region										
Luhansk region			1					1		
Lviv region		3	1				5	2		4
Mykolayiv region							2			
Odesa region			2							
Poltava region			1				1			
Rivne region			1							
Sumy region			1							
Ternopil region			1							
Kharkiv region			2							
Khmelnysky region			1							
Cherkasy region				2			1			
Chernivtsi region							1	1		

<sup>1</sup> State Migration Service of Ukraine.

<sup>2</sup> State Border Guard Service of Ukraine.

<sup>3</sup> State Penitentiary Service of Ukraine.

<sup>4</sup> State Court Administration of Ukraine.

<sup>5</sup> Ministry of Internal Affairs of Ukraine.

<sup>6</sup> Ministry of Social Policy of Ukraine.

<sup>7</sup> Ministry of Health of Ukraine.

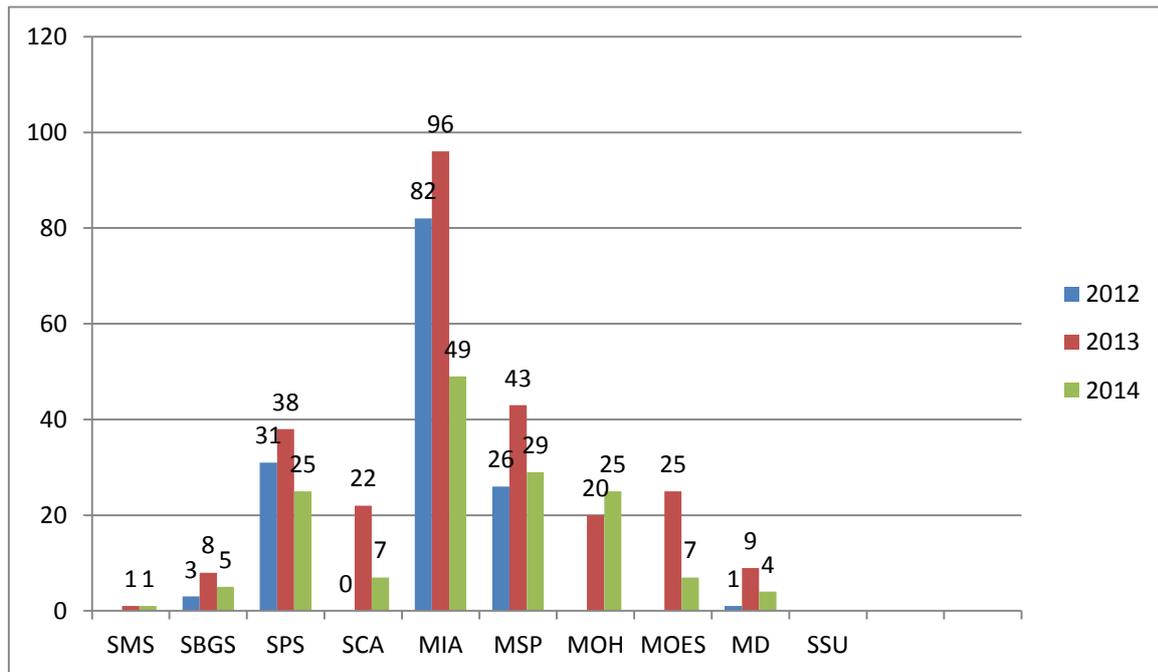
<sup>8</sup> Ministry of Education and Science of Ukraine.

<sup>9</sup> Ministry of Defense of Ukraine.

Chernihiv region	1		2	1							
Total	1	5	5	2	7	9	9	5	2	7	52

See Figure 3.1. for comparative data on visits (2012-2014) with breakdown by ministry and agency responsible for places of detention.

**Figure 3.1. Comparative data on visits with breakdown by ministry and agency responsible for places of detention (2012-2014)**



### 3.2. The role of the public in NPM implementation in Ukraine

National preventive mechanism in Ukraine functions in the Ombudsman+ format. Our “+” is the public, representative of NGOs and activists-volunteers who take part in regular monitoring visits with the representative of the Commissioner for Human Rights.

However, contribution of civil society into development of the NPM is not limited to visits to places of detention.

#### *Challenges in 2014*

One of the outstanding features of visits to places of detention during 2014 was the extreme conditions for monitoring. Therefore, there was a need to adjust principles of operation, safety, as well as review the list of places of detention.

Following a suggestion by **Kharkiv Institute for Social Research (KhISR)**, places of forced accommodation for persons resettled from the territory of anti-terrorist operation (IDPs) were included into the list of NPM monitoring sites. The Commissioner for Human Rights and, accordingly the NPM Department supported the

suggestion. The key characteristic feature of these settlements is that they appear and disintegrate very quickly, and often constitute a volunteer initiative independent from the state. Indeed, people in these facilities have no other place to seek rescue. In addition, a large number of IDPs are children and persons in need of care (including medical) – the elderly, persons with disabilities, pregnant, and persons with illnesses. Settlements are often created in buildings and territories not equipped for simultaneous stay of adults and children, i.e. children’s camps, boarding schools etc. Some buildings require refurbishments; there are no heating systems or sufficient amount of furniture. In addition, accommodation of IDPs, particularly children, automatically creates the need for staff services, from cooks to psychologists and pedagogues.

Experts of the “**All-Ukrainian Network of PLWH**” **ACO** took part in meetings initiated by the Commissioner for Human Rights on issues related to functioning of places of detention in ATO zone. Results of monitoring in correctional colonies and remand prisons in Donetsk and Luhansk regions on the territory controlled by Ukraine were presented at the meetings. Results of monitoring by human rights organizations were forwarded to the NPM Department for appropriate response measures.

### *Training*

A joint project of the Helsinki Foundation for Human Rights (Warsaw), the NPM Department and **public organization M’ART** “Increasing the standard of protection of rights of children placed in isolation and care facilities in Ukraine” supported by the International Solidarity Fund of the Ministry of Foreign Affairs of Poland included professional training for public and state NPM monitors and development of research toolkit for monitoring of facilities for rehabilitation and trusteeship system where children reside. Preparation process included training, distance learning, study visit to Poland and a final meeting where results were presented.

**PO M’ART** has developed and held a pilot basic course for NPM monitors. Methodological recommendations developed during pilot stage were suggested for implementation in the system of selection and training of monitors in the future. During 2015, representatives of **PO M’ART** have planned a series of specialized training for development of qualifications of public monitors and staff of the NPM Department with the support of the International Renaissance Foundation.

In spring of 2014, experts of the “**All-Ukrainian Network of PLWH**” **ACO** were invited as experts to a training on monitoring the right to medical care in SIZO organized by **KhISR** and the **Association of Independent Monitors (AIM)** in cooperation with the Ukrainian Parliament Commissioner for Human Rights. The training for NPM monitors included sections on specifics of antiretroviral therapy, antitubercular treatment and substitution maintenance therapy in remand prisons.

In June 2014, the **Network of PLWH** in cooperation with the **KhISR** conducted an introductory training in Kyiv for regional staff of the All-Ukrainian Network of PLWH on NPM functioning in Ukraine and specifics of monitoring the right to medical care in penitentiary facilities.

### ***Development of online tools***

In 2014, **Kharkiv Institute for Social Research** initiated development of an integrated online platform for generalization of data on all places of detention in Ukraine.

The map allows for not only viewing the list of all places of detention, but also selecting the necessary facilities by region, jurisdiction, type, visits, and date (entire period or specific year and month). The page is a useful tool for planning and evaluation of NPM monitoring, as well as cooperation with all 10 ministries and agencies responsible for places of detention, discussion of conditions, as well as lobbying for positive change. The project was implemented with the support of the UN Development Program in Ukraine and ISAR Ednannia.

The need for consolidation of large quantities of data on monitored facilities, visit reports, as well as acts of response to these reports by state authorities motivated the **Association of Ukrainian Human Rights Monitors on Law Enforcement (Association UMDPL)** in cooperation with **NPM Department** to establish an online database.

Completion of database development is scheduled for 2015 with the support of the International Renaissance Foundation. It will include three key units of information: 1) *visits reports* (with an option to fill out a report by the monitoring group online); 2) *information on all places of detention in Ukraine* (with basic information on each facility and history of visitation), and 3) *information on conducted trainings for monitors* (including information on training participants and level of preparation of each NPM monitor).

### ***Informational support***

**The Human Rights Information Center (HRIC)** provided significant informational support for NPM activities in 2014 through development of textual and multimedia content for the [www.npm.org.ua](http://www.npm.org.ua) website (in Ukrainian and Russian) and social networks: NPM [Facebook page](#) and [Twitter account](#).

On 24 June 2014, before the International Day in Support of Victims of Torture, in cooperation with the Secretariat of the Ukrainian Parliament Commissioner for Human Rights, a [press conference](#) “*Annual report of the national preventive mechanism: what is happening behind closed doors?*” was held. The press conference included presentation of the monitoring of human rights observance in places of detention in 2013, and the media received unique evidence on conditions and treatment of persons in these facilities.

Journalists of the **Human Rights Information Center** developed a series of opinion articles on human rights in places of detention and activities of the national preventive mechanism published by *Ukrayinska Pravda* and *Dzerkalo Tyzhnya*. **HRIC**

reporters also covered activities of the NPM and problems of human rights observance in places of detention on [www.humanrights.org.ua](http://www.humanrights.org.ua)

### *Expert work*

Experts of **Kharkiv Institute for Social Research** in cooperation with the **NPM Department** developed a project of standard minimum rules for the treatment of persons in social places of detention. These standards will not only allow for recording of conditions of stay by monitors, but also for evaluation in accordance with generally accepted norms. These standards were subject to wide discussion among both public monitors and staff of the NPM Department of the Commissioner for Human Rights, as well as the staff of places of detention and representatives of state authorities responsible for oversight. These events were held with the comprehensive support of the **UN Development Program in Ukraine** and ISAR Ednannia. Experts of **KhISR** suggested a separate set of standards for the treatment of children in detention with the support of UNICEF. These are based, first of all, on numerous international norms, including binding conventions and recommendations. International experience was also taken into account, in particular criteria for assessment of treatment of children in detention facilities developed by the HM Inspectorate of Prisons (UK). In the UK, they constitute an open set of general criteria, subject to discussion and amendments, which need to be considered in the course of monitoring.

In April 2014, representative of the “**All-Ukrainian Network of PLWH**” **ACO** joined the Expert council for realization of the national preventive mechanism (NPM) of the Commissioner for Human Rights. This allowed the NPM to receive expert support on fulfilment of the right to medical care for patients in places of detention.

### *Methodological tools and other publications*

Following working meetings with NPM monitors in 2014, **KhISR** experts developed “*A guide on organization of NPM visits and development of reports*” that includes methodological recommendations on visiting places of detention, possible issues that the monitor can encounter during visits, as well as their solutions, and recommendations on interviews and development and approval of visit reports.

In addition, the *Catalogue of Social Places of Detention in Ukraine* was updated and published due to **KhISR** efforts. The catalogue contains contact information for all places of detention under the Ministry of Social Policy of Ukraine, the Ministry of Health of Ukraine, and the Ministry of Education and Science of Ukraine.

Following monitoring of the rights of the child in correctional facilities by **KhISR** experts with experts from the **NPM Department**, a Special NPM report “*Observance of*

*the rights of children in juvenile correctional facilities of the State Penitentiary Service of Ukraine*” was developed. The monitoring was supported by the UN Children’s Fund (UNICEF) in Ukraine and the European Commission in the framework of a joint project “Consolidation of Juvenile Justice Reforms against Torture and other Forms of Ill-Treatment of Children in Former Soviet Countries”.

**The Association UMDPL** began development of methodological guidance on specifics of monitoring places of detention in the MIA and SPSU systems to be used by NPM monitors during visits to relevant institutions. The manuals are aimed at generalizing and structuring the experience of monitoring places of detention, providing description of the most effective methods of monitoring in order to increase effectiveness of NPM work on identification and recording instances of torture and cruel treatment.

### *Establishment of an initiative group of NPM monitors*

Idea of establishing an initiative group of monitors appeared in December 2014 during a working meeting of NPM monitors. A group of active monitors from different cities and organizations, **Oleksandr Hatiyatullin, Maryna Homenyuk, Valentyna Volyk, and Vira Yakovenko**, undertook the development of ideas for coordination between all NPM participants. For **HRIC, a participant in the process**, this cooperation presented a new challenge as the Center’s team undertook arrangement of internal communications for the first time. The work was made possible due to organizational and financial support of the Human Rights and Justice Program of the International Renaissance Foundation.

One of the first suggestions of the group was conducting cluster meetings for monitors from the eastern, western, central and southern regions.

These events allowed for evaluation of the potential of monitors’ community, verification of the actual number of public monitors prepared for further participation in NPM activities, as well as their qualifications.

We can state now that this systemic work creates solid foundation for a new quality level of self-organization of the community and its activities for preventing torture and cruel treatment in places of detention in Ukraine.

### *Activities of the Expert Council on NPM*

The Expert council for realization of the national preventive mechanism (NPM) held two meetings during 2014 with the following issues on their agenda:

- Approving the Special report of the Ukrainian Parliament Commissioner for Human Rights on NPM implementation in 2013;
- Approving the Annual plan of NPM development in 2014;
- Improvement of the NPM website and its harmonization with the relevant page of the Commissioner’s website;

- Amendments to the Regulations on Expert Council in relation to more active involvement of its members in selection and training of future public monitors;
- Involvement of regional representatives and regional PR coordinators of the Commissioner for Human Rights into independent monitoring visits;
- Development and implementation of electronic database of visits aggregating both reports on conducted visits and information of state authorities on measures following monitoring results, as well as electronic map of places of detention;
- Development and implementation of social standards for persons in places of detention within the system of the Ministry of Social Policy etc.

On 28-29 November 2014, at a working meeting of initiative members of the Expert Council, a comprehensive analysis of the Council's activities was conducted along with identification of options for optimization of its work. In particular, the following was suggested:

- development of an actual work plan for the Expert Council with concrete definition of responsibilities of each member in implementation of activities;
- conduct of regular meetings of the Council (at least one per every quarter);
- Improvement of communication between members of Expert Council;
- Update the composition of the Expert Council by including representatives of the monitors' community.

### **3.2. Activities of regional representatives and regional public relations coordinators of the Ukrainian Parliament Commissioner for Human Rights in the field of monitoring places of detention**

Regional representatives of the Commissioner for Human Rights, as well as regional PR coordinators of the Commissioner for Human Rights, who are performing functions of regional representatives in accordance with the Memorandum of Cooperation between the Commissioner for Human Rights and the Association of Ukrainian Human Rights Monitors on Law Enforcement (Association UMDPL), provided significant support implementation of the national preventive mechanism in 2014.

In 2014, regional coordinators worked in ten regions: Cherkasy, Chernihiv, Zaporizhzhya, Rivne, Luhansk, Ternopil, Kirovohrad, Mykolayiv, Poltava, and Odesa regions.

Until 2014, regional coordinators visited various places of detention as monitors together with the staff of the Secretariat of the Commissioner or with the purpose of verifying specific information on human rights violations. However, given an extremely large number of places of detention (over 6000) and the subsequent need for increase in regularity and number of monitoring visits, in 2014 the Commissioner made

a decision on vesting regional coordinators with the right to conduct independent visits to places of detention with public monitors who had undergone appropriate training and received the Commissioner's assignment.

During 2014, regional representatives and PR coordinators conducted 62 visits to places of detention, including 50 visits by regional coordinators and 12 by regional representatives.

Places of detention of different types were subject to monitoring: Smila psychiatric hospital, Smila neuropsychiatric residence, Sosnivsky district court of Cherkasy city, Horodyshe district department of the MIA Directorate in Cherkasy region and its THF, Kozyatyn district department of the MIA Directorate in Vinnytsya region and the department's THF, Nemyriv district department of the MIA Directorate in Vinnytsya region and the department's THF, Zhmerynka district department of the MIA Directorate in Vinnytsya region and the department's THF, Starokostyantyniv district department of the MIA Directorate in Khmelnytsky region and its THF, Khmilnyk district department of the MIA Directorate in Vinnytsya region and its THF, Rotmistrivka residence for elderly persons and persons with disabilities, Chyhyryn district court of Cherkasy region, in-patient unit of the territorial center of social services of Chyhyryn district, Odesa remand prison of the SPSU Directorate in Odesa region, Odesa childcare residence, THF of Odesa city directorate of the Main MIA Directorate in Odesa region, Chortkiv remand prison of the SPSU in Ternopil region, Berezhany correctional colony of the SPSU Directorate in Ternopil region, Mykolayiv remand prison, Nizhyn childcare residence in Chernihiv region, Chernihiv correctional colony #44, Lutsk remand prison, Starobilsk remand prison, specialized general education boarding school for children with hearing impairments in Lviv, as well as other facilities where persons are held against their will.

The monitoring was conducted with the use of an integrated NPM methodology, and its results were forwarded to the NPM Department for analysis and further response.

Examples of violations of human rights and freedoms identified by regional coordinators during monitoring visits are presented in the next chapter of this Report within the analysis of monitoring results for each ministry and agency.

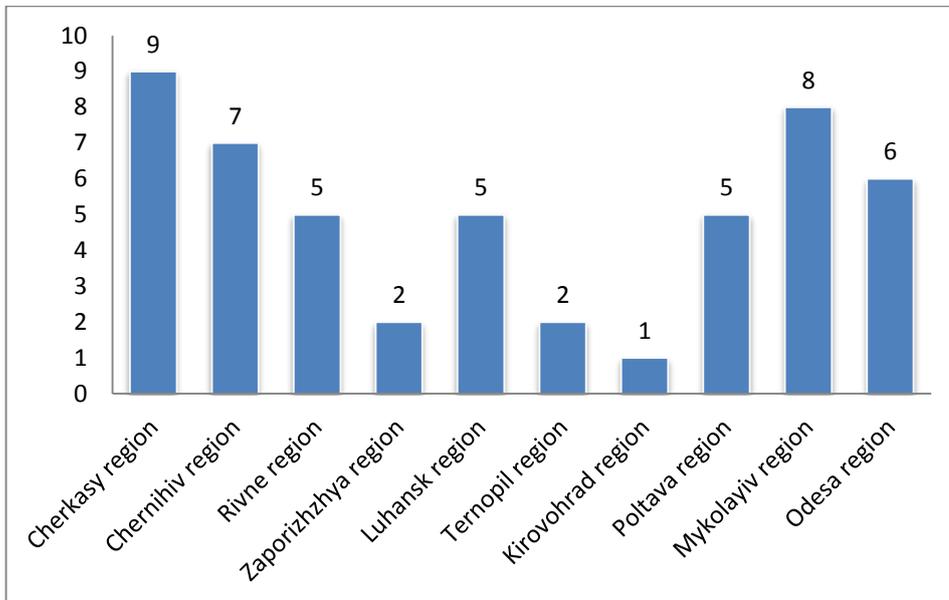


Figure 3.2. Qualitative data on visits by regional coordinators in the framework of implementation of the national preventive mechanism.

## CHAPTER 4. MONITORING PLACES OF DETENTION: FINDINGS, BY MINISTRIES AND AGENCIES

### 4.1. Results of monitoring of institutions of the Ministry of Internal Affairs of Ukraine

#### Overview of places of detention subordinate to the Ministry

The network of detention places within the structure of the Ministry of Internal Affairs remains the largest in comparison with other agencies. The so-called “official places of detention” include facilities that are equipped holding persons, and the special transport means for conveying apprehended, detained persons, and convicted persons.

There are also the so-called “unofficial” places of detention under the MIA’s responsibility that include offices of field officers and investigators, interrogation rooms, as well as any other premises on the territory of the bodies of internal affairs where persons can be held against their will. In 2014, there were 717 city, district and line (on the railroad) units of internal affairs bodies.

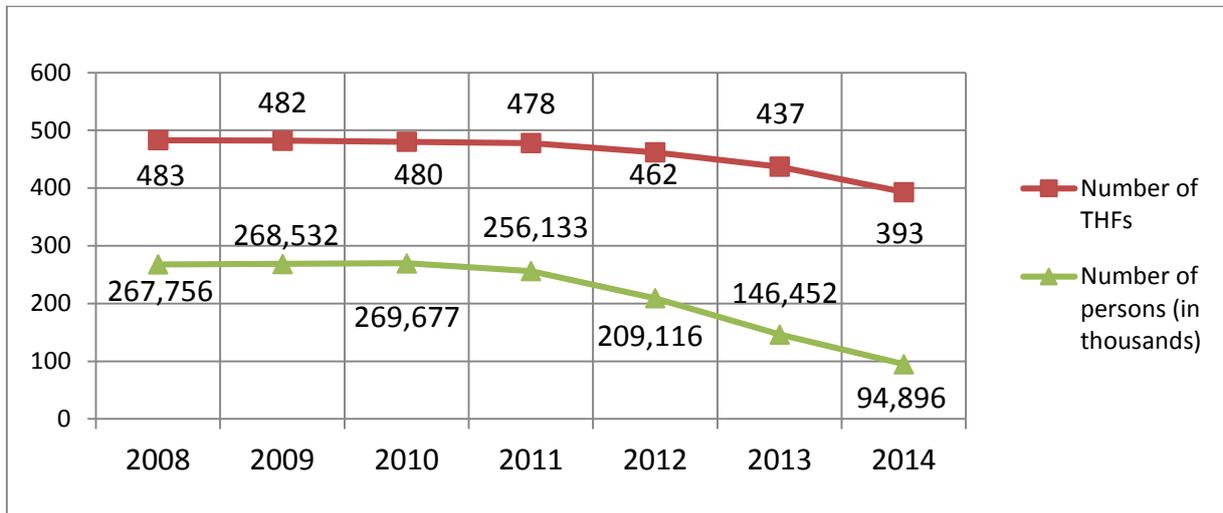
#### **As of 1 January 2015, the specially equipped holding facilities include:**

- 1089 premises for apprehended and detained persons at duty units of the police authorities of Ukraine, used to hold 1 950 persons during the year;
- 393 temporary holding facilities (used to hold 94 896 persons during the year);
- 18 special reception centers for persons subjected to administrative arrest (accommodated 4 714 arrestees during the year);
- 12 reception centers for juveniles, which accommodated 59 minors during the year;
- 508 special wards at medical institutions, which accommodated 400 patients, during the year.

The largest number of detainees of MIA facilities are held in temporary holding facilities. However, since 2011 there has been a tendency towards reduction of the number of such detainees and number of remand prisons.

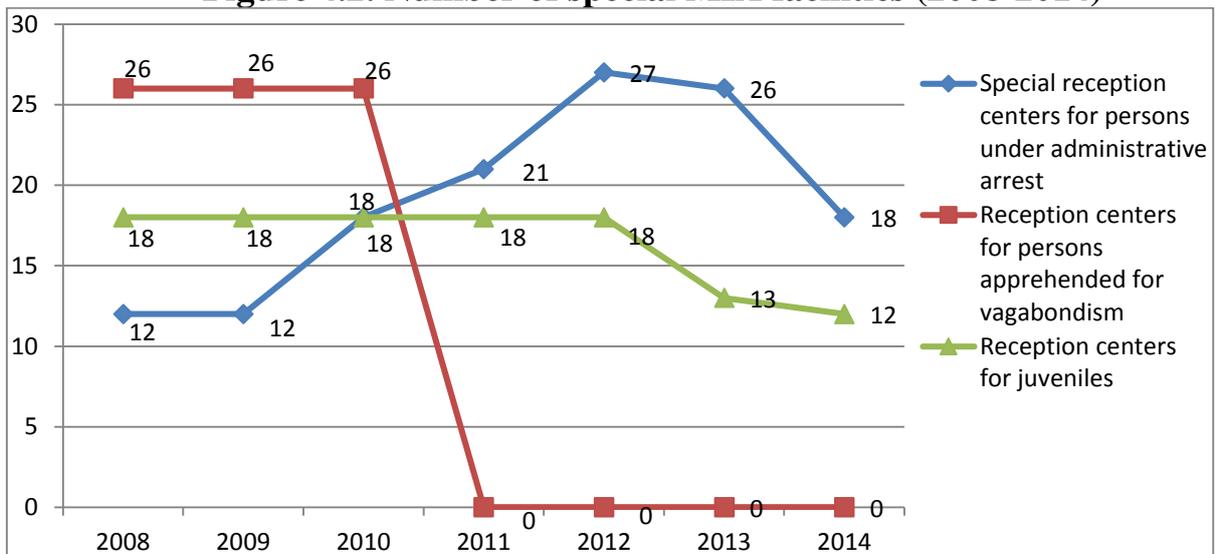
The annual number of THFs and persons detained therein (2008-2014) is reflected on Figure 4.1.

**Figure 4.1. The annual number of THFs and persons detained therein (2008-2014)**

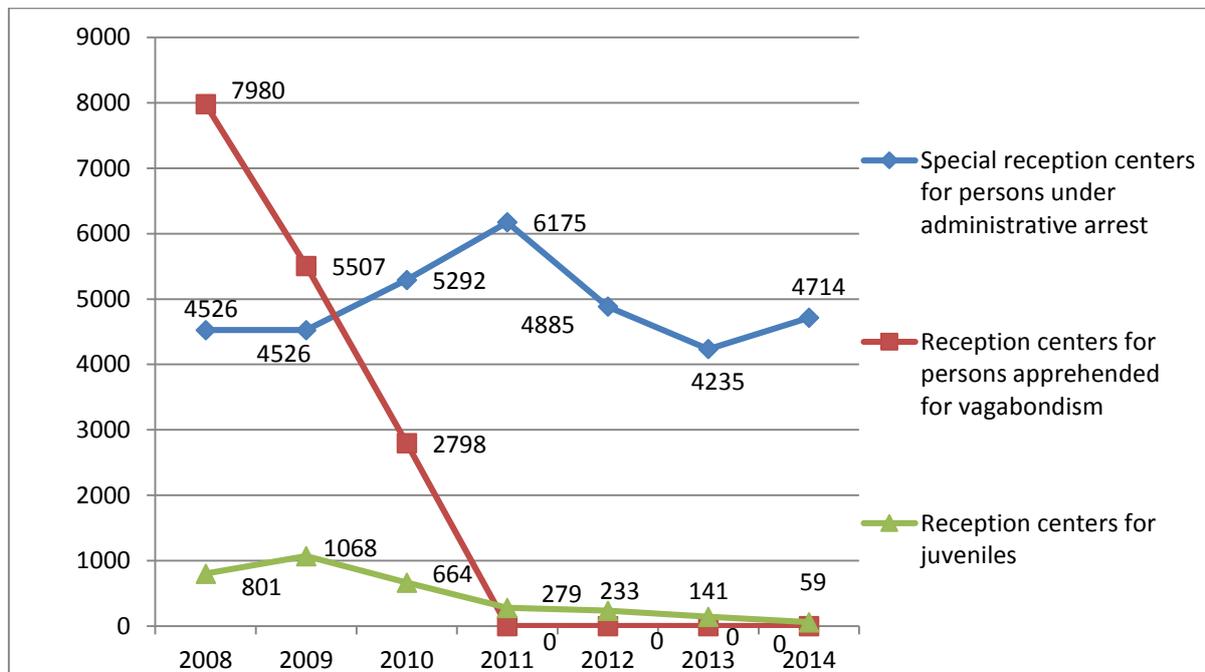


Since in 2014 some of the special facilities are located on the territory outside of control of Ukrainian state authorities, as well as given the decrease in the number of detainees in THFs and the lack of significant budget funds for refurbishments to meet national and international standards, 44 THFs, 8 special reception centers for persons under administrative arrest, as well as 1 reception center for juveniles were shut down only in 2014. There are 12 functioning reception centers for juveniles at the moment.

**Figure 4.2. Number of special MIA facilities (2008-2014)**



**Figure 4.3. Annual number of persons in custody of special MIA institutions (2008-2014)**



**Special transportation means for conveying apprehended, arrested and convicted persons include:**

- *special rail cars ST (vagonzaks, “Stolypin cars”);*
- *special vehicles of MIA (avtozaks);*
- *special vehicles of the National Guard of Ukraine (“avtozaks”).*

The total count of individuals transported by special transport means during 2014 constituted 584 284 persons but this number includes the same individuals who in the course of the year were transported several times and by different transport means. For instance, delivery of one person from a remand prison (THF) to court and back counts as two, and throughout the year there can be several court hearings in the person’s case.

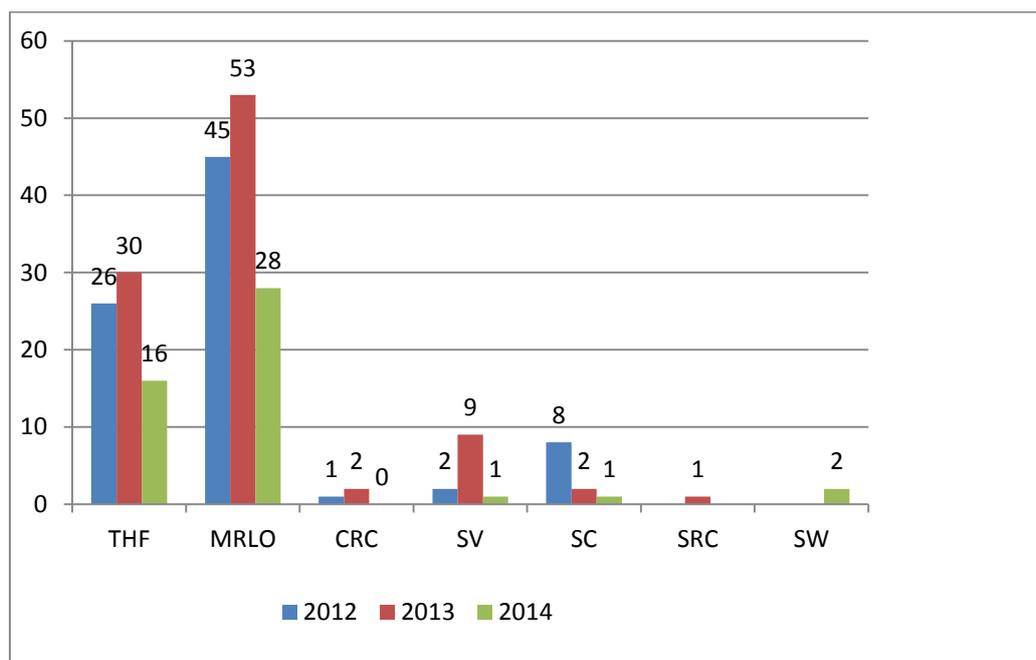
**Statistics on visits to places of detention of the MIA in 2014**

**In 2014, staff of the NPM Department and representatives of the public visited 49 places of detention under the jurisdiction of the MIA of Ukraine, including:**

- 28 city, district and line bodies of internal affairs;
- 16 THFs;
- 1 special reception center for persons under administrative arrest;
- 2 special wards in medical institutions.

In addition, one special rail car ST and special vehicle for transportation of apprehended, detained and convicted persons were checked.

**Figure 4.5. Number of authorities, units and special facilities of the MIA visited in 2012-2014**



*THF – temporary holding facility;*

*MRLO - city, district and line bodies of internal affairs;*

*CRC – reception center for children;*

*SV – special vehicle for transportation of apprehended, detained and convicted persons;*

*SC - special reception center for persons under administrative arrest;*

*SRC– special rail car for transportation of apprehended, detained and convicted persons;*

*SW – special wards in medical institutions.*

**Table 3. Number of bodies, units and special MIA institutions visited during 2014 (by region)**

Region	SV	THF	MRL O	CRC	SRC	SW	otal	T
Kyiv		2	9					12
Vinnitsya region		4	4					8
Zhytomyr region			1					1
Kyiv region		3	3					6
Kirovohrad region		1	1					4
Lviv region			2					2
Mykolayiv region		1	4					5
Odesa region		1						1
Sumy region		2	2					5
Khmelnysky region		1	1					2
Cherkasy region		1	1					3
<b>Total</b>		<b>6</b>	<b>8</b>					<b>49</b>

Six repeat visits to authorities and units of internal affairs were conducted for evaluation of implementation of recommendations from previous visits in 2014.

## **Violations and shortcomings identified during monitoring visits to places of detention under the MIA of Ukraine**

### ***Torture and cruel treatment***

Despite numerous acts of response by the Commissioner on instances of torture and cruel treatment, this despicable phenomenon still exists in the practice of law enforcement bodies. For instance, on 14 October 2014, upon assignment from the Commissioner for Human Rights to the regional PR coordinators, the latter visited the temporary holding facility of Odesa city directorate of the Main MIA Directorate in Odesa region. During interviews with detainees of the facilities, the apprehended K. manifested bodily injuries in the form of bruises on his wrists.

The latter said that he had been assaulted by police officers at the local point at Pryvoz market in Odesa, held handcuffed to a bench at the internal affairs unit for six hours, and practically was deprived of the possibility to move and satisfy natural needs. In addition, his right to see an attorney prior to first interrogation was violated.

The review of the act of response by the Commissioner prompted pre-trial investigation by the Prosecution Service in Odesa region into this case, which is under the Commissioner's monitoring.

Cruel treatment of a juvenile was identified during a visit to Kyiv remand prison. A minor Ch. Who was held at the remand prisons manifested bodily injuries in the form of bruises on arms and legs. Ch. explained that he sustained bruising during conveying to the court as a result of cruel treatment by convoy officials (they were dragging him handcuffed down the stairs, which led to multiple bruising). Relevant address in relation to this fact by the Commissioner was sent to the prosecutor of Kyiv. In the absence of response to the address, the Commissioner notified the Office of the Prosecutor General of Ukraine.

In addition to cases of torture and cruel treatment discovered during monitoring visits to the city, district and line bodies of internal affairs, the Commissioner regularly receives applications from citizens on the facts of torture and cruel treatment by law enforcement officials for the purposes of obtaining confessions

As a rule, these applications include concrete data on how the person was treated (assaulted or humiliated, in which manner and with what tools, when and with what purpose etc.). Sometimes these applications includes copies of medical certificates and photographs of consequences of torture. Therefore, these applications contain evidence

of criminal offences under article 127 of the CC of Ukraine (willful causing of severe physical pain or physical or mental suffering by way of battery, martyring or other violent actions for the purpose of inducing the victim or any other person to commit involuntary actions, including receiving from him/her or any other person information or confession) that provides for criminal responsibility.

In accordance with paragraph 1 of Chapter XI “Transitional Provisions” of the CPC of Ukraine, until entry into force of Article 216 of the CPC of Ukraine, which provides that pre-trial investigation of criminal offences committed by law enforcement officials is held by the state investigation bureau, powers of pre-trial investigation of criminal offences by law enforcement officials are vested with the investigators of prosecution authorities.

In addition, the Law of Ukraine “On Prosecution” provides that prosecution authorities are responsible for oversight of compliance with the law by authorities conducting operational and detective activities, inquiry, pre-trial investigation, as well as in cases of the use of coercive measures related to restrictions of citizens’ liberty.

For the above reasons, as well as due to the fact that the legislation does not allow the Commissioner to enter data on criminal offences into the ERDR and conduct pre-trial investigation, the citizens’ complaints with information about torture are referred to the prosecution authorities pursuant to Article 60 of the CPC of Ukraine (notification of crime) for entry into the ERDR and adequate investigation.

However, in most cases prosecution officials ignore the requirements of the Criminal Procedure Code and review petitions that contain information about crimes in accordance with the Law of Ukraine “On Citizens’ Petitions”. As a rule, the prosecution official justify such actions by the fact that during examination they fail to find objective data on criminal offences as defined by article 11 of the CC of Ukraine. In addition, in certain cases they forward petitions to the bodies actions of which are subject to complaint. Therefore, prosecution officials deprive victims of torture and cruel treatment of effective investigation and prosecution of perpetrators.

The Commissioner has addresses the Prosecutor General of Ukraine with multiple petitions on violations by prosecution officials of the city of Kyiv, Kharkiv and Sumy regions of the rights of citizens to effective investigation of ill-treatment in accordance with the ECHR case law (reg. no. 1.-1293/14-66 dated 08.07.14 №), and on ineffectiveness of investigation of instances of torture and ill-treatment by prosecution officials of Cherkasy region (reg. no.1.-790/14-66 dated 16.04.2014). However, the said violations persist.

*Cruel or degrading treatment during transportation in special carts for transportation of apprehended, detained, and convicted persons*



Convoying persons in special cars even for short distances can amount to cruel or degrading treatment.

For instance, persons subject to convoy are forced to stay in extremely small cells (“large” cell – 3.5 sq. m, “small” cell – 2 sq. m) for long periods (from several hours to several days). In addition, current national standards allow for placement of up to 12 persons in a large cell in case of the travel duration exceeding 4 hours (space for one person constitutes 0.29 sq. m), or 16 persons in cases where such travel does not exceed 4 hours (space for one person constitutes 0.22 sq. m). It is permitted to accommodate up to 5 persons in a small cell when the trip lasts for over 4 hours (space for one person constitutes 0.4 sq. m), or 6 persons where the trip does not exceed 4 hours (space for one person constitutes 0.33 sq. m).

In addition, there is no natural or artificial lighting in the cells. The light only comes into the cell from the hallway.

*Small cell for 5-6 persons*



*Large cell for 12-16 persons*



Upon the Commissioner’s initiative, the Prime Minister of Ukraine created an inter-agency working group on the protection of rights and freedoms of convicted and detained persons that take part in court hearings. The group was created with the purpose of ensuring observance of the rights and freedoms of detained persons, in particular during conveying by railway or automobile transport. The group includes representatives of the Secretariat of the Commissioner for Human Rights, Ministry of Finance of Ukraine, the Secretariat of the Ukrainian Government Agent before the European Court of Human Rights, the Ministry of Justice of Ukraine, the State Penitentiary Service of Ukraine, the State Court Administration of Ukraine, the Ministry of Infrastructure of Ukraine, the Department of Public Safety of the MIA of Ukraine, and the Convoy Department of the Main Directorate of the National Guard of Ukraine.

A regular meeting of the inter-agency group took place on 24 October 2014. It included, in particular, discussion of introducing unified standards on conveying and equipment of special vehicles in accordance with international standards. In addition, participants discussed a possibility of organizing conveying of convicted and detained persons exclusively by automobile transport.

In addition, the Ministry of Internal Affairs of Ukraine, the State Penitentiary Service of Ukraine, the State Railway Administration “Ukrzaliznytsya” and the Ministry of Justice of Ukraine were offered to review the possibility of including

relevant amendments into the current legal regulations with the purpose of harmonizing conditions of transportation by special means of transport with international standards and with the view of analysis of transportation dynamics, ECHR case law and the CPT recommendations.

***Illegal apprehension without a ruling by investigating judge, or court following a long period after commission of a crime***

Results of monitoring MIA activities show that, despite requirements of the criminal procedure legislation, law enforcement officials apprehend persons suspected of crimes without proper court ruling. In addition, a large number of apprehensions takes place after a long period (in certain cases several days or even months) after the commission of an alleged crime, which constitutes gross violation of Article 208 of the CPC of Ukraine. The said article provides an exhaustive list of cases when a competent official can apprehend a person without a ruling by investigating judge or court.

According to **article 208§1 of the CPC of Ukraine**, a competent official has the right to apprehend without investigating judge's, court's ruling only in two cases:

- If the person was caught **while committing a** criminal offence or making an attempt to commit it;
- If **immediately after the commission of crime**, an eyewitness, including the victim or totality of obvious signs on the body, cloth or the scene indicates that this individual has just committed the crime.

If a person **was not committed during commission of crime or immediately after**, the only legal ground for apprehension a persons suspected of committing a crime is a ruling by investigating judge or court for the purposes of assigning a restraint measure.

Therefore, actions of a competent official apprehending a person without a ruling by investigating judge or court following long period after commission of crime can be qualified as a crime against justice. In addition, the said actions can be viewed as knowingly unlawful apprehension, taking into custody, arrest or detention constituting a crime under Article 371 of the Criminal Code of Ukraine and providing for criminal liability.

However, the inspection of the grounds for apprehension of persons in places of detention revealed multiple instances of unlawful apprehensions, including those of minors, without investigating judge's, court's ruling following long period (from several hours to several months) after commission of crime.

For instance, on **10 July 2014**, monitoring of observance of the rights of minors apprehended by the bodies of internal affairs of Kyiv and Kyiv region took place. At the time of inspection, juveniles were already in Kyiv remand prison. According to the report on apprehension of H. (born 1997), he was apprehended on 09 April 2014 at 22:00 at Brovary city department of the Main MIA Directorate in Kyiv region. A ruling of the investigating judge of Brovary city court of Kyiv region M. dated 12 April 2014 on assignment of a restraint measure states that the alleged crime occurred on 4 April

2014. Therefore, apprehension of a minor without a ruling of an investigating judge or court took place **five days after commission of alleged crime.**



УХВАЛА

12 квітня 2014 року.

м.Бровари

Слідчий суддя Броварського міськрайонного суду Київської обл. МІ Т.Л., при секретарі – Б О.С., за участю прокурора – П Ю.В., захисника – Т Л.М., розглянувши в залі суду в м. Бровари клопотання старшого слідчого Броварського МВ ГУ МВС України в Київській області М В.О., за погодженням із старшим прокурором Броварської міськрайонної прокуратури П Ю.В. за матеріалами кримінального провадження, внесеного до Єдиного реєстру досудових розслідувань за № 12014110130001178 від 09.04.2014 року про застосування запобіжного заходу у вигляді тримання під вартою Г А В 15 грудня 1997 року народження, уродженця м. Бровари Київської області, українця, громадянина України, освіта неповна середня, студента 1-го курсу ліцею «Авіант» м.Кисва, не одруженого, проживаючого за адресою: Київська область, м. , раніше судимого Броварським міськрайонним судом Київської області 13.08.2012 року за ч. 2 ст. 185, ч. 3 ст. 185 КК України до 2 років позбавлення волі, на підставі ст. 75 КК України звільненого від відбуття покарання, з іспитовим строком 2 роки підозрюваного у вчиненні кримінальних правопорушень, передбачених ч. 3 ст. 185, ч.2 ст. 187 КК України

ВСТАНОВИВ:

12 квітня 2014 року старший слідчий СВ Броварського МВ (з обслуговування м. Бровари та Броварського району) ГУ МВС України в Київській області М В.О. звернулася до суду з клопотанням про застосування запобіжного заходу у вигляді тримання під вартою відносно Г , підозрюваного у вчиненні кримінальних правопорушень, передбачених ч. 3 ст. 185, ч.2 ст. 187 КК України, при наступних обставинах.

04 квітня 2014 року близько 14 години Г , будучи раніше судимий за корисливий злочин та маючи судимість, яка у встановлений законом порядок та термін не погашена, у період іспитового строку, перебуваючи на території непрацюючої лабораторії, яка розташована за адресою: Київська область, м. Бровари, , після отримання вільного доступу через вікно до приміщення жилої кімнати, вступивши у попередню змову з С І.О., виник умисел направлений на таємне викрадення майна, яке належить К Н.В.

В цей же день, 04 квітня 2014 року близько 14 години, реалізуючи свій злочинний умисел, діючи умисно та з корисливих мотивів, відповідно до попередньої змови з С І.О., через відкрите металопластикове вікно, проник до приміщення жилої кімнати будинку, який розташований на території непрацюючої лабораторії у м. Бровари, . Перебуваючи у приміщенні кімнати та обдивившись у ній обстановку, Г А.В., знаючи, що за його діями ніхто не спостерігає, діючи за попередньою змовою з С І.О., таємно викрав механічний годинник марки «Q&Q» вартістю 135 грн., електрошокер сполучений з ліхтарем вартістю 300 грн., ніж з гравіюванням в чохлі вартістю 100 грн. та складений ніж вартістю 70 грн.

Після викрадення майна, Г А.В. та С І.О., зникли з місця вчинення кримінального правопорушення, тим самим заповділили К Н.В. матеріальної шкоди на загальну суму 605 грн.

Вказана подія зареєстрована до Єдиного реєстру досудового розслідування за № 12014110130001178 від 09.04.2014 року, за ознаками кримінального правопорушення, передбаченого ст. 187 КК України.

09 квітня 2014 року о 22 годині Г А.В. затримано у порядку ст. 208 КПК України за підозрою у вчиненні кримінального правопорушення, передбаченого ч. 3 ст. 185 КК України.

10 квітня 2014 року о 21 годині 50 хвилин Г А.В. повідомлено про підозру у вчиненні кримінального правопорушення, передбаченого ч. 3 ст. 185 КК України.

Similar violations took place during apprehension of a minor L. (born 1997). The report

on apprehension states that he was apprehended on 20 June 2014 at 23:22 at the premises of investigations unit of Shevchenkivske district directorate of the Main MIA Directorate in Kyiv (office 312) by an investigator of the district directorate T. At the same time, the alleged crime took place on 18 June 2014. Consequently, apprehension of a minor without a ruling of an investigating judge or court took place 2 days after the alleged crime.

**Another typical example of apprehension in violation of these requirements was found at Shevchenkivske district directorate of the Main MIA Directorate in Kyiv.**

ПРОТОКОЛ  
затримання особи, підозрюваної у вчиненні злочину

м. Київ

09 грудня 2014 року

Слідчий СВ 2-го ВМ Шевченківського РУ ГУМВС України в м. Києві лейтенант міліції [REDACTED], 09 грудня 2014 року о 22 годині 00 хвилин (фактичний час затримання 17 год. 20 хв.) в приміщенні СВ Шевченківського РУ ГУМВС України в м. Києві, в присутності захисника [REDACTED] відповідно до ст. 40, 104, 131, 132, 208-211, 213 КПК України затримав особу, підозрювану у вчиненні злочину:

1. Прізвище, ім'я, по батькові [REDACTED]
2. Рік, місяць і день народження [REDACTED]
3. Місце народження [REDACTED] Одеська область, Разделянський район, с. Щербанка.
4. Громадянство [REDACTED] України
5. Національність [REDACTED] українець
6. Освіта і спеціальність [REDACTED] середня-спеціальна
7. Сімейний стан [REDACTED] не одружений
8. Місце роботи, посада [REDACTED] не працює
9. Місце проживання: [REDACTED] зареєстрований за адресою Одеська область, [REDACTED] і проживає за адресою: [REDACTED]

10. Відомості про судимість [REDACTED] судимий раз 08.10.1999 року Приморським районним судом м. Одеси, за ч. 3 ст. 142 КК України (редакція 1960 року), до 7-и років позбавлення волі, 23.08.2005 року Приморським районним судом м. Одеси, за ч. 2 ст. 186 КК України, до 4 років позбавлення волі, в 2009 році Приморським районним судом м. Одеси, за ч. 2 ст. 186 КК України, 4 роки 1 місяць позбавлення волі.

11. Паспорт або інших документів [REDACTED] особу засвідчено

Підстави затримання:

- 1) якщо цю особу застали під час вчинення злочину або замаху на його вчинення;
- 2) якщо безпосередньо після вчинення злочину очевидець, в тому числі потерпілий, або сукупність очевидних ознак на тілі, одязі чи місці події вказують на те, що саме ця особа щойно вчинила злочин.

В ході досудового слідства встановлено, що 23 жовтня 2014 року близько 20 години 30 хвилин за адресою: м. Київ, вул. А [REDACTED], невідомої особи, умисно, здійснили напад у відношенні [REDACTED], з метою заволодіння чужим майном, із застосуванням насильства, що є небезпечним для життя чи здоров'я потерпілого, посланий з проникненням у житло, де заволоділи чужим майном

*The crime for which the person was apprehended took place on 23 October 2014. Apprehension took place on 09 December 2014 (more than 1.5 months after the crime).*

**Unlawful apprehensions without a ruling by investigating judge/court following a long time after occurrence of a crime were identified in the following IAB:**

- Kirovohrad city department of the MIA Directorate in Kirovohrad region<sup>10</sup>;
- Vasylkiv city department of the MIA Directorate in Kyiv region<sup>11</sup>;
- Sumy city department of the MIA Directorate in Sumy region<sup>12</sup>;
- Dniprovske regional directorate of the Main MIA Directorate in Kyiv;
- Shevchenkivske district directorate of the Main MIA Directorate in Kyiv;
- Pechersk district directorate of the Main MIA Directorate in Kyiv;
- Svyatoshyn district directorate of the Main MIA Directorate in Kyiv;
- Khmilnyk city department of the MIA Directorate in Vinnytsya region;
- Territorial police unit #4 Dniprovske district department of the Main MIA Directorate in Kyiv;
- Railway unit of Lviv city directorate of the Main MIA Directorate in Lviv region;
- Line department at railway station Zhytomyr MIA Directorate for Southwestern Railways;
- Kirovohrad city department of the MIA Directorate in Kirovohrad region.

At the same time, despite the prevalence of these crimes, in 2014, there were no persons prosecuted for knowingly unlawful apprehension, taking into custody, arrest or detention<sup>13</sup>.

**Table 4. Excerpt from the Unified Crime Report (January –December 2013/2014)**

Crimes against justice and other offences registered by the prosecution bodies in 2013-2014	Recorded criminal offences during the period		Criminal offences where persons were presented with notice of suspicion		Criminal offences where proceedings were transferred to court with indictment		Criminal offences where proceedings were transferred to court with a motion for relief from criminal responsibility	
	2013	2014	2013	2014	2013	2014	2013	2014
Knowingly unlawful apprehension, taking into custody, arrest or detention, article 371	3	0	1	0	1	0	0	0

### *Deprivation of the apprehended persons' constitutional right to defense*

<sup>10</sup> Official website of the Ukrainian Parliament Commissioner for Human Rights. [http://www1.ombudsman.gov.ua/index.php?option=com\\_content&view=article&id=4178](http://www1.ombudsman.gov.ua/index.php?option=com_content&view=article&id=4178)

<sup>11</sup> [http://www1.ombudsman.gov.ua/index.php?option=com\\_content&view=article&id=3850](http://www1.ombudsman.gov.ua/index.php?option=com_content&view=article&id=3850)

<sup>12</sup> [http://www1.ombudsman.gov.ua/index.php?option=com\\_content&view=article&id=3809](http://www1.ombudsman.gov.ua/index.php?option=com_content&view=article&id=3809)

<sup>13</sup> Official website of the Office of the Prosecutor General of Ukraine. Unified Crime Report (January-December 2013/2014, tab 4.17) <http://www.gp.gov.ua/ua/stst2011.html>

Ensuring the right to defense immediately following actual apprehension of a person constitutes one of the most effective tools for prevention of ill-treatment and violations of other rights of apprehended person.

According to Article 29 of the Constitution of Ukraine, every person, arrested or detained, shall be given an opportunity to personally defend himself/herself or to receive legal assistance from a defender.

Part two of Article 62 of the Constitution of Ukraine guarantees the right of a suspect to legal assistance, and such assistance shall be rendered free of charge in cases stipulated by law (Article 59§1 of the Constitution of Ukraine).

The right to defense is also enshrined in a number of articles of the Criminal Procedure Code of Ukraine:

- Article 20§1 of the CPC established the right of an apprehended person to benefit from a legal assistance of a defense counsel;
- Article 20 §3 of the CPC, Article 42 §3(3) of the CPC guarantees the right to have services of a counsel provided at the cost of the state in the cases stipulated for in this Code and/or the law regulating provision of legal aid at no cost including when no resources are available to pay for such counsel;
- Article 49 §1(2) of the CPC establishes an obligation for the to ensure participation of a defense counsel in criminal proceedings when the suspect, accused filed a plea on committing a defense counsel but for reasons of lack of funds or for other objective reasons, is unable to commit one on his own;
- According to Article 208§4 of the CPC, a competent official who apprehended the person without investigating judge’s, court’s ruling, shall be required to immediately inform the apprehended person of his/her rights, including the right to involve a defense counsel;
- According to Article 213§4 of the CPC, an officer who carried out the apprehension should **notify** the body (institution) authorized by the law to provide legal aid at no cost **immediately**, and in case the defense counsel fails to arrive within the period established by the law, immediately advise such body (institution).

Article 5 §8 of the Law of Ukraine “On Militsiya” establishes a duty of police officers to ensure the possibility to **benefit from legal assistance by defender from the moment of apprehension**, including free legal assistance in accordance with the law regulating provision of such assistance.

In accordance with Article 14 §1(5) of the Law of Ukraine “On Free Legal Aid”, persons apprehended on suspicion of crime, have the right to free legal aid.

In addition, the Cabinet of Ministers resolution #1363 dated 28 December 2011 approved the Procedure for notification of the centers for free secondary legal aid on apprehensions of persons<sup>14</sup>. The said procedure establishes general requirements and mechanism for notifying centers for free secondary legal aid on cases of apprehension

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<sup>14</sup> <http://zakon4.rada.gov.ua/laws/show/1363-2011-%D0%BF>

by authorities with powers of administrative apprehension or apprehension pursuant to an order of law enforcement agencies, or apprehension of persons by pre-trial investigation agencies.

Moreover, Article 374 of the Criminal Code of Ukraine establishes criminal responsibility for violating the right to defense (*failure to provide access to a defense attorney in a timely manner, and any other serious violation of the right of a suspected, accused or defendant to defense, if committed by an inquiring officer, investigator, prosecutor or judge*).

Nevertheless, despite existence of imperative norms on the right to defense in Ukraine, and criminal responsibility for violation thereof, as well as numerous recommendations for prevention of violations of the right to defense provided by the Human Rights Commissioner to the leadership of the MIA and the Office of the Prosecutor General of Ukraine during previous year, multiple violations of the right to defense were regularly recorded in 2014, including the following:

- Competent officials who conduct apprehension, despite legal requirements, fail to inform or inform following a long period (from several hours) the body(institution) authorized by the law to provide free legal aid;
- Officers on duty of district, city and line departments fail to verify whether the Center for free legal aid was notified on apprehension of the person brought into custody, as well as fail to notify the Centers upon receiving such information (this duty is established by paragraph 6.6.2 of the Instruction adopted by the MIA order #181 dated 28 April 2009);
- Apprehended persons do not receive primary legal aid (no advise on the right to defense counsel, medical assistance, the right to provide explanations or testimony or stay silent with regard to suspicion etc.);
- The right of suspects to confidential meeting with an attorney is not observed;
- There are obstructions of attorneys' access to apprehended persons;
- Provision of advice on choosing a particular attorney (in violation of Article 48§1 of the CPC);
- Failure to ensure proper records of notifications, in particular registry of notifications of free legal aid centers at every duty station of the bodies of internal affairs etc.;
- Subjects obliged to provide information violate requirements of paragraph 10 of the Procedure adopted by the CMU resolution #1361 dated 28.12.2011 and fail to provide information on number of apprehension and cases where attorneys fail to arrive or arrive later than the term established by the Procedure.

Typical violations of the right to defense recorded in 2014:

**On 30 May 2014**, during monitoring visit Svyatoshyn district directorate of the Main MIA Directorate in Kyiv, four apprehended persons were found in the premises for apprehended persons and persons taken into custody. Interviews and verification of

relevant documentation showed that the Center for free legal aid was notified only **7 hours 30 minutes** following actual apprehension

**On 27 August 2014**, during a visit to Zhmerynka district department of the MIA Directorate in Vinnytsya region, violations of the right to defense were discovered. For instance, in 2014, only one apprehended person was visited by an attorney. Attorneys did not arrive to any other apprehended persons. The Registry of notifications of centers for free legal aid includes waivers of attorney services, which constitutes a breach of Article 54 of the CPC whereby waiver or replacement of defense counsel shall take place solely in the presence of defense counsel after an opportunity for confidential communication has been given.

**On 20 November 2014**, a visit to Kirovohrad city department of the MIA Directorate in Kirovohrad region<sup>15</sup> showed that competent officials of the department fail to notify the Center for free legal aid immediately following apprehension. An interview with apprehended S. revealed that from 11:00 on 18.11.2014 he was under control of police officials who had apprehended him next to his residence and forced to come to the city department in handcuffs. At the same time, Registry of persons taken into custody, visitors and invited persons states that S. arrived to the station on his own as an “invitee” on that day at 12:55. The Center for free legal aid was notified at 17:30 (**6 hours 35 minutes** after the actual apprehension).

Similar violations of the right to defense were established during monitoring visits to the following city, district and line departments:

- *Holosiyivske district directorate of the Main MIA Directorate in Kyiv;*
- *Svyatoshyn district directorate of the Main MIA Directorate in Kyiv (twice);*
- *Pechersk district directorate of the Main MIA Directorate in Kyiv;*
- *Borodyanka district department of the Main MIA Directorate in Kyiv region;*
- *Kozyatyn district department of the MIA Directorate in Vinnytsya region;*
- *Starokostyantyniv district department of the MIA Directorate in Khmelnytsky region;*
- *Romny city department of the MIA Directorate in Sumy region;*
- *Khmilnyk city department of the MIA Directorate in Vinnytsya region;*
- *Vasylkiv city department of the Main MIA Directorate in Kyiv region;*
- *Territorial police unit #2 of Shevchenkivske district directorate of the Main MIA Directorate in Kyiv;*
- *Zhmerynka district department<sup>16</sup> of the MIA Directorate in Vinnytsya region;*
- *Territorial police unit #4 of Dniprovske district department of the Main MIA Directorate in Kyiv;*
- *Korabelny district department of Mykolayiv city directorate of the MIA Directorate in Mykolayiv region;*
- *Leninsky district department of Mykolayiv city directorate of the MIA Directorate in Mykolayiv region;*

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<sup>15</sup> [http://www1.ombudsman.gov.ua/index.php?option=com\\_content&view=article&id=4178](http://www1.ombudsman.gov.ua/index.php?option=com_content&view=article&id=4178)

<sup>16</sup> [http://www1.ombudsman.gov.ua/index.php?option=com\\_content&view=article&id=4003](http://www1.ombudsman.gov.ua/index.php?option=com_content&view=article&id=4003)

- *Line Department of Lviv city directorate of the Main MIA Directorate in Lviv region;*
- *Line Department at Zhytomyr station<sup>17</sup> of the MIA Directorate for Southwestern Railways;*
- *Brovary city department<sup>18</sup> Main MIA Directorate in Kyiv region;*
- *Central district department of Mykolayiv city directorate of the MIA Directorate in Mykolayiv region;*
- *Kirovohrad city department of the MIA Directorate in Kirovohrad region.*

At the same time, despite the prevalence of violations of the right to defense, in 2014, there was only one case recorded and no officials were prosecuted for violating the right to defense<sup>19</sup>.

**Table 5. Excerpt from the Unified Crime Report (January –December 2013/2014).**

Crimes against justice and other crimes recorded by prosecution authorities during 9 months of 2013/2014	Recorded criminal offences during the period		Criminal offences where persons were presented with notice of suspicion		Criminal offences where proceedings were transferred to court with indictment	
	2013	2014	2013	2014	2013	2014
Violation of the right to defense, Article 374	1	1	0	0	0	0

***Appended persons are not informed on the grounds for apprehension or deprived of the right to notify a third party of their choice on their apprehension***

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) attaches particular importance to three rights for persons deprived of their liberty by the police: the right of those concerned to inform a third party of their choice of their situation (family member, friend, consulate), the right of access to a lawyer, and the right of access to a doctor of their choice (in addition to any medical examination carried out by a doctor called by the police authorities).

<sup>17</sup> [http://www1.ombudsman.gov.ua/index.php?option=com\\_content&view=article&id=4071](http://www1.ombudsman.gov.ua/index.php?option=com_content&view=article&id=4071)

<sup>18</sup> [http://www1.ombudsman.gov.ua/index.php?option=com\\_content&view=article&id=4089](http://www1.ombudsman.gov.ua/index.php?option=com_content&view=article&id=4089)

<sup>19</sup> Official website of the Office of the Prosecutor General of Ukraine. Unified Crime Report (January-December 2013/2014, tab 4.17) <http://www.gp.gov.ua/ua/stst2011.html>

Analysis of observance of the right to notify a third party of their choice showed systematic instances of the officials' failure to inform close relatives on deprivation of liberty, including in relation to underage persons who belong to a vulnerable category and, consequently, require additional protection.

In addition, Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms requires that a person be informed in a clear and understandable manner of the reasons for arrest. It also contains provisions for a trial within a reasonable time and compensation in cases of arrest or detention in contravention of the provisions.

In addition, article 208§4 of the CPC establishes an obligation for the competent official who apprehended the person to immediately inform the apprehended person, in a language known to him, of the grounds for the apprehension and of the commission of what crime he is suspected.

Such information, at the very least, indicates that there are grounds for apprehensions, as well as allows the apprehended persons to understand his/her procedural status. At the same time, failure to inform can suggest lack of confidence of the official conducting apprehension in the matters of the actual status of the person, as well as evidence excess of power.

For instance, during a visit to Odesa city directorate of the Main MIA Directorate in Odesa region<sup>20</sup>, communication with persons detained at the THF revealed that police official who conducted their apprehension did not follow requirements of Articles 208, 209, 210, 213 of the CPC in relation to immediate notification of the grounds for the apprehension and the alleged crime; there is no proper advice on the right to benefit from defender's assistance, to legal aid. In addition, relatives were not informed promptly on apprehension and whereabouts of persons, and neither was the institution providing free legal aid.

### ***Violations of the CPC of Ukraine on drawing up reports on apprehension of a person suspected of the commission of crime, in particular in the aspect of indication of time and place of actual apprehension***

Article 208 §5 of the CPC states that on apprehension of a person suspected of the commission of crime, a report shall be drawn up in which, in addition to information specified in Article 104 of this Code, the following shall be indicated: **place, date and exact time (hours and minutes) of apprehension under Article 209 of this Code.**

The moment of apprehension defined by Article 209 of the CPC (*an individual is considered to be apprehended if he/she, with the use of force or through obedience to the order, has to stay next to the competent official or in premises prescribed by the competent official*) constitutes the onset of time limits for notification of suspicion (24 hours following apprehension)<sup>21</sup>, bringing the person before a court for consideration of a restraint measure (within 60 hours), determination of detention as a restraint

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<sup>20</sup> [http://www1.ombudsman.gov.ua/index.php?option=com\\_content&view=article&id=4088](http://www1.ombudsman.gov.ua/index.php?option=com_content&view=article&id=4088)

<sup>21</sup> Criminal Procedure Code of Ukraine (article 278).

measure (within 72 hours)<sup>22</sup>. When the above time limits are exceeded, the persons apprehended on suspicion of crime must be released immediately.

Failure to comply with requirements on indication of the actual time of apprehension often results in illegal violation of time limits for presenting a person with a notice of suspicion, or detention of the apprehended person in the absence of investigating judge's or court's ruling.

Examples of typical violations:

**On 19 November 2014**, during a visit to Kirovohrad city department of the MIA Directorate in Kirovohrad region, the report on apprehension of a person suspected of the commission of crime, in violation of Article 208 §5 of the CPC, the indicated time of apprehension was the time when the report was drawn up at Kirovohrad city department of the MIA Directorate in Kirovohrad region. Meanwhile, the time, place, date and exact time (hour and minute) of actual apprehension are not indicated in violation of Article 209 of the CPC. The report on apprehension of S. contains the following as date, time and place of apprehension: 18.11.2014, 17:30 at office #406 of Kirovohrad city department of the MIA Directorate in Kirovohrad region. The apprehended person stated that actual apprehension took place at 11:00 on 18.11.2014 near his house.

**On 30 May 2014**, the visit to Svyatoshyn district directorate of the Main MIA Directorate in Kyiv and inspection of reports on apprehension of persons suspected of the commission of crime showed that investigators of investigation unit of Svyatoshyn district directorate V. and S. violate article 208 §5 of the CPC on recording the actual time and place of apprehension in accordance with Article 209 of the CPC.

Contrary to requirements of Article 208 §5 of the CPC, reports on apprehension of persons suspected of the commission of crimes A.H.N., I.T.T., A.K.N., and H.D.S. the time and place of apprehension were indicated as the time of drawing up the reports at Svyatoshyn district directorate of the Main MIA Directorate in Kyiv. The inspection showed discrepancy between records in reports on apprehension and actual time and place of apprehension in the meaning of Article 209 of the CPC.

According to report on apprehension of I.T.T., the date, time and place of his apprehension are 30.05.2014 at 00:30 at Svyatoshyn district directorate of the Main MIA Directorate in Kyiv. The apprehended person indicated that his actual apprehension took place at 16:00 on 29.05.2014 at a bus stop at Pidlisna Street in Kyiv.

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<sup>22</sup> Criminal Procedure Code of Ukraine (article 211).

Records in the Registry of persons taken into custody, visitors and invited persons suggest that I.T.T. was brought to the district directorate at 22:20 on 29.05.2014.

Officials of the following IABs fail to indicate the time of actual apprehension in accordance with Article 209 of the CPC in reports on apprehension of persons suspected of the commission of crime:

- *Kirovohrad city department of the MIA Directorate in Kirovohrad region*<sup>23</sup>;
- *Authorities of the MIA Directorate in Mykolayiv region*<sup>24</sup>;
- *Vasylkiv city department of the MIA Directorate in Kyiv region*<sup>25</sup>;
- *Sumy city department of the MIA Directorate in Sumy region*<sup>26</sup>;
- *Kozyatyn district department of the MIA Directorate in Vinnytsya region*<sup>27</sup>;
- *Svyatoshyn district directorate of the Main MIA Directorate in Kyiv*;
- *Khmilnyk city department of the MIA Directorate in Vinnytsya region*;
- *Brovary city department of the Main MIA Directorate in Kyiv region*.

### ***Detention of apprehended persons and investigative actions in places not prescribed by law***

The legislation of Ukraine defines an exhaustive list of premises that can be used in IABs for temporary holding of different categories of persons deprived of liberty.

Premises for apprehended persons (KZD)<sup>28</sup> are intended for temporary holding of persons at the IABs.

Specially equipped investigation rooms (rooms for investigation actions) are prescribed for investigation actions for apprehended persons. Investigation rooms are intended for recording the facts of examination of persons taken into IABs custody and removal of clothing and objects that have clear traces of crime or are outside of civil transactions and require special permit, personal belongings of persons taken into custody, questioning on circumstances of crime, as well as urgent and priority investigation actions (interrogation, confrontation, line-ups, witness certification, presentation of charges etc.), and other actions with persons apprehended on suspicion of a crime in accordance with the CPC of Ukraine<sup>29</sup>.

The room should be properly equipped for these functions, in particular with video surveillance with records archive of at least one month<sup>30</sup>. Such system provides

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<sup>23</sup> [http://www1.ombudsman.gov.ua/index.php?option=com\\_content&view=article&id=4178](http://www1.ombudsman.gov.ua/index.php?option=com_content&view=article&id=4178)

<sup>24</sup> [http://www1.ombudsman.gov.ua/index.php?option=com\\_content&view=article&id=4196](http://www1.ombudsman.gov.ua/index.php?option=com_content&view=article&id=4196)

<sup>25</sup> [http://www1.ombudsman.gov.ua/index.php?option=com\\_content&view=article&id=3850](http://www1.ombudsman.gov.ua/index.php?option=com_content&view=article&id=3850)

<sup>26</sup> [http://www1.ombudsman.gov.ua/index.php?option=com\\_content&view=article&id=3809](http://www1.ombudsman.gov.ua/index.php?option=com_content&view=article&id=3809)

<sup>27</sup> [http://www1.ombudsman.gov.ua/index.php?option=com\\_content&view=article&id=3766](http://www1.ombudsman.gov.ua/index.php?option=com_content&view=article&id=3766)

<sup>28</sup> Rooms for persons detained and taken into custody at duty stations of the internal affairs bodies.

<sup>29</sup> Regulation on the rooms for conduct of investigative actions and other measures at the bodies and units of internal affairs of Ukraine adopted by the MIA order #1561 dated 18.12.2003.

<sup>30</sup> The MIA order #404 dated 16.09.2009 № 404 “On protection of human rights in the activities of the internal affairs bodies of Ukraine”.

for security of IAB officials during communication with apprehended persons, as well as allows excluding risks of ill-treatment of the latter.

The Regulations<sup>31</sup> also include direct prohibition of investigation actions and other measures under the legislation of Ukraine (questioning, meeting with a defender etc.) necessary for comprehensive and objective examination of circumstances of the crime in relation to persons suspected of the commission of crime, in any other premises of IABs except for investigation rooms.

Therefore, the legislation permits the stay or custody of apprehended persons only in two types of premises: premises for apprehended and detained persons and investigation rooms.

However, in practice, apprehended persons often spend hours in hallways and other IAB premises, and investigation actions and other measures prescribed by the legislation usually take place in offices of IAB officials. Investigation rooms in IABs are either absent, or not properly equipped, or not used for the relevant purposes.

The order on equipping investigation rooms at IABs was issued on 18.12.2013, yet, according to information received in response to an inquiry by the Commissioner for Human Rights, as of 01.01.2015 the majority of district, city and line departments of the MIA have no equipped investigation rooms.

Moreover, the Ministry of Internal Affairs undertakes measures that worsen conditions of apprehended persons referring to recommendations from the Commissioner for Human Rights, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and national human rights NGOs.

In particular, MIA order #810 dated 21.08.2013 amended the instruction on design of the premises for apprehended and detained persons at the duty units of the bodies of internal affairs to worsen the conditions for apprehended persons. These amendments introduced temporary norms of design, reconstruction and capital refurbishment of such premises located in existing and adjusted buildings with limited capacities.

The order provides for:

- Permission to equip only one KZD at each duty unit (previously there was a requirement to equip at least three and this requirement still exists in the MIA order (amended) dated 28.04.2009 “On organization of activities of duty units

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<sup>31</sup> Regulation on the rooms for conduct of investigative actions and other measures at the bodies and units of internal affairs of Ukraine adopted by the MIA order #1561 dated 18.12.2003.

of bodies and departments of internal affairs of Ukraine aimed at protecting interests of society and state from unlawful infringements”).

*Availability of one room does not meet the requirements on separate holding of different categories of apprehended persons (adults and children, women and men, persons with and without prior convictions etc.);*

- permitted equipment of KZD floor with concrete or ceramic tiles with no heating (previously, construction regulations provided for equipment of KZD with wooden floor or concrete (ceramic) floors with heating);
- a general norm of water consumption for one person held at KZD is limited to 16 liters and does not have an obligation for providing hot water (previously, regulations included 7 liters of hot water per day);
- ventilation only of the naturally driven type with compensation of draft with inflow from the hallway (previously, such ventilation had to be mechanical with heating of cold air inflow during cold season).

In addition, these changes removed requirements for equipping KZD with:

- Air conditioning system;
- System of communication and radiobroadcasting;
- Measures for decreasing noise and vibration, as well as the system for removal smoke from the hallways without natural lighting;
- Fire-protection and hot water supply;
- Coverage of sleeping places with synthetic leather.

Moreover, leadership of certain district, city and line units refers to discrepancies of conditions in KZD with norms and standards, and decides to shut them down instead of upgrading conditions in accordance with these norms. It leads to fostering conditions where competent officials who conduct apprehension are forced to hold apprehended persons in offices and other premises that are not equipped for these purposes prior to transferring them to THFs.

The following city, district, and line units have only one KZD, or KZD are close due to discrepancies with minimum standards (based on information obtained during visits):

- *Romny city department of the MIA Directorate in Sumy region;*
- *Territorial police unit #2 of Shevchenkivske district directorate of the Main MIA Directorate in Kyiv;*
- *Zhmerynka district department of the MIA Directorate in Vinnytsya region ;*

- *Territorial police unit #4 of Dniprovske district department of the Main MIA Directorate in Kyiv;*
- *Line department at Mykolayiv station of the MIA Directorate for Odesa Railways;*
- *Horodyshche district department of the MIA Directorate in Cherkasy region;*
- *Line department at Zhytomyr station of the MIA Directorate for Southwestern Railways;*
- *Brovary city department of the Main MIA Directorate in Kyiv region;*
- *Central district department of Mykolaiv city directorate of the MIA Directorate in Mykolayiv region.*

Numerous applications to the Commissioner for Human Rights suggest prevalence of violations of the rights of apprehended persons in relation to lengthy detention in unequipped places.

For instance, on 19 May 2014, citizen H. addressed the Commissioner in relation to ill-treatment he had experienced from an official of Ternopil city department of the MIA Directorate in Ternopil region where he was kept handcuffed to a radiator for 5 days.

An inquiry for investigation and relevant measures was sent to the prosecution authorities in Ternopil for the purposes of careful examination of these issues. Pursuant to the inquiry, information on illegal actions of the precinct inspector of Ternopil city department of the MIA Directorate in Ternopil region was included into ERDR; and pre-trial investigation was initiated. The investigation is in progress.

### ***Violation of the right to healthcare and medical assistance***

#### ***Violations of Article 3 of the Law of Ukraine “On Public Health” on provision of medical assistance***

There is no identified group of officials within IABs who have to possess basic practical skills on saving and preserving person’s life in critical condition. According to the law, they have to undertake action aimed at saving and preserving life, as well as minimizing consequences of such condition at the place of event prior to the ambulance’s arrival.

None of the visited city, district, and line departments had appointed officials responsible for providing urgent care.

***Insufficient procurement of medical appliances and medications for urgent and paramedical assistance in units and departments of the MIA***

IN accordance with the ministerial order<sup>32</sup>, every authority and special facility of the MIA shall have a defined set of medications and expense materials. However, monitoring visits showed that the following city, district, and line departments and special facilities were not supplied with medical appliances and medications in accordance with the norms.

For instance, **on 26 August 2014**, during a visit to Nemyriv district department of the MIA Directorate in Vinnytsya region, it turned out that the duty station did not have an ultraviolet lamp; lice control kit and a medical kit for assistance with the purpose of preventing HIV/AIDS infection. The available universal medical kit needs to be complemented. In addition, some of the medications in the kit have expired.



**On 18 July 2014**, a visit to the territorial police unit #№2 of Shevchenkivske district directorate of the Main MIA Directorate in Kyiv showed that the said unit did not have medical kits or appliances foreseen by Regulation #2 adopted by the MIA order #946 on 25.09.2006.

- *Holosiyivske district department of the Main MIA Directorate in Kyiv;*
- *Line department at Kyiv-Pasazhyrsky station of the MIA Directorate for Southwestern Railways;*

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<sup>32</sup> MIA Order #946 dated 25.09.2006 “On approving the norms of household materials procurement for the premises for apprehended persons at the duty units, remand prisons, reception centers for persons apprehended for vagabondism, special reception centers for persons under administrative arrest, centers for temporary stay of foreigners and stateless persons illegally staying in Ukraine”.

- *Borodyanka district department of the Main MIA Directorate in Kyiv region;*
- *Territorial police unit #2 of Shevchenkivske district directorate of the Main MIA Directorate in Kyiv;*
- *Zhmerynka district department of the MIA Directorate in Vinnytsya region;*
- *Territorial police unit #1 of Darnytsya district department of the Main MIA Directorate in Kyiv;*
- *Territorial police unit #4 of Dniprovske district department of the Main MIA Directorate in Kyiv;*
- *Line department of Lviv city directorate of the Main MIA Directorate in Lviv region;*
- *Line department at Zhytomyr Station of the MIA Directorate for Southwestern Railways;*
- *Central district department of Mykolaiv city directorate of the MIA Directorate in Mykolayiv region;*
- *THF of the line department at Kyiv-Pasazhyrsky station of the MIA Directorate for Southwestern Railways;*
- *THF of Kozyatyn district department and Khmilnyk city department of the MIA Directorate in Vinnytsya region.*

***Failure to follow recommendations of doctors called to the THFs on additional examinations, which poses a threat to their life and health***

**For instance, on 11 September 2014, an inspection at the THF of Mykolayiv city directorate of the MIA Directorate in Mykolayiv region, found records in the registry on provision of medical care to persons detained at the THF on medics' recommendations for further examination at healthcare institutions of persons in need of medical assistance. However, there was no information on measure taken to fulfil these recommendations.**

**On 22 September 2014, it was discovered during a visit to the THF of Horodyshche district department of the MIA Directorate in Cherkasy region that, in accordance with the Registry on provision of medical care to persons detained at the THF, one of the detainees was recommended for inpatient care, four persons were recommended additional consultation of specialists. However, two detainees – P.O.S. (recommendation for surgeon's consultation in relation to leg pain) and L. Yu. O. (recommendation for psychiatrist's consultation in relation to delirium tremens). However, they were not taken for consultations, as the THF head explained, due to improvements in health condition.**

**The following special MIA institutions have the above shortcomings:**

- *THF of Starokostyantyniv district department of the MIA Directorate in Khmelnytsky region;*

- *THF of Khmilnyk city department and Nemyriv district department of the MIA Directorate in Vinnytsya region;*
- *THF of Horodyshe district department of the MIA Directorate in Cherkasy region;*
- *THF of Brovary city department of the Main MIA Directorate in Kyiv region;*
- *THF Kirovohrad city department of the MIA Directorate in Kirovohrad region.*

***Personnel of detention facility has no knowledge of the procedure for apprehension and taking into custody of substitution maintenance therapy (SMT) patients or antiretroviral therapy (ART) recipients***

There are no measures in IABs and special facilities on ensuring continuous treatment of SMT/ART patients. The duty stations do not have a List of healthcare facilities administering SMT<sup>33</sup>, and officers on duty do know what measures are necessary for ensuring continuous treatment.

- *Borodyanka district department of the Main MIA Directorate in Kyiv region;*
- *Svyatoshyn district directorate of the Main MIA Directorate in Kyiv;*
- *Kozyatyn district department and Khmilnyk city department of the MIA Directorate in Vinnytsya region;*
- *Starokostyantyniv district department of the MIA Directorate in Khmelnytsky region;*
- *Territorial police unit #2 of Shevchenkivske district directorate of the Main MIA Directorate in Kyiv;*
- *Territorial police unit #1 of Darnytsya district directorate of the Main MIA Directorate in Kyiv;*
- *Territorial police unit #4 of Dniprovske district department of the Main MIA Directorate in Kyiv;*
- *Korabelny and Leninsky district department of Mykolayiv city directorate of the MIA Directorate in Mykolayiv region;*
- *Line department at Mykolayiv station of the MIA Directorate for Odesa Railways;*

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<sup>33</sup> Annex 1 to the Procedure of cooperation between healthcare institution, internal affairs bodies, remand prisons and correctional facilities on ensuring uninterrupted substitute maintenance therapy approved by the joint order of the MoH, MIA, MJ, ДСКН #821/937/1549/5/156 dated 22.10.2012.

- *Line department at Lviv airport and line department of Lviv city directorate of the Main MIA Directorate in Lviv region;*
- *Line department at Zhytomyr Station of the MIA Directorate for Southwestern Railways;*
- *Brovary city department of the Main MIA Directorate in Kyiv region;*
- *Central district department of Mykolaiv city directorate of the MIA Directorate in Mykolayiv region;*
- *THF of the line department at Kyiv Pasazhyrsky station of the MIA Directorate for Southwestern Railways;*
- *THF of Borodyanka district department and Brovary city department of the Main MIA Directorate in Kyiv region;*
- *THF of Kozyatyn district department of the MIA Directorate in Vinnytsya region;*
- *THF of Starokostyantyniv district department of the MIA Directorate in Khmelnytsky region;*
- *THF of Khmilnyk city department and Nemyriv district department of the MIA Directorate in Vinnytsya region.*

***Violations in record-keeping in the Registry on provision of medical care to persons detained at the duty station<sup>34</sup>.***

The data required by the form is not provided, which makes it impossible to control observance of the right to medical care and examination of circumstances of obtaining bodily injuries by persons taken into custody at duty stations.

- *Svyatoshyn district directorate of the Main MIA Directorate in Kyiv;*
- *Leninsky district department of Mykolayiv city directorate of the MIA Directorate in Mykolayiv region;*
- *Line department at Lviv airport and the Railway unit of Lviv city directorate of the Main MIA Directorate in Lviv region;*
- *Brovary city department of the Main MIA Directorate in Kyiv region;*
- *Central district department of Mykolaiv city directorate of the MIA Directorate in Mykolayiv region;*

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<sup>34</sup> Provided by Annex 16 to the Instruction adopted by the MIA order #181 dated 28.04.2009.

➤ *Kirovohrad city department of the MIA Directorate in Kirovohrad region.*

***There is no proper record-keeping in the Registry on provision of medical care to persons detained at the THF.***

Failure to keep proper records makes it impossible to control observance of the right to medical care and examination of circumstances of obtaining bodily injuries by detainees.

➤ *THF of Borodyanka district department of the Main MIA Directorate in Kyiv region;*

➤ *THF of Starokostyantyniv district department of the MIA Directorate in Khmelnytsky region;*

➤ *THF of Romny city department of the MIA Directorate in Sumy region;*

➤ *THF of Khmilnyk city department and Nemyriv district department of the MIA Directorate in Vinnytsya region.*

***There is no proper registration of the citizen's stay at the premises of city, district, and line departments***

Proper records on the stay of persons at the city, district, and line department is one of the safeguards against ill-treatment of apprehended persons and persons taken into custody. The Registry of persons taken into custody, visitors and invited persons<sup>35</sup> that has to be kept at every city, district, and line department serves to ensure proper recording of the stay of persons at the premises of IABs. The registry should include information on all persons, with no exceptions, taken into custody, called by police officials for formalization of administrative materials, procedural and investigation actions, or those who come to the internal affairs body for personal or business reasons.

The officer on duty has to register a person taken into custody in the Registry of persons taken into custody, visitors and invited persons and necessarily **indicated the date and exact time of the person's arrival.**

Staff of the daily shift or other officials upon assignment from the IAB chief or deputy chief inspect the circumstances related to persons brought into custody of the IABs by police officials or citizens. Inspection of circumstances has to take place immediately in a separate room equipped in accordance with respect for honor and

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<sup>35</sup> Provided by Annex 16 to the Instruction adopted by the MIA order #181 dated 28.04.2009 ““On organization of activities of duty units of bodies and departments of internal affairs of Ukraine aimed at protecting interests of society and state from unlawful infringements””.

dignity of the persons **within three hours after their arrival to the duty station**<sup>36</sup>. Therefore, proper records on exact time and place of the person's arrival to the IAB and his/her leave is very important.

Failure to meet the procedural time limits for the person's detention at the internal affairs body creates risks of ill-treatment and constitutes a violation of the right to liberty.

Some IABs use manipulations with the Registry of persons taken into custody, visitors and invited persons for the purposes of artificially increasing the term of person's stay at the IAB premises. For instance, they record fictional leave of the premises and return after certain period. Thus, detained persons can remain at the internal affairs body past the allowed term. In addition, these manipulations usually lead to other violations, in particular of the right to legal assistance.

Clearly, lack of proper registration of persons in IAB premises creates risks of ill-treatment by law enforcement officials, as well as falsifications of the time of actual apprehension etc. However, inspection showed that despite Article 212 of the CPC of Ukraine, a large number of apprehended persons were not accounted for in the Registry of persons taken into custody, visitors and invited persons. By these actions, law enforcement officials are also trying to conceal apprehension.

In violation of requirements of the Instruction adopted by the MIA order #181 on 28.04.2009, Registries of persons taken into custody, visitors and invited persons do not contain data on all persons with no exceptions, taken into custody, called by police officials for formalization of administrative materials, procedural and investigation actions, or those who come to the internal affairs body for personal or business reasons. There are defects in record-keeping, compliance with requirements of the order in relation to the rules of maintaining the Registry; in particular, the following information required by the form is missing:

- Date of delivery (arrival) of the person to the IAB;
- Full names of persons taken into custody, visitors and invited persons;
- Title and last name of the official who delivered or invited citizens;
- Purpose of bringing or arrival (for drawing up the report, upon investigator's invitation etc.);
- Measures taken in relation to the person brought into custody or invited (report drawn up, explanation obtained etc.).

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<sup>36</sup> The Instruction adopted by the MIA order #181 dated 28.04.2009.

Shortcomings in record keeping for the stay of persons at the bodies of internal affairs was found upon inspection at:

- *Line department at Lviv railway station of the MIA Directorate for Lviv*<sup>37</sup>;
- *Railway unit of Lviv city directorate of the Main MIA Directorate in Lviv region*<sup>38</sup>;
- *Territorial units of Dniprovske, Darnytsya, Shevchenkivske district directorates of the Main MIA Directorate in Kyiv*<sup>39</sup>;
- *Terebovlya district department of the MIA Directorate in Ternopil region*<sup>40</sup>;
- *Holosiivske and Podil district directorate of the Main MIA Directorate in Kyiv;*
- *Line department at Kyiv-Pasazhyrsky station of the MIA Directorate for Southwestern Railways;*
- *Borodyanka district department and Brovary city department of the Main MIA Directorate in Kyiv region;*
- *Svyatoshyn district directorate of the Main MIA Directorate in Kyiv;*
- *Kozyatyn district department, Khmilnyk city department and Zhmerynka district department of the MIA Directorate in Vinnytsya region;*
- *Starokostyantyniv district department of the MIA Directorate in Khmelnytsky region;*
- *Romny city department of the MIA Directorate in Sumy region;*
- *Vasylkiv city department of the MIA Directorate in Kyiv region;*
- *Korabelny, Central, and Leninsky district departments of Mykolayiv city directorate of the MIA Directorate in Mykolayiv region;*
- *Line department at Mykolayiv station of the MIA Directorate for Odesa Railways;*
- *Line department at Lviv airport of the Main MIA Directorate in Lviv region;*
- *Horodyshche district department of the MIA Directorate in Cherkasy region;*
- *Line department at railway station Zhytomyr of the MIA Directorate for Southwestern Railways;*
- *Kirovohrad city department of the MIA Directorate in Kirovohrad region.*

***There are no officials responsible for the stay of apprehended persons, or these officials are appointed but fail to fulfill their duties on ensuring the rights of apprehended persons in pre-trial investigation agencies***

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<sup>37</sup> [http://www1.ombudsman.gov.ua/index.php?option=com\\_content&view=article&id=4150](http://www1.ombudsman.gov.ua/index.php?option=com_content&view=article&id=4150)

<sup>38</sup> [http://www1.ombudsman.gov.ua/index.php?option=com\\_content&view=article&id=4070](http://www1.ombudsman.gov.ua/index.php?option=com_content&view=article&id=4070)

<sup>39</sup> [http://www1.ombudsman.gov.ua/index.php?option=com\\_content&view=article&id=4001](http://www1.ombudsman.gov.ua/index.php?option=com_content&view=article&id=4001)

<sup>40</sup> [http://www1.ombudsman.gov.ua/index.php?option=com\\_content&view=article&id=3979](http://www1.ombudsman.gov.ua/index.php?option=com_content&view=article&id=3979)

According to Article 212 of the CPC, one or more officials responsible for keeping those apprehended shall be designated in the pre-trial investigation agency's station. Investigators may not be designated to be responsible for keeping those apprehended.

Article 212§3 of the CPC provides for the following duties of the official responsible for keeping those apprehended:

- 1) register the apprehended person immediately;
- 2) advise the apprehended person of the grounds for apprehension, his rights and duties;
- 3) immediately release the apprehended person after grounds for apprehension seized to exist or time limit for apprehension as established in Article 211 of this Code has expired;
- 4) ensure appropriate treatment of the apprehended person and respect for his rights laid down in the Constitution of Ukraine, the present Code, and other laws of Ukraine;
- 5) ensure recording all actions which are conducted with the involvement of the apprehended person, including the time when such actions started and completed, as well as persons who conducted such actions or were present during the conduct of such actions;
- 6) ensure prompt provision of adequate medical assistance and recording of any bodily injuries or deterioration of the apprehended person's state of health by medical personnel. If the detainee so wills, a specific person of his choosing who is certified to provide medical assistance may be allowed to be amongst providers of medical care to the detainee.

Compliance with the above duties by the responsible official practically excludes risks of ill-treatment of the apprehended person. However, in practice, this safeguard is not functioning.

The following IABs violate requirements of Article 212 of the CPC:

- *Territorial police unit #2 of Shevchenkivske district directorate of the Main MIA Directorate in Kyiv;*
- *Korabelny, Central, and Leninsky district departments of Mykolayiv city directorate of the MIA Directorate in Mykolayiv region;*
- *Svyatoshyn district directorate of the Main MIA Directorate in Kyiv;*
- *Line department of Lviv city directorate of the Main MIA Directorate in Lviv region;*
- *Line department at Zhytomyr station of the MIA Directorate for Southwestern Railways;*

- *Brovary city department of the Main MIA Directorate in Kyiv region;*
- *Kirovohrad city department of the MIA Directorate in Kirovohrad region.*

***The doors of official's offices lack signs indicating names of units (sectors), titles and names of personnel, which makes it impossible to identify the exact location of apprehended persons or persons taken into custody in case of complaints about ill-treatment by police.***

- *Pechersk and Podil district directorates of the Main MIA Directorate in Kyiv;*
- *Line department of Kyiv-Pasazhyrsky station of the MIA Directorate for Southwestern Railways;*
- *Territorial police unit #1 of Darnytsya and territorial police unit #4 of Dniprovske district department of the Main MIA Directorate in Kyiv;*
- *Korabelny and Leninsky district departments of Mykolayiv city directorate of the MIA Directorate in Mykolayiv region;*
- *Line department of Mykolayiv station Of the MIA Directorate for Odesa Railways;*
- *Line department of Lviv airport and Railway Department of Lviv city directorate of the Main MIA Directorate in Lviv region;*
- *Line department of Zhytomyr station MIA Directorate for Southwestern Railways;*
- *Brovary city department of the Main MIA Directorate in Kyiv region.*

***There are no video surveillance systems at the entrances, hallways and reception of city, district, and line departments, or in KZD with video archive stored for at least one month<sup>41</sup> .***

- *Zhmerynka district department in Vinnytsya region;*
- *Railway department of Lviv city directorate of the Main MIA Directorate in Lviv region;*
- *Kozyatyn and Zhmerynka district department, Khmilnyk city department of the MIA Directorate in Vinnytsya region;*
- *Starokostyantyniv district department of the MIA Directorate in Khmelnytsky region;*
- *Territorial police unit #1 of Darnytsya district directorate and territorial police unit #4 of Dniprovske district directorate of the Main MIA Directorate in Kyiv;*

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<sup>41</sup> Paragraph 5 of the MIA order #404 dated 16.09.2009 and the MIA instruction #329 dated 31.03.2011 provide for installation of surveillance cameras.

➤ *Line department at Lviv airport of the Main MIA Directorate in Lviv region.*

***Persons are transferred from SIZO and THFs to the bodies of internal affairs for investigation actions***

MIA order #1561 (paragraph 4) dated 18.12.2003 prohibits transfer of persons held at remand prisons or temporary holding facilities to the premises of bodies and units of internal affairs for investigation actions. Such actions must take place in investigation rooms in remand prisons and THFs. In case of the need to conduct these actions with involvement of apprehended or arrested persons outside of special facilities (crime reconstruction, bringing the person before prosecution authorities, court, or forensic expertise etc.) these persons shall be convoyed directly to the locations, and returned to the special facility without placement to the premises for apprehended and detained persons at the city, district, and line departments.

***Journals on passing of duty have no records on persons held at the premises for apprehended and detained persons, including over the established time limits***

Officers on duty do not control presence of persons in the premises for apprehended and detained persons, as well as apprehension and bringing of citizens to the IABs.

- *Holosiyivske district department of the Main MIA Directorate in Kyiv;*
- *Territorial police unit #4 of Dniprovske district department of the Main MIA Directorate in Kyiv;*
- *Line department at Lviv airport and the Railway Department of Lviv city directorate of the Main MIA Directorate in Lviv region.*

**Example of a violation:**

The report of an officer on duty at Holosiyivske district directorate of the Main MIA Directorate in Kyiv from 09:00 on 15.01.2014 to 09:00 on 06.01.2014 (page 7 of the journal) does not contain information on the number of persons held at the premises for apprehended and detained persons at the station.

↓

м. Шийнов ВБ  
 Фривітій зержувальн  
 бізоні

Начальникові  
 Головного РЧ ГУМВС  
 України в м. Києві  
(найменування органу)  
 Поповичу Ігорю  
(звання)  
 Бришанському В. П.  
прізвище, ініціали

**РАПОРТ**

Доповідаю, що від час зержування з 9.00 год. 5.01 20 13 року до 9.00 год. 6.01 20 13 року зареєстровано \_\_\_\_\_ заяв та повідомлень про злочини та події, з них \_\_\_\_\_ розкриті, затримано осіб, які обгрунтовано підозрюються у вчиненні злочинів, \_\_\_\_\_, злочинців, які перебували в розшуку, \_\_\_\_\_, осіб за скоєння адміністративних правопорушень \_\_\_\_\_. Крім того, доводжу до Вашого відома, що в кімнаті для затриманих і доставлених утримується \_\_\_\_\_ осіб, з яких із порушенням терміну тримання \_\_\_\_\_

(інші обставини, про які необхідно доповісти)

At the same time, the Registry of persons placed into the premises for apprehended and detained persons from 00:45 to 12:40 on 06.01.2014 contains a record for holding citizen B. the premises.

***Registry on removal of apprehended and detained persons from the cells does not comply with Annex 5 of paragraph 2.41 of the Instruction (amended) adopted by the MIA order #60 dsk dated 20.01.2005***

In addition, there are no records for all, with no exception, cases of removal of persons from the cells, in particular taking them for walks, antibacterial disinfection of cells etc. The journals on removal of persons from the cells do not include grounds for removal and names of officials to whom detainees are taken.

- *THF of Borodyanka district department and Brovary city department of the Main MIA Directorate in Kyiv region;*
- *THF of Starokostyantyniv district department of the MIA Directorate in Khmelnytsky region;*
- *THF of Horodyshe regional directorate of the MIA Directorate in Cherkasy region;*
- *THF of the Main MIA Directorate in Kyiv.*

***The registry of persons placed into custody at the THF is untidy, there are correction, information foreseen by the template is missing. In particular, there is no information on grounds for apprehension, time of leaving the THF etc.***

- *THF of Borodyanka district department of the Main MIA Directorate in Kyiv region;*
- *THF of Nemyriv district department of the MIA Directorate in Vinnytsya region.*

***Violations of Article 10 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.***

In particular:

- On full inclusion of education and information regarding the prohibition against torture in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment;
- On inclusion of the prohibition of torture in the rules or instructions issued concerning the duties and functions of any such person.

Plans of functional training of the personnel of special facilities and city, district, and line departments of the MIA for 2012-2013, and 2013-2014 academic years do not include mandatory topics on ensuring human right in activities of the internal affairs bodies.

Results of inspection of professional training materials (topic plans, conspectus etc.), interviews with the staff of special facilities and city, district, and line departments of the MIA suggest that the leadership of bodies and units has not ensured the study by the personnel of national and international legislation, the ministerial legal norms on human rights.

- *Kozyatyn and Zhmerynka district departments, Khmilnyk city department of the MIA Directorate in Vinnytsya region;*
- *Starokostyantyniv district department of the MIA Directorate in Khmelnytsky region;*
- *Territorial police unit #1 of Darnytsya and Territorial police unit #4 of Dniprovske district department of the Main MIA Directorate in Kyiv;*
- *Korabelny and Leninsky district departments of Mykolayiv city directorate of the MIA Directorate in Mykolayiv region;*
- *Line department of Mykolayiv station of the MIA Directorate for Odesa Railways;*
- *Line department at Lviv airport and Railway Department of Lviv city directorate of the Main MIA Directorate in Lviv region;*
- *Line department of Zhytomyr station MIA Directorate for Southwestern Railways;*
- *Brovary city department of the Main MIA Directorate in Kyiv region;*
- *THF Kozyatyn, Nemyriv and Zhmerynka district department, Khmilnyk city department of the MIA Directorate in Vinnytsya region;*

- *THF of Starokostyantyniv district department of the MIA Directorate in Khmelnytsky region*
- *THF of the Main MIA Directorate in Kyiv.*

**The registry of complaints and suggestions is kept with the officer on duty, or access to it is provided on permission of a police officer controlling entrance to the official premises.**

- *Line departments at Kyiv Pasazhyrsky and Zhytomyr stations of the MIA Directorate for Southwestern Railways;*
- *Romny city department of the MIA Directorate in Sumy region;*
- *Line department at Mykolayiv station of the MIA Directorate for Odesa Railways;*
- *Horodyshe district department of the MIA Directorate in Cherkasy region;*
- *Central district department of Mykolaiv city directorate of the MIA Directorate in Mykolayiv region.*

***Lack of review of complaints and suggestions recorded in the Registry of complaints and suggestions***

Despite requirements of Article 19 of the Law of Ukraine “On Citizens’ Petitions” and paragraph 7.4. of the MIA regulation #1177 dated 10.10.2004, the IAB officials fail to ensure objective, comprehensive and timely review of petitions or complaints from the citizens in the Registry of complaints and suggestions, as well as to inform the citizens on the outcome of such review and subsequent response.

- *Svyatoshyn district directorate of the Main MIA Directorate in Kyiv;*
- *Kozyatyn district department of the MIA Directorate in Vinnytsya region;*
- *Romny city department of the MIA Directorate in Sumy region;*
- *TERRITORIAL POLICE units of Shevchenkivske, Darnytsya, and Dniprovske district department of the Main MIA Directorate in Kyiv;*
- *Korabelny and Leninsky district departments of Mykolayiv city directorate of the MIA Directorate in Mykolayiv region;*
- *Line department of Mykolayiv station Of the MIA Directorate for Odesa Railways;*
- *Horodyshe district department of the MIA Directorate in Cherkasy region;*
- *Brovary city department of the Main MIA Directorate in Kyiv region.*

*Example of a violation:*

Трошки шкотили м'ялі нажав пермо-  
 ностанови до, крохорашеня, сирво-меду-  
 ної ерафетизи по факту моста похитте  
 17.04.14р. Конкратенко Дмитро Петрович на  
 вставив іонну, ширелну конекторний за  
 подавело мство завова, ресер нтано  
 08.29.04.14р. до вайлого м'тв'аїну, та як  
 смівробіткелки червої касуїлелі, мені  
 в іволені віделов'елодь, наамлаючелсь на  
 нелке закор'еловелов'елво, м'елт' терелел'ел'ах о'ел'о  
 з'елел'ел'ел'ь с'ел'ел'и похитте?  
 Трошки прелел'ел'ь ш'ел'и.

Підпис

*Handwritten signature*

Прізвище, ім'я та по батькові

[Redacted]

Катерина Петрівна

Місце проживання заявника

м. Київ пр.

[Redacted]

Номери службового й домашнього телефонів

050- [Redacted]

19 квітня 2014 року

Результати перевірки та вжиті заходи

[Empty lines for results]

Заявникові повідомлено про результати перевірки та ужиті заходи

(хто, коли повідомив, вихідний № та дата відповіді)

Перевірку провів

(посада, звання, прізвище, підпис)

" " 20 року

Начальник ГУМВС, УМВС

Начальник міськрайліноргану

2014.05.30 11:05

Registry of complaints and suggestions of Svyatoshyn district directorate of the Main MIA Directorate in Kyiv

## ***Inadequate conditions of detention of detained and convicted persons in places of detention of the MIA***

Typical violations in the form of inadequate conditions of detention, which are common to all places of detention of the MIA, can amount to cruel or degrading treatment.

### ***The size of the living space per detained person in cells of special facilities, premises for apprehended persons and persons taken into custody of duty stations of the IABs does not meet the national and international standards***

The minimum standard for living space per prisoner is 4 square meters excluding sanitary facilities and area for objects of common use. In addition, cells in special facilities, premises for apprehended persons and persons taken into custody of duty stations where the distance between walls is less than 2 meters and less than 2.5 meters between floor and ceiling cannot be used for holding persons<sup>42</sup>.

Violations of the said requirements on the minimum living space were identified during visits to the following IAB units and special facilities:

- *Line department of Zhytomyr station and Kyiv-Pasazhyrsky station of the MIA Directorate for Southwestern Railways;*
- *THF of Zhmerynka district department of the MIA Directorate in Vinnytsya region;*
- *THF of Romny city department of the MIA Directorate in Sumy region;*
- *THF of Vasylkiv city department and Borodyanka district department of the Main MIA Directorate in Kyiv region;*
- *THFs of Nemyriv, Kozyatyn and Zhmerynka district departments of the MIA Directorate in Vinnytsya region;*
- *THF of Starokostyantyniv district department of the MIA Directorate in Khmelnytsky region.*

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<sup>42</sup> 2<sup>nd</sup> General Report, p. 43 [CPT/Inf(92)3], <http://www.cpt.coe.int/lang/ukr/ukr-standards.pdf>



*THF of Starokostyantyniv district department of the MIA Directorate in Khmelnytsky region*



*THF of Borodyanka district department of the Main MIA Directorate in Kyiv region*

***Lack of agreement for food procurement, or untimely and low-quality catering for persons in the premises for apprehended and persons taken into custody of the IAB duty stations.***

- *Korabelny district department of Mykolayiv city directorate of the MIA Directorate in Mykolayiv region;*
- *Svyatoshyn district directorate of the Main MIA Directorate in Kyiv.*

***Premises for apprehended and persons taken into custody of the IAB duty stations are not fully equipped with cutlery sets<sup>43</sup>.***

- *Holosiyvske district department of the Main MIA Directorate in Kyiv;*
- *Line department of Kyiv-Pasazhyrsky station of the MIA Directorate for Southwestern Railways;*
- *Borodyanka district department of the Main MIA Directorate in Kyiv region;*
- *Svyatoshyn district directorate of the Main MIA Directorate in Kyiv;*
- *Territorial police unit #2 of Shevchenkivske and territorial police unit #4 of Dniprovske district department of the Main MIA Directorate in Kyiv;*
- *Korabelny, Central, and Leninsky district departments of Mykolayiv city directorate of the MIA Directorate in Mykolayiv region.*

***Failure to ensure regular free access to running and drinking water.***

<sup>43</sup> Norm #1 adopted by the MIA order #946 dated 25.09.2006.

- *Line department of Kyiv-Pasazhyrsky station of the MIA Directorate for Southwestern Railways;*
- *Zhmerynka district department of the MIA Directorate in Vinnytsya region.*

***Cells of special facilities not equipped with tables for meals, chairs, wall cabinets and drawers for food and personal hygiene items, or such equipment does not meet agency construction norms and international standards***

- *THF Line department of Kyiv-Pasazhyrsky station of the MIA Directorate for Southwestern Railways;*
- *THF of Starokostyantyniv district department of the MIA Directorate in Khmelnytsky region;*
- *THF of Khmilnyk city department, Nemyriv and Zhmerynka district department of the MIA Directorate in Vinnytsya region;*
- *THF of Vasylkiv and Brovary city department, Borodyanka district department of the Main MIA Directorate in Kyiv region;*
- *THF of Mykolayiv city department of the MIA Directorate in Mykolayiv region;*
- *THF of Horodyshe regional directorate of the MIA Directorate in Cherkasy region.*

*THF cells are not equipped with wall cabinets and drawers for food and personal hygiene items*



*THF of Vasylkiv district department of the Main MIA Directorate in Kyiv region*



*THF Line department of Kyiv-Pasazhyrsky station of the MIA Directorate for Southwestern Railways*

***Design of beds in the premises for apprehended and persons taken into custody at duty stations and temporary holding facilities do not meet the requirements.***

Bed sizes of premises and cells do not meet the standards, there is no protective cover on the beds in KZDs, the matchboard is missing etc.

- *THF of Borodyanka district department of the Main MIA Directorate in Kyiv region;*
- *Holosiyvske district department of the Main MIA Directorate in Kyiv;*
- *Borodyanka district department of the Main MIA Directorate in Kyiv region;*
- *Svyatoshyn district directorate of the Main MIA Directorate in Kyiv;*
- *Starokostyantyniv district department of the MIA Directorate in Khmelnytsky region;*
- *Khmilnyk city department of the MIA Directorate in Vinnytsya region;*
- *Territorial police unit #4 of Dniprovske district department of the Main MIA Directorate in Kyiv;*
- *Railway department of Lviv city directorate of the Main MIA Directorate in Lviv region;*
- *THF of the Line department of Kyiv-Pasazhysky station of the MIA Directorate for Southwestern Railways;*
- *Line department of Zhytomyr station MIA Directorate for Southwestern Railways.*



*THF of Borodyanka district department of the Main MIA Directorate in Kyiv region*



*THF of the Line department of Kyiv-Pasazhysky station of the MIA Directorate for Southwestern Railways*

***Absence of hot running water in the cells of MIA special facilities<sup>44</sup>.***

- *THF of the Line department of Kyiv-Pasazhysky station of the MIA Directorate for Southwestern Railways;*
- *THF of Borodyanka district department of the Main MIA Directorate in Kyiv region;*

<sup>44</sup> Foreseen by paragraph 5.3.1 of the State norms on construction (БН) В.2.2-49-2004.

- *THF of Starokostyantyniv district department of the MIA Directorate in Khmelnytsky region;*
- *THF of Romny city department of the MIA Directorate in Sumy region;*
- *THF of Khmilnyk city department, Zhmerynka, Kozyatyn and Nemyriv district department of the MIA Directorate in Vinnytsya region;*
- *THF of Vasylkiv and Brovary city department of the Main MIA Directorate in Kyiv region;*
- *THF of Mykolayiv city department of the MIA Directorate in Mykolayiv region;*
- *THF of Horodyshe regional directorate of the MIA Directorate in Cherkasy region;*
- *THF of Odesa city directorate of the Main MIA Directorate in Odesa region;*

At the same time, the cells in THF of Kirovohrad city department of the MIA Directorate in Kirovohrad region are equipped with hot running water system.

***There is no alarm system (personnel call buttons) allowing to establish immediate contact with the personnel, which creates the risk of untimely intervention into possible incidents (violence between detainees, suicide attempts, fire etc.)<sup>45</sup>.***

- *Line department of Kyiv-Pasazhyrsky station of the MIA Directorate for Southwestern Railways;*
- *Borodyanka district department of the Main MIA Directorate in Kyiv region;*
- *Svyatoshyn district directorate of the Main MIA Directorate in Kyiv;*
- *Starokostyantyniv district department of the MIA Directorate in Khmelnytsky region;*
- *Khmilnyk city department of the MIA Directorate in Vinnytsya region;*
- *Territorial police unit #4 Dniprovske district department of the Main MIA Directorate in Kyiv;*
- *Leninsky district department of Mykolayiv city directorate of the MIA Directorate in Mykolayiv region;*
- *Railway Department of Lviv city directorate of the Main MIA Directorate in Lviv region;*
- *Line department of Zhytomyr station MIA Directorate for Southwestern Railways;*

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<sup>45</sup> Foreseen by paragraph 2(c) of the European Prison Rules whereby in all buildings where prisoners are required to live, work or congregate there shall be an alarm system that enables prisoners to contact the staff without delay. The rooms are not equipped with such system (there are no personnel call buttons etc.), which was also noted in the 12<sup>th</sup> General Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment [p.48 CPT/Inf (2002) 15].

- *Central district department of Mykolayiv city directorate of the MIA Directorate in Mykolayiv region;*
- *Kirovohrad city department of the MIA Directorate in Kirovohrad region;*
- *THF of Brovary and Vasylkiv city departments, Borodyanka district department of the Main MIA Directorate in Kyiv region;*
- *THF of Starokostyantyniv district department of the MIA Directorate in Khmelnytsky region;*
- *THF of Romny city department of the MIA Directorate in Sumy region;*
- *THF of Mykolayiv city department of the MIA Directorate in Mykolayiv region;*
- *THF of Odesa city directorate of the Main MIA Directorate in Odesa region;*
- *THF of Kirovohrad city department of the MIA Directorate in Kirovohrad region.*

***Insufficient or missing natural and artificial lighting in THF cells and premises for apprehended persons and persons taken into custody.***

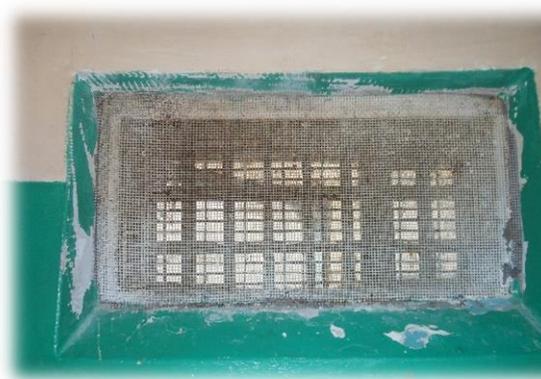
- *THF of Borodyanka district department of the Main MIA Directorate in Kyiv region;*
- *THF of Horodyshe regional directorate of the MIA Directorate in Cherkasy region;*
- *THF of Brovary city department of the Main MIA Directorate in Kyiv region;*
- *THF of Khmilnyk city department, Nemyriv and Zhmerynka district department of the MIA Directorate in Vinnytsya region;*
- *THF of Mykolayiv city department of the MIA Directorate in Mykolayiv region;*
- *Svyatoshyn district directorate of the Main MIA Directorate in Kyiv;*
- *Central district department of Mykolaiv city directorate of the MIA Directorate in Mykolayiv region.*



*THF of Khmilnyk city department of the MIA Directorate in Vinnytsya region*

***Windows of cells and KZD are not equipped with vent panes, therefore access of fresh air is impossible***

- *Svyatoshyn district directorate of the Main MIA Directorate in Kyiv;*
- *Starokostyantyniv district department of the MIA Directorate in Khmelnytsky region;*
- *Korabelny and Leninsky district departments of Mykolayiv city directorate of the MIA Directorate in Mykolayiv region;*
- *Railway department of Lviv city directorate of the Main MIA Directorate in Lviv region;*
- *THF of Starokostyantyniv district department of the MIA Directorate in Khmelnytsky region;*
- *THF of Horodyshe regional directorate of the MIA Directorate in Cherkasy region ;*
- *THF of Brovary city department of the Main MIA Directorate in Kyiv region.*



*THF of Brovary city department of the Main MIA Directorate in Kyiv region*



*THF of Starokostyantyniv district department of the MIA Directorate in Khmelnytsky region*

At the same time, cell windows have windowpanes and accommodations for opening to enable access of fresh air in the following THFs:



*THF of Svitlovodsk city department of the MIA Directorate in Kirovohrad region*



*THF of Chernihiv district department of the MIA Directorate in Chernihiv region*



*THF of Bohun district department of the MIA Directorate in Zhytomyr region*



*THF of the MIA Directorate in Vinnytsya region*

***Sanitary facilities are not equipped with semi-automatic flush taps, certain special facilities do not provide the detainees with a possibility to flush sewage. Flush taps are located in the hallway and are opened by the officer on duty at the cell block upon detainees' request***

- *Holosiyivske regional directorate of the Main MIA Directorate in Kyiv;*
- *Borodyanka district department of the Main MIA Directorate in Kyiv region;*
- *THF of the Line department of Kyiv-Pasazhyrsky station of the MIA Directorate for Southwestern Railways;*
- *THF of Borodyanka and Zhmerynka district department, Khmilnyk city department of the Main MIA Directorate in Kyiv region;*
- *THF of Kozyatyn district department of the MIA Directorate in Vinnytsya region;*
- *THF of Starokostyantyniv district department of the MIA Directorate in Khmelnytsky region;*
- *THF of Horodyshe regional directorate of the MIA Directorate in Cherkasy region;*

- *THF of Odesa city directorate of the Main MIA Directorate in Odesa region;*
- *THF of Kirovohrad city department of the MIA Directorate in Kirovohrad region;*
- *THF of Brovary city department of the Main MIA Directorate in Kyiv region.*



*THF of Starokostyantyniv district department of the MIA Directorate in Khmelnytsky region*



*THF of Borodyanka Regional D of the Main MIA Directorate in Kyiv region*

### ***Violations of the right to privacy***

In the cells of certain special facilities and premises for persons apprehended or taken into custody, the setting of sanitary facilities does not ensure proper privacy for persons using them (partitions and doors are missing, or sanitary facilities are located in the area covered by video surveillance). Therefore, detainees relieve natural functions under constant supervision, which amounts to degrading treatment. In addition, shower cabins in certain special facilities do not have partitions.

Violations of the right to privacy were identified in the following MIA bodies and units:

- *Holosiyivske regional directorate of the Main MIA Directorate in Kyiv;*
- *Borodyanka district department of the Main MIA Directorate in Kyiv;*
- *Zhmerynka district department in Vinnytsya region;*
- *Territorial police unit #4 of Dniprovske regional directorate of the Main MIA Directorate in Kyiv;*
- *Korabelny, Central, and Leninsky district departments of Mykolayiv city directorate of the MIA Directorate in Mykolayiv region;*
- *Kirovohrad city department of the MIA Directorate in Kirovohrad region;*

- *Line department of Kyiv-Pasazhyrsky station of the MIA Directorate for Southwestern Railways;*
- *Railway department of Lviv city directorate of the Main MIA Directorate in Lviv region;*
- *THF of the Line department of Kyiv-Pasazhyrsky station of the MIA Directorate for Southwestern Railways;*
- *THF Borodyanka and Brovary city departments of the Main MIA Directorate in Kyiv region;*
- *THF of Romny city department of the MIA Directorate in Sumy region;*
- *THF of Khmilnyk city department and Kozyatyn district department of the MIA Directorate in Vinnytsya region;*
- *THF of Mykolayiv city department of the MIA Directorate in Mykolayiv region;*
- *THF of Horodyshe regional directorate of the MIA Directorate in Cherkasy region;*
- *Special reception center for persons under administrative arrest of the MIA Directorate in Cherkasy region.*



*THF Kozyatyn district department of the MIA Directorate in Vinnytsya region.*



*Special reception center for persons under administrative arrest of the MIA Directorate in Cherkasy region*



*THF of Horodyshe district  
department of the MIA Directorate in  
Cherkasy region*

*Railway department of Lviv city  
directorate of the Main MIA  
Directorate in Lviv region*

***Excessive humidity and fungal lesions of walls, floors and ceilings of the cells in special facilities***

- *Kozyatyn district department of the MIA Directorate in Vinnytsya region;*



- *THF of Khmilnyk city department a Nemyriv district department of the MIA Directorate in Vinnytsya region.*



***Special facilities are not provided with shower cabins in accordance with the agency construction norms and international standards, and the available shower cabins fail to meet baseline standards***

- *THF of Brovary city department of the Main MIA Directorate in Kyiv region.*

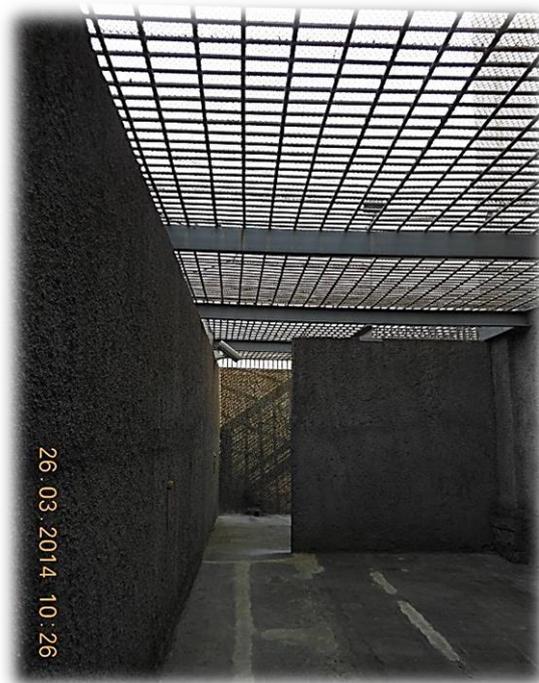
***Number, area and equipment of exercise yards fail to meet national and international standards (insufficient space, missing rain canopies etc.)***

- *THF Line department of Kyiv-Pasazhyrsky station of the MIA Directorate for Southwestern Railways;*
- *THF of Borodyanka district department and Brovary city department of the Main MIA Directorate in Kyiv region;*

- *THF of Starokostyantyniv district department of the MIA Directorate in Khmelnytsky region;*
- *THF of Romny city department of the MIA Directorate in Sumy region;*
- *THF of Khmilnyk city department of the MIA Directorate in Vinnytsya region;*
- *THF of Mykolayiv city department of the MIA Directorate in Mykolayiv region;*
- *THF of Horodyshe regional directorate of the MIA Directorate in Cherkasy region;*
- *THF Kirovohrad city department of the MIA Directorate in Kirovohrad region.*



*THF of Romny city department of the MIA Directorate in Sumy region*



*THF of the Line department of Kyiv-Pasazhyrsky station of the MIA Directorate for Southwestern Railways*

### ***Inadequate equipment of the officers for investigators and attorneys***

The equipment does not meet requirements of paragraph 13.30 of the Instruction (amended) on the functioning of temporary holding facilities adopted by the MIA order #60 dsk on 20.01.2005. There are also no technical means for remote proceedings provided for by Articles 232, 336 of the CPC of Ukraine, windows to the premises next door with polarized (one-way) glass etc.

- *THF of the Line department of Kyiv-Pasazhyrsky station of the MIA Directorate for Southwestern Railways;*

- *THF of Borodyanka district department, Vasylkiv and Brovary city department of the Main MIA Directorate in Kyiv region;*
- *THF of Kozyatyn district department and Khmilnyk city department of the MIA Directorate in Vinnytsya region;*
- *THF of Starokostyantyniv district department of the MIA Directorate in Khmelnytsky region;*
- *THF of Romny city department of the MIA Directorate in Sumy region;*
- *THF of Mykolayiv city department of the MIA Directorate in Mykolayiv region;*
- *THF of Horodyshe regional directorate of the MIA Directorate in Cherkasy region;*
- *THF of the city department of the Main MIA Directorate in Kyiv region.*

### ***Shortcomings and violations common for special facilities of the internal affairs bodies***

#### ***Violation of visiting rights***

Rooms for visitations are absent, and the detainees are not provided opportunities to be visited by relatives.

- *THF of the Line department of Kyiv-Pasazhyrsky station of the MIA Directorate for Southwestern Railways;*
- *THF of Borodyanka district department of the Main MIA Directorate in Kyiv region;*
- *THF of Kozyatyn district department of the MIA Directorate in Vinnytsya region;*
- *THF of Starokostyantyniv district department of the MIA Directorate in Khmelnytsky region;*
- *THF of Khmilnyk city department, Nemyriv and Zhmerynka district department of the MIA Directorate in Vinnytsya region;*
- *THF of Odesa city directorate of the Main MIA Directorate in Odesa region.*

#### ***Violations of the right to access to important public information***

Contrary to p.10 of European Prison Rules, p. 3.1.4, 5.5.7 of VBN B.2.2-49-2004, THF cells are not equipped with television broadcasting antennas or radio receivers with connection to radio broadcasting. Therefore, they have no possibility to keep themselves informed regularly of public affairs.

- *THF of Zhmerynka and Nemyriv district department of the MIA Directorate in Vinnytsya region;*

- *THF of Romny city department of the MIA Directorate in Sumy region;*
- *THF of Horodyshe regional directorate of the MIA Directorate in Cherkasy region;*
- *Line department of Kyiv-Pasazhyrsky station of the MIA Directorate for Southwestern Railways;*
- *THF of Borodyanka district department and Brovary city department of the Main MIA Directorate in Kyiv region;*
- *THF of Mykolayiv city department of the MIA Directorate in Mykolayiv region.*

### ***Deprivation of the right to receive parcels on weekends***

The regulation on receiving and delivering parcels, which is available at the information board at the THF of Starokostyantyniv district department of the MIA Directorate in Khmelnytsky region, states that parcels for THF detainees are accepted only twice per month. In addition, the regulation states that reception of parcels and visits is not available on weekends and holidays, which is a violation of the requirements of MIA regulations.

### ***Special facilities are not equipped with sets of civilian clothing and footwear***

In certain cases, persons taken into custody at THFs in military uniform, officials of the internal affairs bodies, security service, justice agencies, and prosecution have the right to receive a set of civilian clothing. There were no civilian clothing sets in the following special institutions:

- *THF of the Line department of Kyiv-Pasazhyrsky station of the MIA Directorate for Southwestern Railways;*
- *THF of Borodyanka district department of the Main MIA Directorate in Kyiv region;*
- *THF district department of the MIA Directorate in Vinnytsya region;*
- *THF of Starokostyantyniv and Kozyatyn district departments, Khmilnyk city department of the MIA Directorate in Khmelnytsky region;*
- *THF of Horodyshe regional directorate of the MIA Directorate in Cherkasy region.*

### ***Unsatisfactory general sanitary condition***

- *THF of Horodyshe regional directorate of the MIA Directorate in Cherkasy region;*
- *THF of Brovary city department of the Main MIA Directorate in Kyiv region.*

### ***THFs have metal cages***

Investigation room #2 of the *THF of Starokostyantyniv district department of the MIA Directorate in Khmelnytsky region* has a metal cage that is not foreseen by any regulation. Apprehended and detained persons are placed into the cage during investigation actions. Placement in a cage may amount to degrading treatment.



***Not all persons placed into the temporary holding facilities are advised on their rights and duties.<sup>46</sup>***

- *THF of the Line department of Kyiv-Pasazhyrsky station of the MIA Directorate for Southwestern Railways;*
- *THF of Nemyriv district department of the MIA Directorate in Vinnytsya region.*

***Quartz treatment of THF cells is nominal***

- *THF of Nemyriv district department of the MIA Directorate in Vinnytsya region;*
- *THF of Horodyshche district department of the MIA Directorate in Cherkasy region.*

***There is no comprehensive decontamination of apprehended persons before their placement in THF cells***

According to paragraph 9.3 of the Rules adopted by the MIA order #638 dated 02.12.2008, prior to placement in THF cells, apprehended persons have to undergo a comprehensive decontamination procedure, including washing, clothing disinfection, short haircut, beard and moustache shaving (with the permission of a person responsible for criminal proceedings), perineal cavities.

There is no comprehensive decontamination of apprehended persons prior to placement in the cells in the THFs of the Main MIA Directorate in Kyiv.

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<sup>46</sup> Contradicts paragraph 3.6 of the Internal regulations of temporary holding facilities of the internal affairs bodies adopted by the MIA order #638 dated 02.12.2008.

## ***Shortcomings and violations common for MIA internal affairs bodies***

***Failure to provide conditions for barrier-free access to administrative buildings of IABs for persons with disabilities - stairs are not equipped with ramps contrary to the State norms on construction (ДБН В.2.2-17:2006) “Houses and buildings. Accessibility of houses and buildings for groups with reduced mobility”***

- *Holosiyivske and Svyatoshyn district directorate of the Main MIA Directorate in Kyiv;*
- *Line department of Kyiv-Pasazhyrsky station of the MIA Directorate for Southwestern Railways;*
- *Kozyatyn district department of the MIA Directorate in Vinnytsya region;*
- *Starokostyantyniv district department of the MIA Directorate in Khmelnytsky region;*
- *Vasylkiv and Brovary city department of the Main MIA Directorate in Kyiv region;*
- *Territorial police unit#2 of Shevchenkivske district directorate of the Main MIA Directorate in Kyiv;*
- *Korabelny district department of Mykolayiv city directorate of the MIA Directorate in Mykolayiv region;*
- *Railway department of Lviv city directorate of the Main MIA Directorate in Lviv region;*
- *Horodyshche district department of the MIA Directorate in Cherkasy region;*
- *Kirovohrad city department of the MIA Directorate in Kirovohrad region.*

***The Leaflet on unified recording of applications and notifications on crimes and other events in the bodies and units of internal affairs of Ukraine<sup>47</sup> is not located in accessible places<sup>48</sup>.***

- *Borodyanka and Brovary district department of the Main MIA Directorate in Kyiv region;*
- *Svyatoshyn district directorate of the Main MIA Directorate in Kyiv;*
- *Romny city department of the MIA Directorate in Sumy region;*
- *Territorial police unit #1 of Darnytsya district directorate of the Main MIA Directorate in Kyiv;*
- *Korabelny district department of Mykolayiv city directorate of the MIA Directorate in Mykolayiv region;*

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<sup>47</sup> Foreseen by paragraph 1.3 of the Instruction on uniform registration of applications and notifications on crimes and other events at the bodies and units of internal affairs of Ukraine adopted by the MIA order #1050 dated 19.11.2012.

<sup>48</sup> In the hall and citizen's reception of the city, district, and line departments.

- *Line department at Mykolayiv station Of the MIA Directorate for Odesa Railways;*
- *Leninsky and Central district department of Mykolaiv city directorate of the MIA Directorate in Mykolayiv region;*
- *Line department at Lviv airport and Railway department of Lviv city directorate of the Main MIA Directorate in Lviv region.*

***An inspection of the staff offices of Pechersk district directorate of the Main MIA Directorate in Kyiv, revealed items that can be used as means of psychological or physical coercion of detainees (boxing gloves and a punching bag).***



**Positive experience of organization of the functioning of MIA places of detention. Example of proper THF detention conditions most closely approximating international and national standards**

**THF Kirovohrad city department of the MIA Directorate in Kirovohrad region**



*Hot running water in THF cells*



*Windows with vent panes allowing for ventilation*



*TV receivers for access to information on public affairs*



*Lavatory ensuring the right to privacy*

### **Shortcomings in Ukrainian legislation in relation to prevention of torture and other forms of ill-treatment**

#### ***Discrepancies between provisions of the Law of Ukraine “On Militsiya” and requirements of the Criminal Procedure Code of Ukraine***

<b>Article 5 of the Law of Ukraine “On Militsiya” (Police)</b>	<b>CPC</b>
<p>Police:</p> <p>... immediately <b>but no later than two hours after apprehension or arrest</b> (detention) of persons shall notify relatives on their whereabouts and, <b>in case of oral or written request, a defender</b>, as well as the</p>	<p><i>Article 29§5 of the Constitution of Ukraine states, “ Relatives of an arrested or detained person shall be informed immediately of such an arrest or detention ”</i></p> <p><i>The CPC provides that if the competent official who has carried out apprehension has grounds for a reasonable suspicion that notification</i></p>

administration of the workplace or educational institution.

*of apprehension may jeopardize pre-trial investigation, he may make such informing himself **without, however, breaching the requirement concerning its immediacy.***

**According to Article 2084 of the CPC, a competent official who apprehended the person, shall be required to [...] inform promptly other persons of his apprehension and whereabouts in accordance with Article 213 of this Code.**

Police:

...

Shall notify in accordance with the procedure approved by the Cabinet of Ministers of Ukraine, the Center for free secondary legal aid on each case of apprehension, arrest or detention of persons, **except for cases where such person defends him/herself or requested a defender...**

*The CPC does not provide for any exception on notification of the Center for free legal aid on the person's apprehension.*

**Article 213 of the CPC of Ukraine.**

4. An officer who carried out the apprehension should notify the body (institution) authorized by the law to provide legal aid at no cost immediately.

***Contents of the written notice of suspicion do not include the time of actual apprehension and the time of serving the notice***

Contents of the written notice of suspicion are defined by Article 277 of the Criminal Procedure Code of Ukraine whereby written notice of suspicion shall be drawn up by public prosecutor or by investigator upon approval of public prosecutor. In addition to other information, it should include brief description of actual circumstances of criminal offence of which the person is suspected, including time, place of the commission of criminal offence, as well as other essential circumstances that are known at the time of notifying of the suspicion.

However, despite an established term for serving the notice of suspicion (within 24 hours from actual apprehension) in the CPC, Article 277 does not contain a requirement for indication of the date and time of actual apprehension, as well as the date and time of serving the notice of suspicion to the person.

Therefore, it is impossible to verify compliance with Article 278 of the CPC of Ukraine (written notice of suspicion shall be served to apprehended person within 24 hours after he has been apprehended) based on the contents of the notice of suspicion.

### ***Conflict of interest of an official responsible for those apprehended***

According to Article 212§1 of the CPC of Ukraine, one or more officials responsible for keeping those apprehended shall be designated in the pre-trial investigation agency's station. The only unit of the pre-trial investigation agency is the investigations unit. Therefore, responsibility for apprehended persons lies with the official of investigations unit. Even though paragraph 2 of this article states that investigators may not be designated to be responsible for keeping those apprehended, such person will still be an official of the investigations unit.

As a result, the unit conducting investigation is simultaneously responsible for the persons suspected of crime. This situation creates room for abuse of rights and freedoms of an apprehended person.

### ***The legislation does not provide the manner of performing duties foreseen by the CPC of Ukraine by the official responsible for apprehended persons***

There are no legal regulations defining the manner in which an official responsible for apprehended persons has to record all actions involving the apprehended persons, as well as where (which registries/journals) this official has to register the apprehended person etc.

Every internal affairs body has a number of registries and journals for recording information on the stay of apprehended persons at the unit and procedural actions with his/her participation. In addition, there are procedural documents to be drawn up immediately after apprehension (for instance, report on apprehension, report on personal search and inspection of belongings etc.). However, there is no "unified personal file" for recording all actions involving the apprehended persons from the onset of apprehension, including time and motives for deprivation of liberty, time of advising the person on his/her rights, recording injuries or signs of mental illnesses etc.; the time of notification of the next of kin/consul or attorney, as well as the time when they visit the apprehended person; the time when food was offered; the time of interrogation, and the time of transfer to another facility or release etc.

Such unified document could ensure control of observance of the rights of apprehended persons from the moment of actual apprehension. By the way, some information related to the persons stay at the IAB can be entered into the "unified personal file" by the official responsible for apprehended persons.

### ***Shortcomings of the legislation of Ukraine on administrative detention***

In the case of the constitutional submission by the Ukrainian Parliament Human Rights Commissioner on constitutionality of Article 11§1(5)(8) of the Law of Ukraine "On Militsiya", the Constitutional Court of Ukraine in its decision #17-рп/2010 dated 29 June 2010<sup>49</sup> noted that "one of the elements of the rule of law is **the principle of legal certainty** stating that restrictions of basic rights of persons and citizens and

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<sup>49</sup> <http://zakon4.rada.gov.ua/laws/show/v017p710-10>

implementation of these restrictions in practice is only allowed under the condition of foreseeability of application of legal norms established by such restrictions” (paragraph 3 of subsection 3.1 of section 3 of the reasoning).

This conclusion is compatible with the ECHR case law where the Court reiterated that where deprivation of liberty is concerned it is particularly important that the general principle of legal certainty be satisfied (*Baranowski v. Poland*, 28 March 2000, *Novik v. Ukraine*, 18 December 2008)<sup>50</sup>.

***The legislation does not identify the moment of onset or completion of administrative detention***

The Code of Ukraine on Administrative Offences clearly defines the terms of administrative detention, yet measuring its length is practically impossible. Any time period, particularly one defined by legislation, should have clearly defined limits: the moment of onset (beginning of administrative detention) and the moment of completion of administrative detention.

Before the Constitutional Court’s decision<sup>51</sup>, length of administrative detention was defined by article 263§5 of the Code on Administrative Offences and calculated from the moment of delivering the offender for drawing up a report, and if the person was intoxicated – from the moment of sobriety. However, the Constitutional Court of Ukraine decided<sup>3</sup> that this provision was unconstitutional, and since then there is no legal definition of the moment when administrative detention begins in Ukrainian legislation.

***The time limits for bringing of the person detained for administrative offence are not defined.***

For the purposes of drawing up a report on administrative offense in cases where it is not possible to do so at the location of offence, and if such report is mandatory, the offender may be brought to the competent authority, in particular, to an internal affairs body<sup>52</sup>. The offender shall be brought within the shortest possible time<sup>53</sup>.

However, the law does not define how the period of bringing the person should be identified along with its maximum length.

***The procedure for serving the administrative arrest in special premises for persons under administrative arrest is not regulated***

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<sup>50</sup> *Novik v. Ukraine*, ECHR, appl. No. 48068/06, [http://zakon4.rada.gov.ua/laws/show/974\\_442](http://zakon4.rada.gov.ua/laws/show/974_442)

<sup>51</sup> Constitutional Court of Ukraine, decision № 10-пп/2011 dated 11.10.2011, case № 1-28/2011 <http://zakon2.rada.gov.ua/laws/show/v010p710-11/print1382533618117584>

<sup>52</sup> Administrative Code of Ukraine, Article 259§1.

<sup>53</sup> Administrative Code of Ukraine, Article 259§8.

Article 327§3 of the Code of Ukraine on Administrative Offences states that serving administrative arrest should take place in accordance with the rules established by the laws of Ukraine, however there are no such laws at the moment.

Persons subjected to arrest as administrative penalty serve the sentence in special premises for persons under administrative arrest. The premises' functioning is regulated by the Regulations on special premises for persons under administrative arrest at the bodies of internal affairs adopted by the MIA order #552 dated 18.09.1992. Contrary to requirements of the CMU resolution #731 dated 28.12.1992 "On approving of the Regulation on state registration of legal acts and regulations of ministries and other state executive authorities", the said order was not brought into compliance with the Constitution and laws of Ukraine and other legislation, the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, as well as case law of the European Court of Human Rights, international agreements signed by Ukraine recognized as binding by the Parliament of Ukraine.

***The legislation of Ukraine does not set standards on protection of the rights of convicted and detained persons during conveying by rail and road transport***

Since 2000, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has repeatedly provided recommendations for the government of Ukraine for improvement of conditions of transportation of detained and convicted persons.

According to CPT experts, the manner of transportation of detainees, particularly rail transport, is unacceptable given material conditions and possible length of travel.

In its Report to the Ukrainian Government on the visit to Ukraine carried out from 24 November to 6 December 2000, the CPT provided a number of recommendations on road and rail transport of prisoners. The matter was raised again in 2002 with the Ukrainian authorities, who stated that a working group had been set up to transfer responsibility for escorting prisoners from the Ministry of Internal Affairs to the Department for the Execution of Sentences. In the light of the critical findings concerning transport vans by the delegation that carried out the 2002 visit, "the CPT recommended that the Ukrainian authorities give a high priority to resolving the issue of the conditions under which prisoners are transported, with due regard to the recommendations in paragraph 131 of its report on the 2000 visit".

At the moment, there are no unified standards on the procedure of escorting apprehended, convicted, and detained persons by rail and road transport. There are no unified standards that would take into account ECHR case law and recommendations of The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

## **Implementation of the Commissioner's recommendations following visits to places of detention of the MIA of Ukraine**

Official inquiries into shortcomings and violations by directorates and regional and Kyiv main directorates of the MIA of Ukraine found during the Commissioner's exercise of NPM functions are in progress. For each inquiry, the Commissioner for Human Rights receives a letter with inquiry files and conclusions. As a rule, according to the MIA, the violations are confirmed in the course of inspection and shortcomings that do not require significant financial expenses are corrected. In most cases, disciplinary action is taken against a number of officials. However, repeat visits to city, district and line departments and special facilities evidence that information about elimination of shortcomings and violations is not always true. In addition, during official inspections on specific facts provided by the Commissioner in relation to criminal offences by certain IAB officials (unlawful apprehension in violation of Article 208 of the CPC of Ukraine following long period after commission of crime, violation of the right to defense etc.), the IAB leadership only imposes disciplinary liability of perpetrators.

Meanwhile, prosecution authorities ignore information pointing to actual crimes of specific officials during review of the Commissioners acts of response following inspection of places of detention of the MIA. Even more so, the Commissioner sends the act of response in accordance with Article 60 of the CPC of Ukraine, i.e. as report on crime.

Actions of the Prosecutor's Office in the city of Kyiv and the Prosecutor's Office in Svyatoshyn district of Kyiv serve as vivid illustration of such neglect of CPC requirements. In particular, following a visit to Svyatoshyn district directorate of the Main MIA Directorate in Kyiv on 30 May 2014, a letter from the Representative of the Commissioner Yuriy Belousov was sent to the Prosecutor's Office in the city of Kyiv. The letter mentioned specific offences committed by officials of Svyatoshyn district directorate of the Main MIA Directorate in Kyiv. Moreover, the letter included a statement specifying that it is sent in accordance with Article 60 of the CPC of Ukraine, i.e. as an application or report on criminal offence to a state agency authorized to initiate pre-trial investigation from an entity that is not a victim.



ПРЕДСТАВНИК УПОВНОВАЖЕНОГО  
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« 06 » червня 2014р.

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**Шановний Миколо Володимировичу!**

30 травня 2014 року з метою перевірки дотримання прав людини в діяльності органів внутрішніх справ, працівниками Секретаріату Уповноваженого Верховної Ради України з прав людини здійснено моніторинговий візит до Святошинського РУ ГУМВС України в м. Київ.

В ході відвідування опитано осіб, що тримались в кімнаті затриманих та доставлених, працівників райуправління та перевірено облікову документацію Святошинського райуправління.

Перевіркою виявлено ряд системних порушень прав людини:

**1. Протиправні затримання громадян без ухвали слідчого судді, суду.**

30 травня 2014 року в порядку ст. 208 КПК України працівниками Святошинського РУ ГУМВС України в м. Києві було затримано та доставлено до райуправління громадян Грузії А Г.Н., І Т.Т., А К.Н. та громадянина України Г Д.С.

Дане затримання було здійснено без ухвали слідчого судді, суду, незважаючи на те, що досудовим розслідуванням встановлено, що злочин у вчиненні якого вони підозрюються було скоєно в період часу з **02.05.14 на 03.05.14**.

Таким чином дане затримання відбулось із порушенням вимог ч. 1 ст. 208 КПК України, якою уповноваженій службовій особі надається право затримувати без ухвали слідчого судді, суду лише у двох випадках:

– якщо особу застали під час вчинення злочину або замаху на його вчинення;

– якщо безпосередньо після вчинення злочину очевидець, в тому числі потерпілий, або сукупність очевидних ознак на тілі, одязі чи місці події вказують на те, що саме ця особа щойно вчинила злочин.

## 2. **Порушення права на правову допомогу.**

Всупереч вимогам ст. 208, 213 КПК України, Порядку інформування центрів з надання безоплатної вторинної правової допомоги, затвердженого Постановою Кабінету міністрів України від 28 грудня 2011 р. № 1363, уповноважені службові особи Святошинського РУ ГУМВС України в м. Києві, що здійснюють затримання, не повідомляють орган (установу), уповноважений законом на надання безоплатної правової допомоги, **негайно після затримання**.

В ході опитування затриманих: А Г.Н., І Т.Т., А К.Н. та Г Д.С., з'ясовано, що з **17.00, 29.05.2014** вони перебували під контролем працівників міліції і не мали можливості вільно пересуватись. Також, в журналі відвідувачів доставлених та запрошених Святошинського РУ зазначено час доставлення вказаних осіб: 22.20, 29.05.2014.

Про затримання зазначених осіб центр з надання безоплатної вторинної правової допомоги повідомлено лише о **00.30, 30.05.2014**.

Таким чином про затримання І Т.Т., А Г.Н., Г Д.С. та А К.Н., центр безоплатної правової допомоги було повідомлено приблизно **через 7 год. 30 хв.** після фактичного затримання, або через 2 год. 10 хв. після доставлення до Святошинського райуправління.

**Уповноважені службові особи, що здійснюють затримання** не виконують вимоги ч. 4 ст. 213 КПК України, а саме – не повідомляють **негайно після затримання** осіб, орган (установу), уповноважений законом на надання безоплатної правової допомоги.

На порушення вимог п. 6.6.2. Інструкції, затвердженої наказом МВС від 28.04.2009 № 181 **черговий Святошинського РУ** не перевіряє, чи повідомленс Центр безоплатної правової допомоги про затримання доставленої особи, та якщо повідомлення не здійснена, не повідомляє Центр самостійно, зафіксувавши таке повідомлення.

**Службова особа, відповідальна за перебування затриманих Святошинського РУ** не виконує вимоги ч. 5 ст. 213 КПК України. Зокрема, не перевіряє дотримання вимог ст. 213 в частині повідомлення органу (установи), уповноваженому законом на надання безоплатної правової допомоги, про затриманих осіб.

## 3. **Фальсифікації часу фактичного затримання осіб.**

Слідчі СВ Святошинського РУ ГУМВС України в м. Києві В Д.С. та С А.Д. порушують вимоги ч. 5 ст. 208 КПК України, щодо фіксування фактичного часу затримання осіб, відповідно до вимог ст. 209 КПК України.

В протоколах затримання особи за підозрою у вчиненні злочину А Г.Н., І Т.Т., А К.Н. та Г Д.С., на порушення вимог ч. 5 ст. 208 КПК України часом затримання зазначено час складання протоколу в приміщенні Святошинського РУ ГУМВС України в м. Києві. В той же час, **місце,**

дата і точний час (година і хвилина) фактичного затримання відповідно до положень статті 209 КПК України взагалі не зазначені. Таким чином, виникають підстави для порушення граничного строку затримання особи без ухвали слідчого судді, суду визначеного ст. 211 КПК України.

Так, згідно із записом в протоколі затримання І Т.Т. дата, час і місце його затримання вказані 30.05.2014 о 00.30 в приміщенні Святошинського РУ ГУМВС України м. Києва, в той час як сам затриманий зазначає фактичне його затримання 29.05.2014 біля 16.00 на автобусній зупинці вул. П. м. Києва, а відповідно до записів журналу обліку доставлених, відвідувачів та запрошених Святошинського РУ І Т.Т. було доставлено до райуправління о 22.20, 29.05.2014.

В протоколах затримання А Г.Н., А К.Н. та Г Д.С. дата, час і місце затримання зазначено 30.05.2014 о 00.30 в приміщенні Святошинського РУ ГУМВС України м. Києва, а зі слів затриманих час фактичного затримання 29.05.2014 о 17.00 на квартирі за адресою: вул. , 23-А кв. .

#### 4. Інші порушення прав затриманих осіб.

Особи, що тримаються в кімнаті для затриманих та доставлених чергової частини не забезпечуються сніданками.

Відповідно до вимог п. 6.7.3 Інструкції «Про організацію діяльності чергових частин органів і підрозділів внутрішніх справ України, направленої на захист інтересів суспільства і держави від протиправних посягань», затвердженої наказом МВС від 28.04.2009 № 181, особи, які утримуються в КЗД більше 3 годин, повинні забезпечуватись гарячим харчуванням (сніданок - з 07.00 до 08.00, обід - з 13.00 до 14.00, вечеря - з 19.00 до 20.00) за нормами добового забезпечення продуктами харчування, затвердженими постановою Кабінету Міністрів України від 16.06.92 № 336 «Про норми харчування осіб, які тримаються в установах виконання покарань, слідчих ізоляторах Державної кримінально-виконавчої служби, ізоляторах тимчасового тримання, приймальниках-розподільниках та інших приймальниках Міністерства внутрішніх справ» (із змінами).

На момент початку опитування затриманих о 12 год. 10 хв. 30.05.14 жоден із затриманих, що перебувають в КЗД з третьої години ночі 30.05.14 не отримував сніданок.

Слідчі СВ Святошинського РУ ГУМВС України в м. Києві В Д.С. та С А.Д. позбавляють права затриманих отримувати копії процесуальних документів рідною або іншою мовою, якою вони володіють відповідно до вимог п.18 ч. 3 ст. 42 КПК України. Так, під час особистого спілкування із затриманими А Г.Н., І Т.Т., А К.Н. з'ясовано, що вони не розуміють українську мову і не ознайомлені із змістом протоколу затримання за підозрою у вчиненні злочину. Даний факт підтверджується відсутністю їх особистих підписів у протоколах.

Окрім цього ознайомлення із протоколами здійснювалось за відсутності захисника, який своїм підписом мав би засвідчити зміст протоколу та факт неможливості його підписання.

5. Під час поміщення осіб до кімнати затриманих та доставлених чергової частини оперативний черговий не перевіряє документи, які дають підстави на поміщення.

30.05.2014 на підставі протоколів про затримання особи у вчиненні злочину на підставі ст. 208 КПК України (без ухвали слідчого суді, суду), до КЗД чергової частини були поміщені А Г.Н., А К.Н. та І Т.Т., в протоколах затримання яких було зазначено дату затримання 13.05.2014, а І Т.Т. - 30.02.2014.

Враховуючи вищезазначене, на підставі ст. 101 Конституції України, ст. 1, 3, 13, 17, 22 Закону України "Про Уповноваженого Верховної Ради України з прав людини", ст. 60 Кримінального процесуального кодексу України, прошу Вас здійснити перевірку стану дотримання прав людини в діяльності Святошинського РУ ГУМВС України та вжити заходів прокурорського реагування відповідно до вимог чинного законодавства.

Про вжиті заходи та прийняті рішення прошу поінформувати Уповноваженого Верховної Ради України з прав людини в термін, передбачений законом, додавши копії матеріалів перевірки.

Зокрема:

- витягу з Єдиного реєстру досудових розслідувань;
- пояснення затриманих А Г.Н., І Т.Т., А К.Н. та Г Д.С;
- пояснення слідчих СВ Святошинського РУ ГУМВС України в м. Києві В Д.С. та С А.Д.;
- пояснення оперативного чергового, який здійснював поміщення А Г.Н., І Т.Т., А К.Н. та Г Д.С до кімнати для затриманих та доставлених;
- пояснення осіб, які здійснювали затримання А Г.Н., І Т.Т., А К.Н. та Г Д.С;
- пояснення уповноваженої службової особи відповідальної за перебування затриманих Святошинського РУ ГУМВС України в м. Києві;
- пояснення адвокатів центру з надання безоплатної правової допомоги, які були викликані для надання допомоги затриманим А Г.Н., І Т.Т., А К.Н. та Г Д.С;
- висновків за результатами перевірки.

Додаток на: 13 арк.

З повагою



Ю.Л. Белоусов

Instead of following requirements of Article 214 of the CPC by entering the relevant information into the Integrated registry of pre-trial investigations (ERDR) and initiating proceedings, the Prosecutor's Office in the city of Kyiv forwarded the Commissioner's letter to the Prosecutor's Office in Svyatoshyn district of Kyiv.



Прокуратура України  
**ПРОКУРАТУРА МІСТА КИЄВА**

вул. Предславинська, 45/9, м. Київ, 03150

факс: 524-82-90

20.06/№ 04/22-2206/кв 14

Прокурору  
Святошинського району м. Києва  
Мілевському А.П.

В  
Верховна Рада України  
Представнику Уповноваженого- керівника  
Департаменту з питань реалізації  
національного превентивного механізму  
Белоусову Ю.Л.

вул. Інститутська, 21/8, м. Київ, 01008  
на № 8-105/14-110 від 06.06.2014

Направляю для розгляду лист Представника Уповноваженого-керівника Департаменту з питань реалізації національного превентивного механізму Верховної Ради України Белоусова Ю.Л. щодо можливих порушень прав осіб, доставлених до Святошинського РУ ГУМВС України в м. Києві, а також з інших питань.

Перевірку доводів, викладених у зверненні необхідно провести згідно з вимогами чинного законодавства. При встановленні порушень вжити заходів реагування.

Про результати розгляду листа повідомити Представника Уповноваженого - керівника Департаменту з питань реалізації національного превентивного механізму Верховної Ради України Белоусова Ю.Л. та ґрунтовно інформувати прокуратуру міста у встановлений законом строк.

Додаток: на 17 арк. першому адресату.

Заступник прокурора міста Києва

А.Приз

The Prosecutor's Office in Svyatoshyn district of Kyiv also ignored Article 214 of the CPC of Ukraine, as well as the Commissioner's request on providing the copies of documents confirming entry of information on these crimes in the ERDR and initiation of pre-trial investigation.



Прокуратура України  
Прокуратура міста Києва  
**ПРОКУРАТУРА СВЯТОШИНСЬКОГО РАЙОНУ  
МІСТА КИЄВА**

вул. Гната Юри, 9, м. Київ, 03148

факс: 403-30-27

14.04.14 № (10-8) 5432/дек

Представнику Уповноваженого -  
керівника Департаменту з питань  
реалізації національного  
превентивного механізму  
Верховної ради України  
Белоусову Ю.Л.

вул. Інституцька, 21/8 м. Київ, 01008

**Шановний Юрію Леонідовичу !**

Прокуратурою району розглянуто Ваш лист № 8-1057/14-110 від 06.06.2014 щодо можливих порушень прав осіб, доставлених до Святошинського РУ ГУ МВС України в м. Києві.

Враховуючи те, що в діях окремих працівників Святошинського РУ ГУМВС України в м. Києві виявлені порушення вимог КПК України, прокуратурою району 09.07.2014 начальнику ГУМВС України в м. Києві внесено подання.

**З повагою**

Прокурор району  
радник юстиції

  
А. Мілевський

Having received no proper response to information about a crime from the Prosecutor's Office in the city of Kyiv and Prosecutor's Office in Svyatoshyn district of Kyiv, the Commissioner sent a repeat request to the Prosecutor's Office in the city

of Kyiv to provide confirmation of entry of information about the crime to ERDR and examination of facts, i.e. copies of documents requested in the previous letter.



СЕКРЕТАРІАТ  
Уповноваженого Верховної Ради України з прав людини

вул. Інститутська, 21/8  
01008, Київ, Україна

E-mail: omb@ombudsman.gov.ua  
http://www.ombudsman.gov.ua

Тел.: (+38 044) 253-22-03

№ 8.-1724/14-110

« 11 » Вересня 2014р.

**Прокурору м. Києва  
Юлдашеву С.О.**

*вул. Предславинська, 45/9,  
м. Київ, 03151*

**Шановний Сергію Олександровичу!**

30 травня 2014 року з метою перевірки дотримання прав людини в діяльності органів внутрішніх справ, працівниками Секретаріату Уповноваженого Верховної Ради України з прав людини здійснено моніторинговий візит до Святошинського РУ ГУМВС України в м. Київ.

Перевіркою виявлено ряд системних порушень прав людини.

З метою перевірки виявлених недоліків та вжиття заходів прокурорського реагування 06.06.2014 прокурору містка Києва направлено лист за підписом Представника Уповноваженого Верховної Ради України з прав людини Белоусова Ю.Л. за № 8.-1057/14-110.

16.07.2014 до Секретаріату Уповноваженого Верховної Ради України з прав людини надійшла відповідь прокуратури Святошинського району м. Києва від 14.07.14 за вих. № (10-58)5432вих. щодо результатів перевірки виявлених порушень під час моніторингового візиту працівників Секретаріату Уповноваженого з прав людини до Святошинського РУ ГУМВС України в м. Києві 30.05.2014. Зазначена відповідь не містить копій матеріалів перевірки, про необхідність подання яких наголошувалося у запиті Представника Уповноваженого від 06.06.2014 за №8.-1057/14-110.

Звертаю Вашу увагу на те, що відповідно до п. 5 ч.1 ст. 13 Закону України “Про Уповноваженого Верховної Ради України з прав людини” Уповноважений має право на ознайомлення з документами, у тому числі тими, що містять інформацію з обмеженим доступом, та отримання їх копій в органах державної влади, органах місцевого самоврядування, об’єднаннях громадян, на підприємствах, в установах, організаціях незалежно від форми власності, **органах прокуратури**, включаючи справи, які знаходяться в судах.

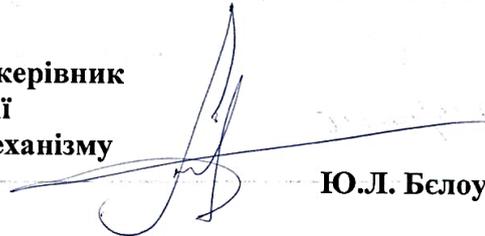
Керуючись ст. 101 Конституції України, ст. 13, ст. 22 Закону України “Про Уповноваженого Верховної Ради України з прав людини”, повторно

060950

прошу надати Уповноваженому Верховної Ради України з прав людини копії матеріалів перевірки про необхідність подання яких наголошувалося у запиті Представника Уповноваженого від 06.06.2014 за №8.-1057/14-110.

*Додаток: на 1 арк.*

**З повагою  
представник Уповноваженого – керівник  
Департаменту з питань реалізації  
національного превентивного механізму**



**Ю.Л. Белоусов**

In response, the prosecution service of Kyiv confirmed that there were no measures taken to ensure proper investigation of human rights violation. In particular, the response states that there were no explanations taken from the apprehended persons, investigators, officer on duty, attorneys, or other persons during the inspection of lawfulness of apprehension at Svyatoshyn district directorate of the Main MIA Directorate in Kyiv.



Прокуратура України  
**ПРОКУРАТУРА МІСТА КИЄВА**

вул. Предславинська, 45/9, м. Київ, 03150

факс: 524-82-90

01.10.14 № 04/2/2 - 39096и/14  
На №8-1724/14-110 від 15.09.2014

Представнику Уповноваженого-  
керівника Департаменту з питань  
реалізації національного  
превентивного механізму  
Верховної ради України  
Белоусову Ю.Л.

вул. Інституцька, 21/8 м. Київ, 01008  
№ 231/к-в від 15.09.2014

**Шановний Юрію Леонідовичу!**

Прокуратурою міста Києва розглянуто Ваше звернення, щодо ненадання прокуратурою Святошинського району матеріалів перевірки за фактами порушень, виявлених під час моніторингового візиту працівників Секретаріату Уповноваженого з прав людини Верховної Ради України до Святошинського РУ ГУМВС України в м. Києві.

Встановлено, що 30.05.2014 під час проведення перевірки законності тримання осіб в Святошинському РУ ГУМВС України в м. Києві пояснення від затриманих, слідчих, оперативного чергового, адвокатів та інших осіб не відбирались.

Таким чином, надати копії пояснень не представляється можливим.

Водночас, направляю копію витягу з Єдиного реєстру досудових розслідувань.

Додатки: на 1 аркуші.

**З повагою**

Заступник прокурора міста  
радник юстиції

**М. Ахсаров**

In addition, the Prosecutor's Office in the city of Kyiv provided an excerpt from ERDR that confirms unlawfulness of apprehension of the persons in question.

Rather than providing an excerpt from ERDR on the crime committed by officials of Svyatoshyn district directorate of the Main MIA Directorate in Kyiv (knowingly unlawful apprehension, taking into custody, arrest or detention), the Prosecutor's Office in the city of Kyiv provided an excerpt on the alleged crime for commission of which these persons were unlawfully apprehended.

Витяг з кримінального провадження №1201410008000

№1

Дата надходження заяви, повідомлення або виявлення з іншого джерела: 12.05.2014

Заявник або потерпілий: І (код )

Дата внесення до ЄРДР: 14.05.2014

Правова кваліфікація: (КК України 2001)СТ.189 Ч.2

Фабула:

В період часу з 02.05.2014 на 03.05.2014, громадяни Грузії А, Г.Н., А К.Н., І Т.Т., Г Д.С. за попередньою змовою, з не встановленою особою, знаходячись в квартирі № по вулиці в місті Києві, з погрозою вбивства та заповідання тілесних ушкоджень, вчинили вимагання грошових коштів у громадянина Узбекистану І І.М. та заволоділи ними в сумі 4900 доларів США.

Особа, яку повідомлено про підозру:

1) А	Г	Дата народження:	1	4.19
2) А	Н	Дата народження:	2	8.19
3) Г	С	Дата народження:	1	1.19
4) А	Н	Дата народження:	2	2.19
5) І	Т	Дата народження:	16	1.19

Орган досудового розслідування: Святошинське районне управління ГУ МВС України в місті Києві

Слідчий: Е О.Л., Н А.С., С А.Д., З І.В.М.

Прокурор: Лг І.О., К І.М.М., С М.В., К С.В., Ш Т.О.

Підпис реєстратора \_\_\_\_\_ А М.А.

Заступник прокурора міста

26.09.2014



12014100080004055

At the same time, the said excerpt contains evidence of another violation by the Prosecutor's Office in the city of Kyiv, namely the application or report on criminal offence was received on 12.05.2014, whereas it was entered into ERDR on 14.05.2014, i.e. later than 24 hours, which is a violation of Article 214§1 of the CPC of Ukraine.

Based on 2014 results, a request was sent to the MIA for information on the status of implementation of recommendations following monitoring visits to places of detention of the MIA in 2014.

The response stated the following:

“Analysis of reports received by the MIA confirmed that most widespread violations in activities of the monitored institutions and bodies include failure to ensure proper conditions of detention in the premises for apprehended and detained persons, as well as special facilities of police, inadequate official record-keeping, and violations of the procedure on notification of the centers for free legal aid.

Measure to eliminate deficiencies related to the lack of proper conditions of detention in the premises for apprehended and detained persons, as well as special facilities of police are slow due to the lack of funding of the bodies of internal affairs. For instance, currently equipment of 385 premises for apprehended and detained persons at the duty stations, as well as 100 special facilities does not comply with the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. Therefore, they require proper refurbishments that take place if funding is available. These refurbishments took place only in the THFs of Zhytomyr city department of MIA Directorate in Zhytomyr region, Vovchansk and Zmiyiv district department of the Main Directorate of the MIA in Kharkiv region. Due to the lack of funds, construction of 12 THFs is on hold.

At the same time, staff of the Department of Public Safety of the MIA conducted visits to 16 regions with inspections of 68 city, district and line departments for the purposes of oversight of the functioning of THFs, units of convoy service of police, including implementation of recommendations following monitoring visits. Disciplinary penalties were imposed on 55 officials, including 35 senior management officials”.

The above confirms that MIA officials take into consideration recommendations that require significant funding. At the same time, majority of identified violations and deficiencies do not require significant funding and depend solely on executive discipline of individual officials. Additional funding is not necessary to ensure the apprehended person’s right to defense immediately after apprehension (notify the Center for free legal aid) or enter information on the person’s stay at the bodies of internal affairs in the Registry of persons taken into custody, visitors and invited persons. Moreover, there is no funding needed to stop apprehensions without a ruling by investigating judge or court long after occurrence of crime in violation of Article 208 of the CPC.

## 4.2. Results of monitoring of institutions of the State Penitentiary Service of Ukraine

At the moment, there are 150 institutions within the authority of the State Penitentiary Service of Ukraine located on the territory controlled by Ukrainian government, in which 72 602 persons were being held at the beginning of **2015**.



There are **27 institutions** and **47 units** of criminal executive inspection on the territory of Donetsk and Luhansk regions that are not controlled by Ukrainian authorities.

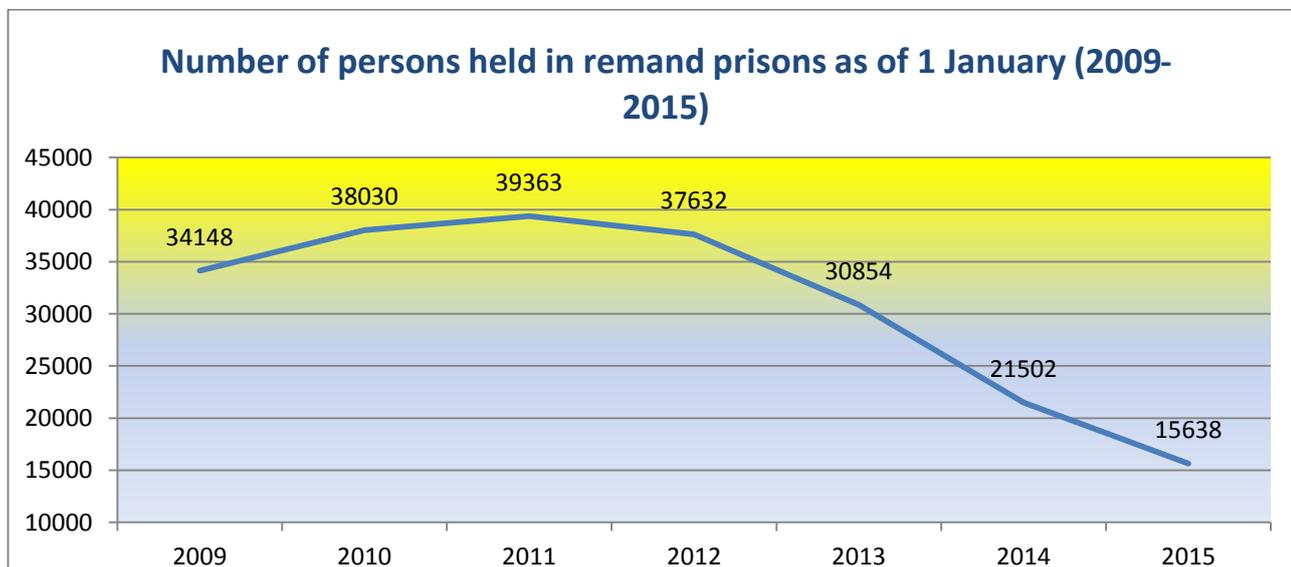
<b>In 13 remand prisons and 16 penitentiary facilities with functions of remand prisons</b>	<b>15 638</b> detainees and convicted persons
<i>Including those on the stage of:</i>	
Pre-trial investigations	<b>1 921</b> person
Court trial ( <i>before conviction</i> )	<b>5 503</b> persons
<b>In 115 criminal executive institutions including:</b>	<b>56 521</b> convicted person
<b>In 8 correctional colonies with maximum level of security</b>	<b>3 269</b> persons
<b>In 33 correctional colonies with medium level of security for repeat offenders</b>	<b>22 592</b> persons

in <b>27</b> correctional colonies with medium level of security for first-time offenders	<b>16 526</b> persons
in <b>7</b> correctional colonies with minimum level of security and general conditions for men	<b>2 131</b> person
in <b>4</b> correctional colonies with minimum level of security and lenient conditions for men	<b>585</b> persons
in <b>11</b> correctional colonies for women	<b>2 773</b> persons
in <b>4</b> specialized healthcare institutions	<b>1 157</b> persons
In healthcare institutions at correctional colonies and remand prisons	<b>1 587</b> persons
in <b>21</b> correction centers	<b>2 404</b> persons
in <b>6 correctional facilities (for juveniles)</b>	<b>443</b> persons

Among convicted persons:

**496** persons are serving **arrest** sentences in **53** arrest houses established at penitentiary facilities and remand prisons;

**1613** persons are serving sentences of **life imprisonment**;



**Criminal demographics of persons sentenced to deprivation of liberty:**

- **8.5** thousand persons with sentences over **10** years;
- **11.1** thousand persons – for intentional murder, including **5.6** thousand – for aggravated murder;
- **5.4** thousand persons – for inflicting intentional grave bodily harm;
- **14.8** thousand – for brigandism, robbery, and extortion;

- **1.5** thousand – for rape;
- **24** persons – for taking hostages;
- **7.5** thousand – for crimes of illegal trafficking of narcotic or psychotropic substances, their analogues or precursors, and other crimes against public health.

Production capacities of the State Penitentiary Service of Ukraine include **88** industrial, **12** agricultural enterprises of penitentiary facilities, and **139** workshop.

In **82** penitentiary facilities, there are vocational and technical educational institutions with almost **8.4** prisoner students.

*In 2014, there were visits conducted together with representatives of the public to 25 institutions (10 remand prisons, 8 correctional colonies, 7 correctional facilities), including one repeat visit.*

The visits covered 15 regions (*Volyn, Dnipropetrovsk, Zhytomyr, Zaporizhzhya, Kyiv, Lviv, Luhansk, Poltava, Rivne, Sumy, Ternopil, Kharkiv, Khmelnytsky, and Chernihiv regions*).

**Monitoring sites:**

Correctional colonies	Remand prisons
<b>Shostka correctional colony (№ 66)</b> <b>Berezan correctional colony (№ 95)</b> <b>Temnivka correctional colony (№ 100)</b> <b>Dykanivska correctional colony (№ 12)</b> <b>Pervomaysky correctional colony (№ 117)</b> <b>Berdychiv correctional colony (№ 70)</b> <b>Kopychyntsi correctional colony (№ 112)</b> <b>Zamkova correctional colony (№ 58)</b>	<b>Kyiv remand prison</b> <b>Zhytomyr penitentiary facility (№ 8)</b> <b>Novhorod-Siversky penitentiary facility (№ 31)</b> <b>Odesa remand prison</b> <b>Dnipropetrovsk remand prison</b> <b>Vilnyansk penitentiary facility (№ 11)</b> <b>Zaporizhzhya remand prison</b> <b>Starobilsk remand prison</b> <b>Artemivsk penitentiary facility (№ 6)</b> <b>Mariupol remand prison</b>
<b>Juvenile correctional facilities</b>	
<b>Pryluky juvenile correctional facility</b> <b>Kremenchuk juvenile correctional facility</b> <b>Kuryazka juvenile correctional facility</b> <b>Dubno juvenile correctional facility</b> <b>Kovel juvenile correctional facility</b> <b>Melitopol juvenile correctional facility</b> <b>Sambir juvenile correctional facility</b>	
<b>Repeat visits</b>	
	<b>Melitopol juvenile correctional facility</b>

**Monitoring results provided for identification of systemic violations of procedures for detention and punishment that lead to cruel or degrading treatment of prisoners.**

***Main issues leading to cruel or degrading treatment of prisoners***

- Beating on different body parts, the use of the so-called “stretches”, “swallow”, “standing on columns”, and putting salt on self-inflicted injuries;
- Public humiliation through irregular cleaning of places of common use and sanitary facilities;
- Hard handcuffing
- Inhuman or rude treatment of convicts by some staff members;
- Unfounded restriction not foreseen by law, as well as abuse of safety measures towards detainees and convicts
- Abuse of correctional regime functions by the administration of penitentiary facilities and remand prisons;
- Negative practice of involving prisoners into control over the other convicts’ behavior;
- Unfounded transfer from one facility to another, disciplinary punishments, restrictions of access to TV programs
- Biased internal investigations, lack of possibility to receive legal advice, as well as violation of the petition procedure leading to the lack of possibility to challenge administrations’ actions.

A monitoring visit to A.S. Makarenko Kuryazka juvenile correctional facility and interviews with juveniles revealed information about numerous violations of human rights and freedoms in the functioning of the above facility.

In particular, existence of a clear unofficial hierarchy among inmates was brought up. The “active” unit chosen by the administration was responsible for 24/7 control of the convicts’ behavior. The “activists”, in return enjoy preferential treatment from the administration. The above illustrates how the personnel practically relieved themselves from the correctional work with the juveniles and transferred these functions to other convicted persons, which constitutes a gross violation of both domestic legislation and international standards.

During interviews, the residents voiced multiple complaints on ill-treatment, some of which ***can amount to torture, cruel, inhuman, or degrading treatment and punishment*** in accordance with the ECHR case law, in particular:

- Pouring sault on the body in case of injuries – this particularly cruel form of punishment, which can be qualified as torture, can be used if the juvenile hurts him/herself as a form of protest;
- “*standing on columns*” – the juveniles are forced to stand in one spot during long time (up to 15 hours) over the course of several days, sometimes – three months. The entire staff of the facility is aware of the practice, as well as school teachers who mark the punished children as absent;

- *Constant carrying of a sandbag* – is used towards underage persons who are on the preventive register for suicide/self-harm tendencies (40 persons are in the registry). The minors punished in this manner have to carry the sandbag with them at all times, including during sleep;
- *Marching on the training ground* entails the juvenile marching along the square perimeter for several hours; there were cases of all-day marching by a group singing a military song.

A monitoring visit to Temnivka correctional colony (#100) revealed facts of multiple violations of human rights and freedoms in the functioning of the said facility.

For instance, administration of the prison uses the so-called “active” unit to maintain order. In violation of criminal executive legislation, the said unit practically performs functions of correction and control.

We should note that the staff of the Secretariat of the Commissioner for Human Rights has repeatedly encountered these practices of correctional and juvenile correctional facilities of the State Penitentiary Service whereby the administration practically holds aloof from its duties on correction and control of the convicts’ behavior. Instead, they place these important functions with other convicted persons thus violating national legislation and international human rights standards.

However, particularly in Temnivka correctional colony (№ 100) the use of the so-called “active” unit has reached extreme scale. The administration formalized this practice by establishing the “order section” performing the functions of maintaining order and controlling behavior of convicted persons. The convicted persons from the section walk around the territory with red armbands; they gather in their premises where field officers give instructions, including on measures in relation to individual convicts; they take part in both general and personal searches etc.

They enjoy privileges from the administration, and can move freely around the territory, as well as have their own gym. All interviewed convicts that the so-called drill is implemented through to “active” unit with disciplinary punishments for minor violations. For instance, one of the “activists” required the junior inspection to write a report on violation of the regime for a minor violation (damaged clothing tag). When the latter refused, the “activists” personally took the convict to the duty unit where he continued to demand disciplinary sanctions from the administration.

The duty unit has specialized room with barred windows foreseen by the legislation. The room has no furniture/appliances except for a table. According to the administration, the said room is used for searches. At the same time, the convicts stated that these premises are used for temporary (up to 10 hours) holding of convicts who had violated the procedures, until obtaining their explanations.

***During visits to Dykanivska (#12) and Pervomaysky (#117) correctional colonies***, and interviews with the convicted persons, members of monitoring groups received information about numerous violations of the rights of convicted persons, as well as identified instances of ill-treatment that can amount to torture, cruel, inhuman, or degrading treatment or punishment.

The so-called correction measures start from the moment of convicted persons’ arrival to the facility when the staff and “active” inmates offer newcomers to clean

toilets and other places in the quarantine, diagnostics, and allocation units. The personnel and “active” prisoners subject those who refuse to mop the floors, to physical violence in the form of “stretches”. The persons is put facing the wall with the arms up and legs at shoulder width, beaten with hands, feet and wooden sticks on all body parts, except for the head.

The administration uses such refusal to clean as a method of selection in accordance with the criminal subculture. Considering these persons to be criminal leaders, after the beating the personnel imposes the strictest disciplinary punishment of placement into disciplinary isolation cell for 15 days.

Further on these convicts confront the staff in relation to their unwillingness to follow certain procedural documents, i.e. prohibition of sleep and sitting on beds during daytime, regulated wake-up after night sleep, compulsory physical exercise, restrictions in access to TV programs, as well as the lack of free movement around the territory etc. The convicted persons also incite other inmates not to follow these instructions. The administration often penalizes them in order to reduce the negative impact of the said convicted persons, calls them gross violators of the penitentiary regime, and prepares evidence for punishment on false grounds under Article 391 of the Criminal Code of Ukraine.

Inmates also stated during interviews that persons attempting at or committing self-harm, as well as those behaving in agitated manner during conversations on regime violation, are placed into temporary off-record holding at the medical unit for the so-called “tying”. The administration tells these convicted persons that the latter will be subjected to relevant measures due to their aggressive behavior. Unregistered case files on psychiatric disorders are compiled in relation to these persons. Then, in the medical ward, they are tied to the bed with sheets with no opportunity to satisfy their natural needs. Staff and “activists” periodically use violence towards these inmates, including beatings with hands on different body parts, predominantly the chest, resulting in injuries of varying degrees, including cracked ribs. Another type of common manner of inflicting injuries is the following: the staff member stands on the convict’s chest and abdomen and jumps for at least 10 minutes while holding on to the wall.

In the quarantine, diagnostics and allocation unit, the monitors discovered that an “active” inmate stays with the newcomers 24/7 (during the past 1.5 years) who is registered as cleaning staff performing household services. However, his tasks include control over the newcomers’ behavior, as well as, according to the interviewees, active partaking in mental and physical violence towards the said persons.

At the same time, according to information submitted to the Commissioner, an inspection by the Office of the Prosecutor in Kharkiv region shoed that none of the persons interviewed by prosecutors provided explanations on existence of the said violations.

Meanwhile, the Secretariat of the Commissioner received information on the use of repressions (placement into disciplinary isolation cell) towards the prisoners who communicated with the monitoring group during its visit to Dykanivska correctional colony (#12). A request sent to the State Penitentiary Service in relation to this fact remained without due response.

In *Dubno juvenile correctional facility*, 16 inmates reported cruel treatment (physical violence) by the administration. Local prosecution authorities were informed about this with a request to provide relevant legal qualification.

On 22 May 2014, the Office of the Prosecutor in Rivne region recorded this case into the ERDR under #12014180000000049 and initiated criminal proceedings with a preliminary qualification under Article 365§2 of the Criminal Code of Ukraine.

At the same time, all 16 juveniles who had reported cruel treatment changed their testimony following interviews with the prosecutors and signed written statements on denying previous statements.

In another case, during a visit to Bilenke correctional colony (#99) and interviews with the convicted persons, the regional PR coordinator of the Commissioner received information on the use of violence by the staff towards 12 prisoners who had arrived from Zaporizhzhya remand prison.

The Office of the Prosecutor of Zaporizhzhya region received this information; however, there was no legal qualification of the actions or relevant response measures.

In November 2014, the *Commissioner for Human Rights opened proceedings on the mass assault of prisoners by the staff of Berdychiv correctional facility (#70)*.

In the framework of proceedings it was established that on 12 November 2014, in accordance with the Plan of general search in Berdychiv correctional colony (#70), there was a general search. According to the inmates, the search was conducted in a rude manner; the facility staff insulted them and tried to provoke illegal actions. They threw personal belongings, food items, dishes and underwear of the inmates from the living areas to the hallway floor.

In addition, there was a report on the beating of 10 convicted persons who were first brought from the enhanced supervision unit to the headquarters and, following a short conversation, assaulted by the field officers of the facility. For instance, the inmates noted that the staff were holding their hands behind their back in handcuffs and continuously hitting and kicking their head, mostly in the back. Visible injuries were attested by the representative of the Secretariat of the Commissioner following examination.

In Kyiv remand prisons, physical injuries (stripe bruises of wrist joints from handcuffing, bruising and hemorrhage of the head and neck) were found on 4 convicted persons brought from Berdychiv correctional colony (#70) via Zhytomyr penitentiary facility (#8) on 12 November 2014.



According to the prisoners, on 12 November 2014, the staff and other people in camouflage uniform led by the deputy director of the facility H. entered the enhanced supervision unit cells at Berdychiv correctional colony (#70) where the prisoners were held. By that time, H. had been dismissed from office for two weeks due to investigation into his illegal action towards convicted persons. The group announced a search though “they did not look for anything, only took and destroyed food, personal belongings, confiscated spoons, cups, mirrors and glass dishes”. Then, the prisoners were taken out of the cell allegedly for a conversation with the directorship. They were brought one-by-one to the room and beaten cruelly, as well as threatened with physical destruction, with no explanations.

Other units also had similar instances of the use of violence. A large number of inmates confirmed the information received by the Commissioner during personal and group interviews with the staff of the Commissioner and representatives of public human rights organizations with prisoners of Berdychiv correctional colony (#70).

Moreover, there were reported self-harm acts by four prisoners protesting against administration’s actions.

Instances of cruel treatment were also found at *Zamkova correctional colony* (#58) and Vinnytsya penitentiary facility (#1) during a visit on 29 November 2014. According to a convicted P., in the morning of 27 November 2014, during removal from the disciplinary isolation cell at Zamkova correctional colony (#58) to the medical unit, the prison staff beat him. To protest these actions, the convict harmed himself by cutting both forearms. On the same night, he was transferred to another penitentiary facility. Upon arriving to Vinnytsya penitentiary facility (#1) on 28 November 2014, he was examined by medical staff who recorded external bodily injuries in the form of bruising and scratch wounds on his back.

### **Systemic violation of the penitentiary procedure established by law leading to violation of the right to free development of person**

#### ***Support of criminal subculture, social correction methods, transfer of responsibility for maintaining penitentiary procedure by the administration of facilities to the convicted persons***

➤ *Existence of strict hierarchy among the convicted persons and appointment of the “enforcers” for the facility, its units, local sectors, quarantine unit, common funds, gambling etc.*

➤ *Substitution of the set procedure for enforcement of convicted persons’ rights with the criminal subculture and material dependency of some convicts from others.*

➤ *Transfer of functions of maintaining order at the regime facility to convicted persons with negative tendencies who maintain connections with the outside world organize delivery of prohibited items, solve conflicts and other current issue.*

➤ *Use of methods of influence on convicted persons, which are not foreseen by the law.*

➤ *Social discrimination and marginalization of convicted persons, stigmatizations, and dishonoring (persons are isolated, regularly cleaning certain cells, toilets, places of common use etc.).*

Results of monitoring of **Berezan correctional colony (#95)** evidenced that administration of the facility stratifies the convicts and transfers responsibility for maintaining order to convicted persons with negative tendencies. By doing so, they support criminal subculture without consideration of social correction methods provided by the Criminal Executive Code of Ukraine.

Thus, the administration relieves itself from the duties of correction measures and control of the convicts' behavior transferring these duties onto convicted persons with negative tendencies. This practice constitutes a gross violation of national legislation and international human rights standards.

Interviewed prisoners confirm the information above. According to them, the administration transfers a number of tasks in relation to maintaining order in the prison to some of them. In particular, there is a strict hierarchy among them, appointed "enforcers" responsible for the facility, units, local sectors, quarantine unit, common fund, and gambling etc. The so-called "common funds" includes money and material resources (cash, cigarettes, medicines etc.) and is collected as a toll from the convicted persons. At the facility, the system of influence is constructed in the following way: 50% of issues are solved by the "enforcers", and 50% - by the administration.

The "enforcers" appointed from prisoners exercise control in the regime facility, maintain connections with the outside world, solve conflicts and other current issues, including matters of delivery of prohibited items to the secured area (drugs, alcohol, mobile phones, parcels, tobacco products, coffee etc.). In addition, prisoners can purchase any item from "dealer" prisoners.

Almost all matters of delivery of prohibited items are solved through the industrial area. In addition to the production norm, different items of common use are produced from the leftovers (large waste). These items, the so-called "livak" are usually sold for money (small souvenir items costs 300-400 UAH, items requiring more handcraft – 1200 UAH) or cigarettes.

In violation of the law, the convicts can consume alcohol, however, exclusively after the evening inspection. The use of alcohol "not during designated time" is punished by "enforcers" and their assistants. There is a stricter penalty, physical punishment, for those initiating conflicts in the state of alcohol or drug intoxication, as well as drug overdose (these cases are carefully concealed).

For instance, during conflict between the convicted person and administration, the latter involves "enforcers" who use their status and influence to punish the prisoner. The said conflicts are usually resolved in the absence of administration staff. Only in cases of strong resistance or outrage by the prisoner, handcuffs are used (for pacifying the persons). Other special means (straitjacket, rubber batons etc.) are not used. In certain cases, administration denies lawful requests as a penalty for bad behavior.

While the administration is completely inactive and supporting, there are instances of cruel and degrading treatment among prisoners. It was established during monitoring that 8 persons who had stolen from other prisoners or were in debt before

them and did not return it (“rats”) were rejected by the general population of prisoners and kept constantly at the isolated premises at the inter-zone checkpoint. These measures are also used in relation to convicted persons who had overdosed on narcotic substances. The administration did not provide sufficient explanation as to these facts.

In addition, there are *stigmatized prisoners* who regularly clean toilets, particularly in other cells. Almost all prisoners at the disciplinary isolator/cell-type premises confirmed this fact and stated that duty schemes are formal, whereas cleaning of sanitary facilities in the cells is done by convicted persons brought by the administration in the morning.

***Among other things, there are cases of arbitrary restriction of the legal rights of convicted and detained persons:***

- *There are violations of the right to telephone conversations. Due to the limited number of phones and schedule designed in the interests of administration, the length does not exceed 3-5 minutes;*
- *There have been numerous complaints by convicted persons and prisoners on failure to follow the requirements of food preparation, as it does not have proper quality and organoleptic qualities. There are almost no fresh vegetables or sufficient amount of fats in prisoners’ nutrition;*
- *There are cases of using free labor of convicted persons who are taken to production units for longer than the period established by the legislation, or their working hours are not recorded properly. In addition, there are instances when items produced by prisoners are counted as production of the so-called “active” unit (brigadiers);*
- *Amount of allocations for compensation of the work of prisoners assigned for household services does not allow for payments of minimum monthly wage (1218 UAH). In practice, they are paid only 0.25 or 0.5 of the minimum wage. There is no compensation for work on weekends and holidays in accordance with the Labor Code of Ukraine;*
- *In almost every facility, there are instances of insufficient provision of individual protection means and additional nutrition for workers.*
- 

***The Commissioner for Human Rights regularly receives citizens’ petitions on violations of the legal rights of detained and convicted persons.*** In 2014, there were 1038 petitions on these matters, usually raising the following issues:

- Unsatisfactory conditions of holding convicted and detained persons, and low quality of food;
- Violations of the right to healthcare, medical assistance and insurance;
- Violations of the right to correspondence
- Violations of the procedure for phone calls;

- Use of physical violence and threats to life by the administration;
- Violation of the right to legal aid.

***Convicted and detained persons are practically not aware of their rights and duties, and facility administrations ignore provision of such information.*** The said facts are confirmed by a large number of petitions (816) to the Commissioner for Human Rights asking for clarification on implementation of the Law of Ukraine “On Amnesty in 2014”, as well as requirements of the criminal executive legislation in relation to conditional release from punishment, transfer to other penitentiary facility closer to the place of residence, obtainment of a passport, restoration of the rights to freedom of belief and religion. ***At the same time, in most cases response to these petitions is insufficient and has low efficiency:***

Petitions are sent to the authorities, actions of which are subject to complaint;

Inspections are superficial since their staff does not review in detail actions of the administration and keep neutral and loyal position;

Internal investigations into alleged illegal actions by certain officials are superficial or not held at all;

There are only formal responses or referrals to other state authorities with justification that the matters are outside of their scope of competence.

There is a need to solve the issue related to adherence with Article 113 of the Criminal Procedure Code of Ukraine, as there are numerous complaints from convicted persons ***about the lack of possibility to challenge actions of the administration.*** In practice, inmates can only submit an oral complaint to the officer on duty. In case of a written closed application the inmate can be called to the administration with opening of the envelope and reading of the contents, and even tearing the letter and throwing it away. Later, a conflict is provoked through the “activists” with the inmate and disciplinary sanctions applied, including placement into the disciplinary isolation cell or transfer to the enhanced supervision unit.

***The low performance of the administrations in relation to clarification of rights deserves particular attention.*** The leaflets “Rights and duties” are not adequate and contained limited information on exercise of rights.

Information boards are not kept well. There are virtually no updates, and the information is outdated. The boards “Legal corner” contain no information on the rights of inmates. In addition, most departments have no information on prevention of socially dangerous diseases.

In addition, interviews with inmates revealed that a large number of question on amnesty, phone calls, parcels, or visits. The inmates are not aware of their rights and duties, and the administration ignores providing such information. In certain cases, officials respond, “There are things I read out, and there are things I will not mention”, or “Nothing is allowed”. As a result, in June 2014, convicted persons at the disciplinary isolation unit at Berezan correctional colony (#95) went on a hunger strike to receive clarification of the latest legislative changes on receiving parcels. The inmates were forced to take this action since the administration fulfills the request in such case.

The right to phone conversations foreseen by Articles 107, 110 of the Criminal Executive Code of Ukraine is not ensured in its entirety. The convicted persons complained about violations of the privacy of conversations by other inmates.

For instance, one can only use the phone upon writing an application and having a card received from the relatives. At the same time, the majority of interviewed inmates confirmed that they use the payphone very rarely and prefer illegal mobile connection instead.

For instance, there are only 2 payphones for 1200 inmates at Temnivka correctional colony (№ 100). A convicted person has to arrange with the senior officer on duty prior to making a phone call. The latter dials the number, clarifies the addressee's data, and only then allows a conversation. It is forbidden to call without arrangements with the senior officer on duty.

Berezan correctional colony (#95) has only one payphone. One can use it only upon writing an application and having a card from the relatives. At the same time, the majority of interviewed inmates confirmed that they use the payphone very rarely and prefer illegal mobile connection instead. If there is cash, a "dealer" inmate solves the question of buying a cell phone for 250 UAH.

***In majority of visited institutions, organization of free time and leisure of inmates is unsatisfactory.*** There are virtually no functioning organizations of amateur arts except for religious services and certain religious groups. For the most part, convicted persons spend their leisure through watching TV programs and playing board games (cards, backgammon, chess etc.).

***Violations of the right to sufficient standard of living, including sufficient nutrition, clothing, and housing (Article 48 of the Constitution of Ukraine), remain widespread in penitentiary institutions.***

- *Illegal fees for meals and material belongings contrary to the current Article 121 of the Criminal Executive Code of Ukraine whereby convicted persons are obliged to reimburse only cost of utilities and other provided services.*

The Ministry of Justice of Ukraine insists on full reimbursement of meals and clothing by convicted persons despite the fact that, according to the decree of the Cabinet of Ministers of Ukraine #1017 dd. 08.08.2007 "On approving the list of paid services provided by institutions of the State Penitentiary Service", food, provision of inmates with food, clothing, footwear, and garments are not on the list of services.

On 11 March 2015, the Commissioner for Human Rights addressed the Prosecutor General of Ukraine on the matter of ensuring the rights of convicted persons in relation to payments from their salaries, pensions, or other income.

In response, the Office of the Prosecutor General of Ukraine informed that the position of the Ministry of Justice of Ukraine, in accordance to which "other provided services" include "provision of food, clothing, footwear and garments" is erred and not based on legal norms. Accordingly, on 31 March 2015, a letter was sent to the Ministry of Justice of Ukraine emphasizing the above and suggesting that measures be taken to eliminate these violations, including initiation of relevant legislative amendments.

- *The issue of placement and provision of living space for the convicted persons is not solved; there are no decent sanitary and living conditions;*
- *The appliances are old and worn; living premises require regular, sometimes capital refurbishment, networks of communal use are in similar condition;*
- *Most general cells of remand prisons are dirty; the walls are leaking and covered in mold; there is virtually no free space due to excess crowding, anti-sanitary conditions and unpleasant smell;*
- *Sanitary facilities are in unsatisfactory technical condition; ventilation and lighting are insufficient or absent etc.*

As a result of negligence, there are conflicts between the administration and convicted persons. A vivid example took place at **Zamkova correctional colony (#58)** in October 2014.

The visit established that approximately 230 inmates refused to take food provided by the institution as a protest to illegal actions and negligence of the administration. They were complaining about inappropriate conditions, including insufficient space, unsatisfactory condition of sanitary facilities, insufficient lighting and ventilation, low level of food procurement and medical service. A large number of complaints concerned arbitrary disciplinary punishments, as well as forcing to write statements on absence of complaints by the prosecution and facility staff.

The Office of the Prosecutor of Izyaslav district of Khmelnytsky region initiated a criminal case under article 365§2 of the Criminal Code of Ukraine (entered into the ERDR on 20 October 2014) pursuant to an application by an inmate S. on assault. *The issue of outcomes of a repeat inspection is open at present time.*



***In general, conditions of holding inmates in penitentiary institutions fail to meet legal requirements:***

The number of equipped sleeping places exceeds the legal norm on space. There is virtually no free space in living sections. There are many unnecessary things in rooms for personal belongings, and the inmates keep their belongings under their beds;

Living and service spaces of structural units of certain facilities are not used in accordance with their purpose;

Electrical networks are designed with violations of safety rules and isolations, and their use is extremely dangerous;

Certain departments have no premises for correctional measures;

Sanitary facilities in most visited institutions are in unsatisfactory condition.



*Odesa penitentiary facility (№ 21)*

For instance, *the diagnostics and allocation unit of Melitopol correctional colony* was equipped similar to an enhanced supervision unit in violation of Article 95 of the Criminal Executive Code of Ukraine. Sleeping premises (2 rooms with 3 sleeping places each) are equipped as cells with cell doors and additional internal cage doors contrary to pp. 11, 12 of the Internal rules for penitentiary facilities approved by the order of the State Department of Execution of Punishments #275 dd. 25 December 2003.

During a visit, one underage woman was in one of these premises. She explained that she was virtually in one sleeping room at all times, refusing to go out to a walk and staying at the exercise yard for no more than 15 minutes. In order to leave the sleeping room, one needs to call a senior inspector to open the door since there is no free access to all additional premises of the unit, drinking water, or sanitary facilities.

The exercise yard at the unit is too small, and it is only possible to sit on the bench. In addition, it is located within 15 meters from the security line next to the area for service dogs. As a result, loud barking and aggressive behavior of the dogs creates unbearable conditions and makes it impossible for someone to remain in the exercise yard.

At the time of monitoring, there was reconstruction of social and psychological service premises from barracks to blocks. These premises, as a rule, are designed for stay of approximately 50 inmates.

In the meantime, *sleeping premises in other units remain overcrowded with 90-150 inmates*. As a result, sleeping places do not provide for minimum privacy; there is

no sufficient free space; the inmates create private space with curtains made from sheets.



*Berezan correctional colony (№ 95)*



*Zamkova correctional colony (№ 58)*



*Shostka correctional colony (№ 66)*



*Berdychiv correctional colony (№ 70)*

At the same time, among general sleeping premises where most inmates are held, there are separate high-comfort rooms for 5-10 persons equipped with TVs, microwaves, fans, electric kettles etc. Inmates with privileged status are placed in these premises, which does not reflect objectives and principles of criminal executive legislation.



Windows of correctional colonies are in inadequate technical condition, some of them have broken or non-transparent glass causing insufficient access of daylight. Design of the windows is outdated, and the frames cannot be opened. Access to fresh air is provided only through disassembling them, which is impossible during the cold period. Consequently, access to fresh air is restricted.

There is no daily upkeep of adequate sanitary and hygienic conditions in certain *general use facilities (sinks, toilets)*. Their condition is anti-sanitary and does not correspond to technical requirements: sinks and closet cups are old and outdated requiring replacement. Despite available instructions on disinfection in units and the need to provide prepared disinfectant solution, such reserve is absent.

Some toilet stalls are not equipped with semi-automatic flush or doors, which leads to spread of unpleasant odors, excess humidity, anti-sanitary conditions, as well as prevents their use with respect for dignity and privacy.



*Berezan correctional colony (№ 95)*



*Zhytomyr penitentiary facility (№ 8)*

Washing rooms are in unsatisfactory technical and sanitary condition, there were not enough taps.



*Berezan correctional colony (№ 95)*



*Vilnyansk penitentiary facility (№ 11)*

There is no upkeep of adequate order *in the rooms for storage and intake of food*, and fire safety requirements are severely violated. For instance, there were burnt bricks on the table at the unit #2 used as a stand for self-made oven for heating food.



*Berezan correctional colony (№ 95)*

Electric sockets in housekeeping rooms are out of order, fridges are outdated and lacking sanitary disinfection, which causes gastrointestinal infections. Rooms for storage of personal belongings have no order, and some inmates' bags have no tags with last names and brigade numbers.

**Rooms for reception and personal search** are not equipped adequately as there are no seating arrangements (benches, chairs). The rooms are in disorderly and anti-sanitary condition; the equipment is worn out and has not been repaired for a long time. There is insufficient lighting, and the room is half-basement.



*Berezan correctional colony (№ 95)*

*Zhytomyr penitentiary facility (№ 8)*

**Almost all visited** enhanced supervision and disciplinary isolation cells have insufficient natural lighting, inadequate technical condition of sanitary units, weak intake and exhaust ventilation.

Some disciplinary isolation cells are narrow with virtually no free space. Two-person cells are only 1.1 – 1.7 sq. m. wide and are unfit for holding people. The number

of equipped sleeping places in enhanced supervision and disciplinary isolation cells exceeded the number of inmates significantly leading to insufficient free space. The lighting is natural and artificial, and there is half-darkness when artificial lights are off. In addition, the lighting is designed with violations of safety rules, light bulbs are not covered with ceiling lamps preventing access by inmates.

The toilet is flushed through the sink tap, and there is no semiautomatic flush. The water is provided by the officer on duty upon request, which leads to constant unpleasant odor. The sanitary facility of the cells was in inadequate technical condition and dirty, and its use was degrading for the person's dignity.

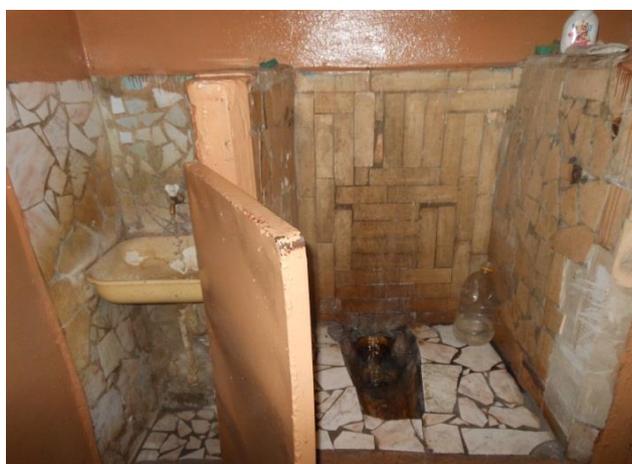
There is no drinking water in cells; the convicted persons drink tap water, the quality of which is unsatisfactory. When kept in plastic bottles, it causes rusting.



*Mariupol remand prison*



*Berezan correctional colony (№ 95)*



*Shostka correctional colony (№ 66)*

### **Conditions in arrest houses**

The cells are designed for several persons and have the capacity of 14 sleeping places. Conditions of persons under arrest are identical to those in disciplinary isolation cells and cell-type premises, as they are also located in the semi-basement.



*Shostka correctional colony (№ 66)*

**Exercise yards for inmates** at disciplinary isolation/enhanced supervision cells are typically made of four solid walls sized 12-25 square meters with high bars instead of a ceiling.

Replacement of the textured coating has not been completed (the walls are covered with rough coating); they need decoration and increased access to sunlight (despite the required 1/3 of the area, rain canopies take up almost the entire space), as well as conditions for physical exercise.

Exercise yards for detained persons in remand prisons are in similar condition.



*Berezan correctional colony (№ 95)*



*Mariupol remand prison*

***The issue discrepancy between the legislative norms on space in cells of preliminary detention facilities and current human rights standards is yet unresolved.*** In particular, the Law on Preliminary Detention establishes that it should not be less than 2.5 sq. m., whereas current international standards provide for at least 4 square meters. Unfortunately, with the lack of funding for regular and major refurbishments, these measures were not implemented.

**The following violations remain widespread in remand prisons:**

There are no adequate responses to the issues of placement and provision of living space; there are no adequate sanitary and material conditions;

The appliances are old and worn; living premises require regular, sometimes capital refurbishment, networks of communal use are in similar condition;

- Most general cells of remand prisons are dirty; there are leakages and mold on the walls; there is virtually no free space due to excess crowding, anti-sanitary conditions and unpleasant smell;
- Sanitary facilities are in unsatisfactory technical condition; ventilation and lighting are insufficient or absent etc.

According to the legislation in relation *to access to hygiene items by persons in remand prisons*, the latter have the right to purchase or receive in parcels/packages, use and store items of first necessity, periodicals, literature, food etc.

At the same time, there is insufficient attention paid to improvement of general hygiene in remand prisons, access to water and sanitary conditions, as well as personal hygiene items contrary to requirements of legislation and international standards on treatment of prisoners.



*Zaporizhzhya remand prison*



*Kyiv remand prison*



*Vilnyansk remand prison*



*Odesa remand prison*

In addition, during interviews the prisoners voiced complaints about the *failure to adhere to food preparation technology leading to low quality and inadequate organoleptic properties*: the food does not taste good, pickled cabbage is provided every day, the nutrition is limited.

The food has low quality and inadequate organoleptic properties. The menu lacks variety: predominantly it includes barley and wheat porridge, the cooking process does not follow the technology (the soup is an indiscrete mass, there are many bones in the food, sometimes – chicken feathers, and fish is provided only in canned form. The usual dinner is potatoes (“resembling animal food”).

During the visit to meal units of *Dykanivska (#12) and Pervomaysky (#117) correctional colonies, Starobilsk remand prison*, it was established that lunch salads from pickled vegetables did not contain onion and oil in violation of regulations. Nutrition of convicted and detained persons even during summer has virtually no fresh vegetables.

*During monitoring of penitentiary facilities, prisoners voiced complaints about violations of the labor legislation during the use and remuneration for prisoners’ work.* One of the inmates of Berezan correctional colony (#95) indicated that he had been working at the unit producing items of general use during a long period, yet received three cigarettes as compensation. Following an attempt to challenge the administration’s actions, he was subjected to disciplinary measures, including transfer to a cell.

**Manufacturing process at certain enterprises of penitentiary facilities is not organized properly**, the so-called “active” prisoners known as “brigadiers” control fulfillment of production norms and quality indicators. In addition, they perform staff functions in relation to preparing work tasks and controlling assignments on taking prisoners to manufacturing sites. The brigadiers enjoy preferential treatments by the administration, including higher wages.

For instance, the average salary at the bag production unit at *Pervomaysky correctional colony (#117)* in June 2014 was approximately 100 UAH, whereas the brigadiers received over 700 UAH for that month. Moreover, the inmates stated that part of the produced merchandised is recorded as the brigadiers’ output so the latter would receive higher salaries. Situation at the manufacturing unit at *Dykanivska (#12) correctional colony* is similar.

There were instances of using free labor of inmates at Pervomaysky correctional colony (#117). The prisoners were taken to manufacturing sites daily from 16:45 to 19:30 (for 2 hours 45 minutes) with no record in the worksheet. There was also no record of produced merchandise. There were other instances of using free labor due to failure to keep record of performed work at the said facility (brigade on roof repair).

In 2014, administrations of penitentiary facilities continued to conclude agreements with commercial enterprises on services with the use of the customer’s raw materials (in particular, for knitwear and other goods) with minimum payment for the prisoners’ labor. For instance, *in Berdychiv correctional colony (#70)*, the amount for worker’s salary in the price of one pair of gloves constituted 5 kopyyka. Thus, agreements concluded by many institutions are unbeneficial to prisoners since they exclude the possibility of receiving fair compensation.

Inspection of the issue of piece rate pay established that during long period a symbolic salary was provided, which is degrading in relation to the workers and constitutes slave labor. The enterprise of Berdychiv correctional colony (#70) established the salary of O.O. Hrytsenko in July 2014 in the sum of 6 UAH, and only 1.5 UAH was transferred to his personal account (25% of total salary).

There is an issue of insufficient funding of the work of service staff prisoners by the State Penitentiary Service. Importantly, these expenses are provided under the “Salaries” line of the state budget (KEKV 2111) along with remunerations for contracted workers. In practice, the salary of these inmates was paid less than in half (in some facilities – a quarter) of the legally established minimum despite the fact that majority of these prisoners had been working at least 8 hours per day (including weekends and holidays) due to uninterrupted technological cycle of the functioning of these facilities (cafeteria, interregional hospitals, steam-rooms etc.). Their work on weekends and holidays was not remunerated at all despite requirements of the Labor Code.

In violation of Article 110 of the Labor Code of Ukraine, Article 30 of Ukraine “On remuneration”, administrations did not notify prisoners on the amount of salary, in particular the total amount, size and grounds for reductions, and the amount transferred to the personal account of inmates.

In addition, in violation of the Resolution of the USSR State Labor Committee and the Presidium of the Central Council of Trade Unions #731/ II-13 dated 16.12.1987 “On the order of free provision of milk or other food products of the same value to workers and servicemen working in hazardous conditions”, workers of units with hazardous conditions (foundry production, electric and gas welding) did not receive milk. In addition, there were no bonuses for hazardous labor conditions as foreseen by law.

### **The state of ensuring the right of convicted and detained persons to healthcare raises concerns.**

Following the monitoring visits, the relevant reports indicating specific shortcomings were reviewed with subsequent recommendations for improvements. The following shortcomings were most frequent:

- Medical records do not correspond to current legal provisions;

- Insufficient level of testing for HIV-infection, as well as inadequate medical care for persons with HIV/AIDS;

- Inadequate conditions for prisoners with infectious tuberculosis;

- Inadequate records on physical injuries of underage prisoners at the time of arrival;

- Failure to follow joint orders of the Ministry of Justice and Ministry of Health of Ukraine on providing prisoners with medical assistance;

- Insufficient procurement of necessary equipment and medication for medical units;

- Insufficient knowledge of norms and requirements of international human rights legislation, standards on treatment of prisoners by the personnel;

Unsatisfactory level of training for medical personnel for confirmation or upgrade of qualification;

Kits for urgent medical assistance lacking medications, medical equipment is not used in accordance with the purpose (the ultrasound machine is not used due to the absence of a qualified specialist).

A monitoring visit to *Artemivsk remand prison* on 16 October 2014 showed that there were 38 patients with infectious tuberculosis at the isolation ward, which created an extremely dangerous epidemiological situation in both the facility and entire city of Artemivsk. In addition, there were 2 persons with insulin dependency form of diabetes who had not received any injections for several weeks. The situation with procurement of medication and medical equipment at the facility was unsatisfactory. The last transfer of procurement funds took place in July 2014. The medical unit lacked medication for hypotension, bleeding, pain, inflammation, and spasms, there were no rubber gloves, drip systems, syringes etc. Territorial medical establishments of the MoH of Ukraine refused to provide medical assistance for the special population in violation of the joint order of the Ministry of Justice and Ministry of Health of Ukraine №239/5/104 dated 10.02.2012 “On the Procedure for cooperation between healthcare institutions of the State Criminal Executive Service of Ukraine with healthcare institutions in provision of medical assistance to detained persons”, which further complicates the critical situation of medical assistance in remand prisons.

During visits, there were multiple instances recorded when patients admitted to regular treatment (following preliminary examination) were discharged in 3 days with a diagnosis “almost healthy”, which is confirmed by the relevant records in the journal of patient registration. These instances took place in relation to patients with pneumonia and rheumatism with contagious endocarditis and mitral valve deficiency.

The said fact calls for further inspection since during monitoring visits to Shostka correctional colony (#66) and Berdychiv correctional colony (#70) there were complaints by prisoners about infringements of the rights of ill prisoners admitted to general hospital at Temnivka correctional colony (№ 100) through coercion to refuse treatment. Interviewed inmates also stated that early discharge prior to completion of treatment is used as a punishment for violations (for instance, smoking outside of designated areas).

During monitoring visit to *Mariupol remand prison* on 19 November 2014, it was established that there were two prisoners with firearm leg injuries at the medical unit. This constitutes a violation of current legislation as they are in need of specialized medical assistance. In addition, despite requirements of the Cabinet of Ministers decree #205 dated 25 June 2014, there were 24 persons with contagious tuberculosis at the cells of tuberculosis unit. The said persons must receive treatment either in specialized units of tuberculosis treatment hospitals of the State Penitentiary Service of Ukraine, or at tuberculosis treatment facilities of the Ministry of Health of Ukraine.

On 9 October 2014, a visit to *Starobilsk remand prison* showed that only disinfection specialist and pharmacist were present from the entire medical unit staff. According to their professional duties, they do not provide direct medical assistance. Staff of the human resources service failed to clarify to the monitoring group who was

vested with duties of the medical unit chief. Consequently, this leads to a conclusion on inadequacy of the protection of the right to healthcare at the institution.

Importantly, in 2014, the Commissioner for Human Rights received 615 written petitions from prisoners or their close relatives on inadequate medical assistance at penitentiary facilities.

The key issues raised in these petitions included low level of primary medical assistance at penitentiary facilities, inadequate organization of the process of consultations with specialists, arbitrary delay in reviewing requests for hospitalization by the Department of the Penitentiary Service of Ukraine etc.

For instance, on 3 April 2014 pursuant to proceedings launched by the Commissioner for Human Rights following a petition of citizen Zh., a verification visit to *Shostka correctional colony (#66)* took place for the purpose of checking information on violation of constitutional rights of a convicted R. Multiple violations of the rights of persons at the institution were identified during the visit. In particular, health condition of prisoner R. required urgent surgery thus he was referred to the interregional hospital at *Temnivka correctional colony (№ 100)*. However, officials of the institution demanded that prisoner R. and five other convicted persons waived treatment. As a result, all of them returned to the penitentiary facility.

During personal conversations with convicted persons, violations of the rights of prisoner D., a diabetes II patient, were discovered. During his stay at Temnivka correctional colony (№ 100), the medication for maintaining blood sugar level was confiscated. Upon return to Shostka correctional colony (#66), he did not receive any treatment thus facing threat to his life.

There were numerous recorded violation by the Department of the State Penitentiary Service that ignored requests for hospitalization of convicted persons. Sometimes responses to such requests were provided only after 3-6 months, or not provided at all.

### **Response and state of dialogue with the State Penitentiary Service in relation to recommendations of the Commissioner for Human Rights**

According to the SPS, the service authorities have conducted a detailed inspection of the Report of the Commissioner on Monitoring Places of Detention in 2013. An order #№ 804/0Д-14 dated 24.12.2014 of the SPS was issued, and a working group comprised of SPS officials was established for the purpose of implementation of the Report recommendations.

Overview of the results of conducted activities at the bodies and institutions under the authority of the SPS of Ukraine were submitted to the Secretariat of the Commissioner for Human Rights.

*The SPS of Ukraine supports measures for implementation of the national mechanism against torture for strengthening guarantees for protection of human rights.* In particular, unimpeded access to facilities of the SPS is foreseen for the staff of the NPM Department of the Secretariat of the Commissioner for Human Rights.

To ensure cooperation with the ombudsman, the SPS issued an order #810 dated 30.11.2012, in accordance to which authorities of territorial SPS bodies shall provide

necessary support to the staff of the NPM Department in their monitoring visits to penitentiary facilities and remand prisons.

The State Penitentiary Service of Ukraine has taken into account recommendation of the Commissioner and revoked internal instruction #3/2/1-2344 dated 28.04.2010 that prohibited accepting open correspondence from detained and convicted persons to the Commissioner for Human Rights, the European Court, other international organizations to which Ukraine is a party or member state, prosecutor or defense counsel. The said instruction violated the procedure established by the Regulations on the custody of detained and convicted persons in remand prisons of the State Department for Execution of Sentences approved by the Department order #192 dated 20.09.2000. According to the procedure, in case of absence of a postal stamp or funds for its purchase, expenses are born by the remand prison.

The issue of compliance with Article 134 of the Criminal Executive Code of Ukraine is under supervision. The said article regulates communication of the convicted person with an attorney or other legal expert authorized by the law to provide legal aid personally or upon assignment of a legal entity during the convicted person's (prisoner's) stay at the disciplinary isolation unit, isolation ward, cell-type premises. Rooms for short visits are equipped in accordance with the order of the Ministry of Justice of Ukraine # 1118/5 dated 27.07.2012.



*Shostka correctional colony (№ 66)*



*Zamkova correctional colony (№ 58)*

Persons sentenced to life imprisonment and the housekeeping unit prisoners have the possibility of unlimited number of phone conversations pursuant to written applications. The calls are conducted via payphones at their own expense.



*Pryluky juvenile correctional facility*



*Sambir juvenile correctional facility*

A number of measures were implemented for the purposes of improving conditions of custody for convicted and detained persons.



*Artemivsk remand prison*



*Zamkova correctional colony (№ 58)*

Drinking water tanks with taps were installed in the cells of remand prisons. The priority was given to cells for underage persons. Refurbishments of some exercise yards took place along with equipping them with rain canopies and creating conditions for active physical exercise.



*Melitopol juvenile correctional facility*

Selection of goods at the facility stores was increased to include food, tobacco products, detergents, personal hygiene items, clothing, footwear, bed linen and underwear. Prices for goods at the stores do not exceed marginal prices, and all the quality documentation is available.



*Artemivsk remand prison*

Functioning of medical units is modified to comply with the joint orders of the Ministry of Justice of Ukraine and the Ministry of Health of Ukraine. The staff of medical units established supervision over the group of persons with tuberculosis, viral hepatitis B and C. Institutions are cooperating with territorial institutions of the MoH of Ukraine, including infectious disease specialists who are involved, if necessary, for consultation and assignment of treatment.

The decree of the Cabinet of Ministers of Ukraine #205 dated 25 June 2014 approved the Procedure for medical assistance to persons with tuberculosis who are detained or held in custody at remand prisons and penitentiary facilities. According to the order, there is mandatory medical examination and treatment, including specialized, of convicted and detained persons with tuberculosis.



*Mariupol remand prison*



*Zhytomyr penitentiary facility (№ 8)*

### 4.3. Results of monitoring of institutions of the State Border Guard Service

#### 4.3.1. Overview of detention places of the State Border Guard Service

Places of detention of the State Border Guard Service subject to NPM monitoring include:

- *Temporary detention facilities (TDF)*<sup>54</sup>;
- *Special premises for temporary custody of persons apprehended under administrative law (SP)*<sup>55</sup>;
- *Designated places (including transit zones) at border checkpoints for custody of persons denied entry to the country (places of custody for persons denied entry – PCPDE)*

PLACES OF DETENTION			
	2012	2013	2014
TDF	10	11	10
SP	75	60	53
PCPDE	No information	3	0

As of 31 December 2014, the State Border Guard Service operated 63 places of detention with the total capacity of 314 persons (10 TDFs for 158 persons and 53 SPs for 156 persons).

During 2014, the above facilities held 1058 persons from 43 countries (of which 660 were in custody for up to 3 days, and 398 for over 3 days).

As to the specially designated premises (rooms) at Ukrainian state border checkpoints for persons denied entry to the country (except for transit zones of international airports): according to official data of the border agency, none of these places were functioning in 2014 at the border checkpoints (*in 2013, three specially designated premises were functioning – in Simferopol, Donetsk and Kharkiv airports*).

During the year, NPM monitors visited 5 places of detention under the control of the State Border Guard Service of Ukraine, including two repeat visits (*in 2013 there were 8 visits, including one repeat visit*), namely:

- 1 TDF (Lviv border control unit);

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<sup>54</sup> *Temporary detention facilities* are intended to hold offenders apprehended under administrative law on suspicion of an offense pursuant to a decision of the investigator and in accordance with the procedure established by the Criminal Procedure Code of Ukraine. Such facilities operate in locations of the state border guard authorities (usually, regional centers).

<sup>55</sup> *Special premises* are arranged at the units directly involved in protection of the state border and are designated for temporary custody of offenders apprehended under administrative law and violations of legislation on the state border of Ukraine.

- 2 SPs (*Zhulyany unit of Kyiv separate checkpoint and Lviv-airport unit of Lviv border control unit*);
- 2 PCPDE (transit zones of Kyiv and Lviv airports).

### Typical violations identified during monitoring visits

***There were no violations of the rights of detained persons that may constitute torture, cruel, inhuman or degrading treatment or punishment found in 2014.***

Following confidential communication with detainees, interviews with the staff and security guards of facilities, inspection of the state of functioning of facilities and examination of premises, a number of shortcomings that **may lead to ill-treatment** were identified, in particular:

- The current procedure does not guarantee free access of detainees to information on their rights and other useful information that would help adapting to new conditions, as well as provision of information in a language understandable to them immediately after apprehension<sup>56</sup>);



- Units of Zhulyany border unit of Kyiv checkpoint (Kyiv international Airport) and Lviv-airport unit of Lviv border control unit (Lviv International Airport) have no actual or formal medical staff;

- According to paragraph 3.2. of internal regulations at the SP of Zhulyany unit of Kyiv checkpoint, only persons held at the facility for over three days have the right to a walk with duration of 1 hours;

- Rooms for detainees have no desks or tables despite regulations of the border agency (*Zhulyany unit of Kyiv checkpoint, Lviv-airport unit of Lviv border control unit*).

<sup>56</sup> At Zhulyany border unit of Kyiv checkpoint and Lviv-airport unit of Lviv border control unit useful information (on the management of border guard agencies, contact phone numbers of the court, prosecution authorities, legal aid providers etc.) is available in Ukrainian language only on the board at the special premises hall. The internal regulations, daily schedule for persons detained at the SP in Ukrainian, Russian, and English languages are available on the same information board. Translations are either absent or incorrect.



Monitoring of the legislation of Ukraine, agency and interagency norms on observance of rights and freedoms of detained persons and prevention of torture, cruel, inhuman, or degrading treatment took place throughout the year. Its outcomes pointed to the following issues that had already been mentioned in the NPM report in 2013:

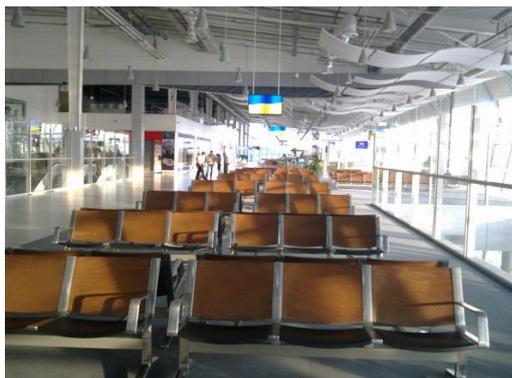
- rules and standards in the current Regulations on the procedure of holding of individuals detained by the State Border Service of Ukraine under administrative proceedings for violation of the legislation on the state borders of Ukraine and on suspicion of a criminal offence do not meet the current minimum standards for the treatment of persons taken into custody and, therefore, require revision;
- there is no legal regulation of the list of disciplinary measures towards persons held in custody of the border agency, conditions and procedure for their application, as well as guarantees for prevention of torture during their application;
- another remaining unresolved legal issue relates to the duty of public authorities to ensure proper conditions and vital needs (water, food, sleep, satisfaction of natural needs etc.) in transit zones of international airports for persons who were denied entry into the territory of Ukraine, whose freedom of movement in the transit area of such airports is limited until return to the country of departure.

### ***Observance of human rights and freedoms at the Ukrainian state border checkpoints***

During 2014, there were two monitoring visits to Kyiv and Lviv airports conducted to transit areas of airports for the purposes of monitoring observance of rights and freedoms of citizens at the Ukrainian state border checkpoints (in 2013 – one visit to the transit area of Kyiv airport).

Monitoring results confirmed the urgent need to find solution to the lack of adequate conditions at transit areas of airports for persons denied entry into Ukraine

and fulfillment of their vital needs (water, food, sleep, contact with the outside world etc.).



For instance, Kyiv and Lviv international airports have no conditions for sufficient night rest of persons denied entry. The latter often await return flights during one or several days. Regardless of their age and sex, they only have the possibility to stay at general seating of the departure area. Mothers with children suffer the most from these conditions since the state does not provide them with the possibility to use premises for mothers and children free of charge.

Foreigners denied entry have no way of topping-up their mobile phone accounts to make calls since there are no such terminals at the departure areas.

The departure area has no points to exchange currency for the purchase of personal items at the outlets (duty-free stores).

There is an ongoing issue related to numerous denials of entry into Ukraine based on the results of questioning by officials of the Border Guard Service.

For instance, statistics on performance of the border unit at Lviv international airport during 9 months of 2014 shows that following interviews Lviv border guard officials denied entry predominantly on the grounds of failing to confirm the purpose of visit to almost half of all foreigners who were denied admission. The State Border Guard Service command is not concerned with the fact that often such interviews take place with significant obstacles to communication without qualified interpreters or access to legal aid.

According to the head of the border control unit at Lviv international airport, interviews with foreigners for qualifying the purpose of visit and availability of funds for the period of stay and return are conducted based on the risk assessment in accordance with the Law of Ukraine "On Border Control", decrees of the government and other regulations of the agency.

However, the said law and statutory provisions do not contain clear criteria of risk assessment that justify denial of entry into Ukraine on the above grounds.

**In the Commissioner's view, the lack of clear criteria for justified decision that denies crossing the state border creates room for violations of human rights and freedoms, in particular, the freedom of movement.**

*Case study: On 5 September 2014, border guard officials at Lviv airport denied entry into Ukraine to the citizen of Turkey M. The decision was based on the record in the database of the State Border Guard Service on prohibition of entry for this persons issued by the regional department of the State Migration Service of Ukraine. To prove legal grounds of his actions, Turkish citizen M. provided copies of decisions of the district administrative court that postponed and revoked the above SMS decisions. However, the competent border guard official did not consider these court decisions though they are binding in accordance with the Ukrainian legislation and serve as confirmation of the legal right of M. to enter Ukraine. Consequently, the right to freedom of movement of this person, in particular, to enter Ukraine, was violated.*

As a rule, when denied entry, foreigners are deprived of access to legal consultation or support from organizations or experts authorized to provide legal aid in these cases.

Passport control areas have no visual contact information on these issues. Officials of border control units do not provide such information to foreigners.

**Consequently, foreign citizens who were denied entry into Ukraine currently have no access to legal aid during their stay at the transit (service) areas of international airports in Ukraine.**

#### **Implementation of the Commissioner's recommendations provided in 2014.**

According to the Administration of the State Border Guard Service, during 2014:

- suggestions of the Commissioner taken into consideration in the draft of the new Instruction on the custody of persons detained at the bodies (units) of state border control;
- Information on the right to immediately inform the next of kin on apprehension, grounds thereof and one's whereabouts was included into the written form of clarification of the rights and duties of the detained persons along with information on the right to contact the center for free secondary legal aid;
- Rooms for placement of detained persons at Zhulyany unit and Lviv airport were equipped with desks and chairs;
- Issues on prevention of torture, inhuman or degrading treatment and punishment of detained persons were included into the personnel training programs for 2015.

#### **4.4. Results of monitoring of institutions of the State Migration Service**

##### **Overview of detention places of the State Migration Service**

According to Article 13 of the Law of Ukraine “On Ukrainian Parliament Commissioner for Human Rights”, the following institutions of the State Migration Service (hereinafter – the SMS) are subject to monitoring:

*Centers for temporary stay of foreigners and stateless persons illegally staying in Ukraine (hereinafter – TACs);*

*Temporary accommodation centers for refugees<sup>57</sup>.*

The SMS of Ukraine maintains and operates two TACs designed for simultaneous accommodation of 373 persons:

- *Volyn TAC (capacity – 165 persons);*
- *Chernihiv TAC (capacity – 208 persons).*

According to official data of the migration agency, during 2014 these TACs held 407 foreigners and stateless persons (in 2013 – 337 persons), including 312 *persons in Volyn TAC and 95 persons at Chernihiv TAC.*

Since the TAC in Chernihiv region was not functioning during the second half of 2013 due to refurbishments, staff of the NPM Department of the Secretariat of the Commissioner visited the TAC twice in 2014 – in August and December of the reporting period.

During monitoring visits, administration and personnel of these facilities did not impede access of monitoring groups to premises and confidential communication with the detainees.

Results of confidential communication with foreigners and stateless persons, interviews with the staff, inspection of official records and premises of TACs ***showed no instances of torture or cruel treatment of detainees in 2014.***

Based on the results of monitoring visits by NPM Department, the administration of the center and the leadership of the State Migration Service of Ukraine undertake efforts to the extent possible to implement recommendations for the prevention of inhuman or degrading treatment of the TAC “residents”.

In particular, following NPM recommendations, the migration agency developed leaflets on the foreigners’ rights, duties, house regulations, contacts of organizations and institutions providing legal and other assistance. In addition, at Chernihiv TAC, the TV was repaired and payphone functioning was resumed following the visit in August 2014 when they were not working.

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<sup>57</sup> The national preventive mechanism does not monitor temporary accommodation centers for refugees since, according to the legislation, the state does not restrict asylum seekers in their decision on whether to stay at these centers, as well as they can leave and return at their own will. At the same time, the NPM continues to monitor legislation in this field to establish whether these centers are places of detention in the understanding of Article 4 of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

## **Key issues that can be viewed as ill-treatments identified at Chernihiv TAC in 2014**

**The TAC administration continues to restrict access to communication with the outside world to persons detained at the TAC, in particular with the family members.**

For instance, there is an ongoing practice of confiscating mobile phones with photo and video cameras during placement to the TAC. Short-term use is only permitted upon approval by the director of the facility.

Since the TAC is not a facility for execution of punishments, and persons held therein were subjected to administrative sanctions prior to their placement to the TAC, such restriction is clearly disproportionate to the violation.

*However, on the positive note, the administration does not prohibit migrants from using mobile phones without photo and video cameras.*

The issue related to lack of qualified medical personnel was solved only to some extent. During the year, administration of Chernihiv TAC did not succeed in hiring a nurse for at least one of the three vacant positions. Medical assistance is provided by one nurse and general specialist working part-time and visiting the center 1-2 times per week.

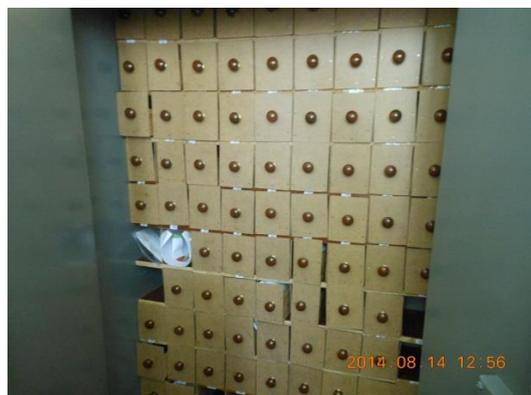
The foreigners did not receive printed leaflets on the rights and duties of foreigners, internal TAC regulations, calls from the payphone and other useful information that would support quick adaptation of foreigners in conditions of isolation. Despite assertions of the administration and presentation of a printed copy of the leaflet, the monitoring group did not see these leaflets with any of the foreigners.

Despite the fact that foreigners have already served punishment for the violation, they are deprived of the right to keep personal valuable belongings with them (documents, precious metals goods, personal money etc.).

**The above belongings are necessarily confiscated during placement to the TAC and kept at a designated premise of the facility.**



**Room for storing personal belongings of foreigners**



**Registry of confiscated valuable belongings and safe with storage cells**

During the first monitoring visit in August, the foreigners (except for Afghani citizens) were deprived of the possibility to view any TV programs: the TV with satellite reception at the psychological relaxation room was not working. The only functioning TV was in the room of Afghani citizens.

The sanitary condition of the bathroom, shower, and toilet during both visits was unsatisfactory. Administration appoints foreigners living on the relevant floor for daily cleaning of these premises.



**Ceiling and ventilation in the shower room at the dormitory      Bathroom at the dormitory**

According to the records on TAC personnel trainings, there were three sessions titled “Convention against torture and other forms of cruel, inhuman, or degrading treatment and punishment” held in 2014. However, interviews with the guards showed the lack of knowledge in the field of prevention of torture and ill-treatment.

There are two staff positions of interpreters at Chernihiv TAC, and only one of them is filled with a person fluent in English and French, whereas the other one has been vacant for a long time. As a result, there is a language barrier between the personnel and foreigners affecting the treatment of migrants in negative way.

Three rooms for multiple-persons accommodation (## 301, 308, 309) have only 2.5 sq. m. per one person instead of 7 sq. m. provided by the minimum international standards.

Foreigners at Chernihiv TAC have no free access to information on the possibility of receiving free secondary legal aid or contact information of a center providing such services near the facility.

### **Regulatory deficiencies leading to ill-treatment:**

According to Ukrainian legislation, foreigners and stateless persons who had committed administrative offence (illegal stay in Ukraine or border crossing) can be expelled from Ukraine based on the decision of an administrative court. Until completion of measures necessary to implement the court decision on expulsion, they are held in the custody of the centers for temporary stay of foreigners and stateless persons of the State Migration Service of Ukraine (TACs).

Current legislation authorizes the State Migration Service of Ukraine and the State Border Guard Service of Ukraine to take decision on placement of persons into the TACs (the Law of Ukraine “On Legal Status of Foreigners and Stateless Persons”, the Law of Ukraine “On amendments to laws of Ukraine pursuant to adoption of the Law of Ukraine “On Legal Status of Foreigners and Stateless Persons”” dated 16.10.2012, 5453-IV).

Consequently, a person is virtually deprived of his/her liberty for a very long time (up to 12 months) with not relevant court decision, which can be viewed as a violation of the right to liberty.

The Regulation on the center for temporary stay of foreigners and stateless persons illegally staying in Ukraine adopted by the MIA order #390 dated 16.10.2007 does not comply with certain norms of Ukrainian legislation and international standards in the field of protection of the rights and freedoms of foreigners, in particular, in relation to:

- The requirement for immediate provision of sufficient relevant information to support adaptation in conditions of deprivation of liberty to a foreigner or stateless person at the time of placement into the TAC in a native or other language that s/he understands;
- Definition of a clear list of items allowed (prohibited) for use at the TAC;
- Exclusion of the possibility of placement of foreigners and stateless persons to the so-called localized rooms (as a form of disciplinary punishment);
- Obligatory written permission of a medical staff for the placement of foreigners or stateless persons to these rooms, and daily medical supervision of mental and physical health of these persons;
- Guarantees for confidentiality of medical examination of foreigners and stateless persons;
- Possibility to submit personal belonging and items to the competent TAC official at any time at one’s will;
- Possibility for the families for spending time together during the day.

# Implementation of NPM recommendations provided to the State Migration Service in 2014

## On the regulatory framework:

– Recommendations of the NPM are taken into consideration in the draft Instruction on the custody of foreigners and stateless persons in centers for temporary stay of foreigners and stateless persons illegally staying in Ukraine;

## On other issues:

– Following visits of NPM monitoring groups, administration of Chernihiv TAC in coordination with the central office of the SMS of Ukraine has developed and **in December 2014** started issuing to each person at the moment of placement, with signed confirmation, leaflets with information on conditions of their stay at the facility for the purpose of familiarizing detained persons with the TAC rules, rights and duties, as well as other relevant information to support speedy adaptation in detention.

### Familiarization with the rights, responsibilities and living conditions in Chernigov STSF State Migration Service of Ukraine

#### 1. Foreigners in Chernigov STSF have rights:

- to become acquainted with their rights and responsibilities in Chernigov STSF;
  - to be informed about video surveillance on the territory of Chernigov STSF ( article 3 of the Law of Ukraine " About legal status of foreigners and stateless persons ", The order of Cabinet of Ministers of Ukraine dated 06.02.2013 about implementation of the state targeted law-enforcement program of installation of modern systems of security , usage of devices for the external control ( supervision) and fast reaction on period to 2016;
  - to be provided with health care service;
  - to have eight hours of sleep at night;
  - to wear their own clothes (schedule of washer Wednesday and Thursday from 11 a.m. till 1 p.m.);
  - to receive hygiene items every month;
  - to send and receive letters; receive parcels and money orders (address 5 Lina street, village Rozsydiv, Ripki district, Chernigiv region, 15044);
  - to meet their relatives and communicate with them;
  - to meet administration of Chernigov STSF according to the schedule: director Soluyan to meet administration of Chernigov STSF Monday and Thursday 2p.m. – 4p.m. tel. 43100, deputy director Chyva Pavel Yevgeniy Petrovich Monday and Friday 2a.m. – 4p.m. tel. 43350, Deputy Director of MTR Gubar Ilya Vladimirovich Tuesday and Friday 10a.m.-12p.m. tel.43514, Head of DAW with Documents Priliva Aleksandr Vladimirovich Tuesday and Thursday 10a.m.-1p.m. tel. 43283; Chief of security Kozoruyak Sergey Mihaylovich Wednesday and Friday 10a.m.-12p.m. tel.43320
  - to meet with lawyers and representatives of diplomatic missions and consular institutions of the country of origin, international organizations, NGOs and international human rights organizations (Chernihiv, 1400 57/1 Gorkogo Street phone/fax: (0462) 62-53-81) and bodies of the Migration Service of Ukraine (Chernihiv, 51a Shevchenko Street)
  - to use telephone set in Chernigov STSF and make local, long distance and international calls;
  - to worship, conduct religious ceremonies as long as it does not threaten the safety of Chernigov STSF and does not limit rights of other migrants;
  - to watch TV and listen to the radio, leisure;
  - to use literature, newspapers, magazines and other printed publications;
  - to use personal audio and video equipment if it does not violate the order of the day and does not disturb others;
  - to make complaints; send petitions and letters to state authorities of Ukraine in accordance with the legislation of Ukraine (Regional Court address: 92 Svyatoholmyevskaya Street Repky Chernigiv oblast 15000); Public procurator's office address: 92 Svyatoholmyevskaya Street Repky Chernigiv oblast 15000);
  - to deposit money and valuable things;
  - to buy food, daily necessities and others for private money, through the distribution network under the order;
  - to get back the money that are withdrawn and kept in deposit room (on the form and manner established by order of registration of transactions).
- #### 2. The rooms Chernigov STSF Migration Service of Ukraine foreigners are allowed to keep:
- clothing and footwear according to the season, things and personal care products, medicines, allowed by the doctor;
  - books, newspapers, magazines, stationary;

- tobacco products;
  - food (except for products with expired date of storage, canned products made at home, products that require additional heat processing);
  - Audio and video equipment, refrigerators and other appliances in small size.
- #### 3. Foreigners who are in the Chernigov STSF Migration Service of Ukraine must:
- adhere the established rules of internal order and to principles of coexistence, comply with the order of administration of Chernigov STSF;
  - keep quiet during the night from 22 00 to 7 00, and on public holidays from 22 00 to 7 30;
  - inform the doctor and administration of Chernigov STSF immediately in case of symptoms of an illness, injury or other accidents which pose threat to the health;
  - follow personal hygiene rules, maintain cleanliness and order in residential area and outdoor grounds;
  - be polite with the staff of Chernigov STSF and with other fellow detainees, adhere to the principles of public life;
  - take care of the equipment and other property of Chernigov STSF, use equipment and furniture appropriately;
  - reside within the territory, live in the allocated room.
- #### 4. During his stay in Chernigov STSF Migration Service of Ukraine foreigners are prohibited from:
- purchasing and possession of firearms or knives, stabbing and cutting items, alcoholic beverages, narcotic drugs and psychotropic substances;
  - independently leaving the territory of Chernigov STSF, which is guarded or going to the areas to which access is prohibited by administration;
  - breaking or disturbing the established daily rules;
  - having in the room bulky items that interfere with free movement;
  - drinking alcohol, taking drugs and psychotropic substances;
  - smoking in unauthorized places;
  - intentionally inflicting injury or causing health problems, and encourage or assisting others in committing such actions which affect the order in Chernigov STSF and its security;
  - changing the allocated room independently;
  - gambling.
- #### 5. The maximum term of stay in Chernigov STSF, State Migration Service of Ukraine is 12 months.
- After finishing the term of staying a foreigner can receive a document for temporary staying in Ukraine. The grounds for the document are an application of a foreigner or a stateless person after the full term in the STSF and a resolution of a central office of executive power that fulfill governmental policy in the field of migration about impossibility to deport a foreigner or a stateless person because of absence of emergency passport, transport connections with the country of origin or other reasons irrespective to the foreigner as it is said above.
- Got familiarized and received a copy  
Full name and signature of a detained  
Full name and signature of STSF  
worker who conducted familiarization

– Damage of the satellite TV cable was repaired, and the payphone, which was not functioning at the time of the first visit, resumed its work;

– The number of beds in rooms # 301, 308, 309 was reduced to provide foreigners and stateless persons with at least 7 sq. m. of floor space per person.

## Recommendations on the following issues were not implemented:

- Providing foreigners and stateless persons with the possibility to decide on the procedure of storing personal valuables, money and documents;

- Providing migrants with the opportunity of unrestricted use of mobile phones with photo and video cameras and Internet access with the view to their status of persons who had served administrative punishment and awaiting expulsion;
- Filling vacant positions of nurses at the healthcare unit of Chernihiv TAC (according to official position of the migration agency, this question is not relevant since the TAC is not filled);
- Inclusion of materials on prohibition of torture into trainings of guards;
- The need for organizing language training of the TAC staff to improve communication with foreigners.

#### 4.5. Results of monitoring of institutions of the Ministry of Defense

##### Overview of places of detention of the Ministry of Defense of Ukraine.

Under the definition of Article 13 of the Law of Ukraine “On the Ukrainian Parliamentary Commissioner for Human Rights”, the NPM monitoring covers the following institutions of the Ministry of Defense of Ukraine:

Disciplinary battalion of the Policing Service of the Armed Forces of Ukraine (hereinafter – PSAF disbat);

Guardhouses;

Rooms for temporarily detained military personnel (hereinafter – RTD);

Special wards at military hospitals (hereinafter – special wards);

Military units of the Armed Forces of Ukraine<sup>58</sup>.

##### Number of institutions of the Ministry of Defense of Ukraine and persons held therein in 2012-2014

Type of institution	2012 (as of 31.12.2012)		2013 (as of 31.12.2013)		2014 (as of 31.12.2014)	
	N umber of instituti ons	N umber of persons	N umber of instituti ons	N umber of persons	N umber of instituti ons	N umber of persons
<b>Disciplinary battalion</b>	1	4	1	0	1	0
<b>Guardhouse</b>	4	6	2	9	1	4

<sup>58</sup> Military units where citizens of Ukraine serve military duty.

<b>Rooms for temporarily detained military personnel</b>	8	1	9	2	3	3	0	3	10	1
<b>Special wards at military hospitals</b>	8		4	8	4	4	6		7	
<b>Military units</b>	37	3	0582	39	2	1520	1	58	1	902

In 2014, the staff of the NPM department and public monitors conducted two repeat visits to detention facilities of the defense agency:

- *the guardhouse of the Central Directorate of the Police Service of the Armed Forces of Ukraine (hereinafter – PS AFU guardhouse)*
- *Psychiatric clinic of the Main Military Clinical Hospital of the Ministry of Defense of Ukraine (hereinafter - MMCH).*

In addition, a visit to military unit A0139 located in Kyiv took place with the aim of monitoring the rights and freedoms of military conscripts.

During visits, representatives of the institution administrations did not impede the groups' access to places of custody, as well as confidential communication with the military men.

At the same time, similar to 2013, the monitoring group had to wait for a long time for permission of the military leadership for access to the territory of the facility (visit to the m/u A0139 in Kyiv, waiting time – 50 minutes).



Analysis of identified violations shows that majority of them (66%) relate to material conditions, 31% concern ill-treatment, and 3% - insufficient organization and training of the staff on prevention of ill-treatment of persons deprived of their liberty.

**In 2014, there were no recorded instances of violations of the rights of convicted, detained and apprehended military personnel or conscripts, which can be viewed as torture or cruel treatment.**

Confidential interviews with convicted, detained and apprehended military personnel, interviews with the staff of the administrations of facilities and the guards, inspection of the functioning and examination of premises revealed a number of restrictions of the rights and freedoms of the above category of persons that can amount to **inhuman or degrading treatment**.

These include, first of all:

*In relation to ill-treatment:*

- There are no outdoor walks organized for patients of the psychiatric clinic of the MMCH – military conscripts. They only leave the building escorted by medical personnel for the purpose of medical examinations and treatments;
- The registry on the use of physical restraint measures towards the patients of the psychiatric clinic of the MMCH does not reflect all instances of the use of such measures.

*On ensuring adequate conditions:*

At the MMCH psychiatric clinic:

- Patients are accommodated in rooms with 10-12 persons, there is not enough fresh air in hospital wards;
- The bathroom is for common use by men and women with restricted access (it is locked, the service nurse opens it every hour or upon patients' request);
- Smoking takes place in the bathroom, there is no sufficient ventilation.

•

At the sleeping premises of the m/u A0139:

- The actual space per person is less than the recommended minimum (2.8 sq. m. instead of 4 sq. m.);
- There is no intake and exhaust, or forced mechanical, ventilation;
- Most mattresses, pillows, and blankets used by the conscripts are worn and need replacement.

**Other issues that have negative impact on the rights and freedoms of military personnel at the facilities of the Ministry of Defense include:**

*In the regulatory framework:*

There is no mechanism for exercise of the right of patients to submit confidential complaints to relevant authorities outside of the healthcare facility of the Ministry of Defense of Ukraine;

The MoH has not established an official informed consent form for hospitalization to the psychiatric clinic of the MMCH required by article 1 of the Law of Ukraine “On Psychiatric Assistance”;

*In relation of ill-treatment of persons:*

Most interviewed patients of the psychiatric clinic of the MMCH do not have information on the purpose of treatment, their diagnosis, names of medications they take, as well as their impact on the body. Some patients are not aware of the reasons for admission to the psychiatric hospital;

There has been no solution for the issue of arbitrary confiscation of mobile phones of the patients of the MMCH psychiatric clinic – military conscripts where no such restrictions have been authorized by the doctor. According to the decision of the clinic director, they are allowed to communicate with family and close ones via mobile phone only on Tuesday and Friday from 15:00 to 16:00 at the room of the nurse where confiscated phones and chargers are stored;

Military conscripts are not familiar with the right to use mobile phones during off-duty time (m/u A0139).

*In relation to personnel training:*

Educational materials on prevention of torture of convicted, detained and apprehended military personnel are not included into the standards of training for the staff of security and patrol services of the authorities (military units) of the Police Service in 2014;

Military personnel guarding persons held in custody at the disciplinary battalion and at the PS AFU guardhouse have low level of awareness on prevention of torture and cruel treatment of convicted, arrested and detained military personnel.

## **Implementation of recommendations of the Commissioner provided in 2014**

Results show that leadership of the Ministry of Defense of Ukraine, the Police Service of the Armed Forces of Ukraine and military units subject to repeat visits take certain steps towards implementation of NPM recommendations on prevention of torture, cruel and degrading treatment of convicted, arrested, and detained military personnel and conscripts.

The monitors noted progress in treatment of inmates and improvements of material conditions in visited facilities.

According to official data of the defense agency (PS AFU) during 2014, similar to 2013, approximately half of recommendations were implemented, predominantly those not requiring significant funding.

*In relation to the regulatory framework:*

1. The Instruction on the procedure of punishment at the disciplinary battalion (approved by Order of the Minister of Defense of Ukraine on November 29, 2004, No. 567, and registered with the Ministry of Justice of Ukraine on December 10, 2004, under No. 1572/ 10171) was amended in relation to:

- The right of convicted military personnel to subscribe and receive newspapers, magazines and other periodicals at their own cost with no restrictions on their number, as well as, in accordance with the procedure established by the commander of the disciplinary battalion, to conduct phone conversations with no restrictions to their number, including during their stay at in-patient healthcare institutions;

- Obligation to provide convicted military personnel with access to confidential attorney visits and receiving legal assistance, including during their stay at in-patient healthcare institutions

- Guarantees for convicted military personnel undergoing treatment on receiving legal assistance and conducting telephone conversations in accordance with the Criminal Executive Code of Ukraine.

2. The Instruction on the procedure and conditions of detention for military personnel taken into custody (approved by Order of the Minister of Defense of Ukraine on September 26, 2013, No. 656, and registered with the Ministry of Justice of Ukraine on October 16, 2013, #1775/ 24307) was amended in relation to, in particular:

- Prohibition on reviewing convicted persons' correspondence addressed to the Ukrainian Parliament Commissioner for Human Rights, the European Court of Human Rights, as well as other relevant bodies of international institutions to which Ukraine is a party or member state, competent officials of these institutions, prosecutors, defense counsel in the case, as well as correspondence received by convicted persons from the above entities and persons;

- The ban on lowering standards for nutrition in case of placement into solitary confinement;

- Restrictions on the right to freedom of religion or expression related to religious views are permitted at guardhouses and special wards only in the scope established by the Criminal Executive Code of Ukraine;

- Requirements for equipping rooms for short/long-term visits;

- Application of the rights, duties, prohibitions and restrictions established by the criminal executive legislations for persons serving prison sentences to those sentenced to guardhouse arrest;

- Receiving medical assistance and treatment, including paid services, at personal/relatives/ expense at healthcare institutions licensed by the Ministry of Health of Ukraine outside of the system of the Ministry of Defense;

- Receiving legal aid from attorneys or other legal experts authorized by law to provide legal aid personally or upon assignment from a legal entity;

- Application of the right to legal aid to convicted military personnel undergoing treatment at in-patient healthcare institutions;

- Revoking restrictions on phone conversations for the military personnel (including mobile networks), in particular during their stay at in-patient healthcare institutions, as well as the right to use the Internet;
- Establishment of amateur art organizations by convicted military personnel and their participation in such organizations on voluntary basis.

*In relation to improvement of detention conditions for convicted, arrested and detained military personnel:*

Refurbishment and construction work completed on equipping one cell of the PS AFU guardhouse (for 3 persons) in accordance with the requirement of the European Penitentiary Rules and the Commissioner's recommendations.



*On including training materials on prevention of torture into personnel training programs:*

In the end of 2014, pursuant to recommendations of the national NPM provided to the defense agency, the Police Service of the Armed Forces of Ukraine included issues of prevention of torture of convicted, arrested and detained military personnel into the standards of training for the staff of security and patrol services of the authorities (military units) of the Police Service of the AFU and organizational and methodological guidelines on training of these units for 2015.

#### **4.6. Results of monitoring of institutions of the State Court Administration of Ukraine**

##### **Overview of places of detention of the SCA of Ukraine**

According to Article 13 of the Law of Ukraine “On the Ukrainian Parliament Commissioner or Human Rights” NPM monitoring covers the premises (rooms) for defendants (convicts) at appellate and local courts of general jurisdiction.

According to Article 145 of the Law of Ukraine “On Judiciary and Status of Judges”, the State Court Administration (hereinafter – SCA) provides organizational support for the functioning of state judicial authorities, including through its territorial branches.

The above law establishes that its duties include, in particular, ensuring conditions for functioning of the courts of general jurisdiction, preparation of materials for suggestions on budgets of courts.

According to official SCA data, there were 25 appellate courts and 637 local courts of general jurisdiction operating in Ukraine in 2014<sup>59</sup>.

Premises for accused persons (defendants/convicts) were maintained and used in all 25 appellate courts (100%) and in 448 local courts of general jurisdiction (70.3%).

During 2014, there were visits to 7 local courts of general jurisdiction:

*Solomyansky district court, Kyiv;*

*Dniprovsky district court, Kyiv;*

*Svyatoshyn district court, Kyiv;*

*Boryspil city district court, Kyiv region;*

*Ripky district court, Cherkasy region;*

*Prydniprovsky district court, Cherkasy region;*

*Sosnivsky district court, Cherkasy region.*

As a rule, court management of courts supported the work of NPM monitoring groups, officials guarding the accused persons (defendants/convicts) during their stay in court did not impede confidential communication of monitors with the latter.

### **Typical violations of the rights and freedoms of accused persons (defendants/convicts) identified in 2014**

#### ***1. Like in the previous year, manifestations of cruel, inhuman or degrading treatment were found in all visited courts.***

Confidential interviews with the accused persons (defendants/convicts), interviews with court officials and guards, inspection of official documentation and examination of court premises showed that ***the following manifestations of cruel treatment of accused persons (defendants/convicts) continued in 2014***

*a. Overcrowding of cells for accused persons (defendants/convicts)<sup>60</sup>;*

*b. Premises for accused persons (defendants/convicts) fail to meet international standard minimum rules for detention of prisoners<sup>61</sup>;*

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<sup>59</sup> Excluding the courts on the territory of the Autonomous Republic of Crime. Information on the number of courts in Luhansk and Donetsk regions is valid for 01.01.2014.

<sup>60</sup> For instance, there were 2 persons in each cell of Dniprovsky district court in Kyiv. Accordingly, there was 1.4 sq. m. of floor space per person while the national standard is 4 sq. m. (ДБН В.2.2-26:2010. Courts).

<sup>61</sup> The area of single cell in Prydniprovsky district court in Cherkasy is 1.2 – 1.3 sq. m., in Ripky district court of Chernihiv region – 1 sq. m., Svyatoshyn district court in Kyiv – 0.7 sq. m..



Solomyansky district court, Kyiv Svyatoshyn district court, Kyiv

*c. Lack of sufficient or any meals on the day of participation of the accused person (defendant/convict) in court hearings<sup>62</sup>;*

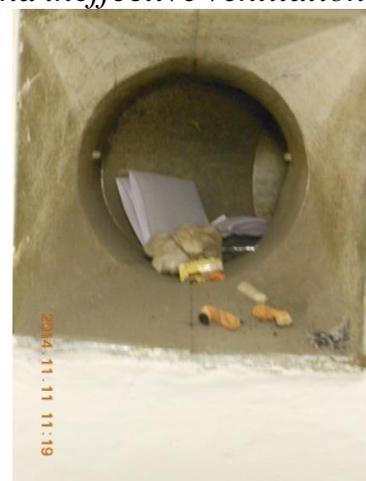


Lunch substitution for three persons at Dniprovsky district court in Kyiv

*d. Lack of fresh air due to tobacco smoke and ineffective ventilation.*



Dniprovsky district court, Kyiv



Svyatoshyn district court, Kyiv

***Restrictions of the rights and freedoms of the accused persons (defendants/convicts) that constitute inhuman or degrading treatment.***

<sup>62</sup> At Dniprovsky district court in Kyiv, persons brought from Lukyanivsky remand prison received one slice of white bread and one boiled egg instead of lunch. At Prydniprovsky district court in Cherkasy, defendant S. did not received any lunch.

a. many courts continue to use metal cages instead of organic glass barriers in courtrooms;



Dniprovsyky district court in Kyiv



Ripky district court in Chernihiv region

b. Many courts do not have bathrooms or water sources for the defendants. Available bathrooms are in anti-sanitary condition.



Dniprovsyky district court, Kyiv



Solomyansky district court in Kyiv

***The following issues should also be pointed out:***

- a. not all courts are equipped with lamps for disinfection of courtrooms, premises for defendants/convicts and convoy;
- b. Not all locations have proper conditions for ensuring participation of persons with special needs in court hearings (no ramps or bars etc.);
- c. Premises for defendants/convicts do not have conditions for confidential communication with defenders.

Citizen's complaints to the Ombudsman in 2014 also mentioned instances of cruel treatment of defendants/convicts during their stay in courts.

For instance, out of 15 applications to the Commissioner on cruel or inhuman treatment at local courts of general jurisdiction, four concerned keeping in a metal cage in the courtroom, four – failure to provide medical assistance, and two mentioned issues of deprivation of food, inhuman conditions at the cells and lack of access to case files.

Each of these complaints gave rise to letters to the prosecution authorities and territorial units of the SCA requesting relevant inspections, as well as assignments to regional representatives of the Commissioner for Human Rights.

*Case study: in September 2014, the Commissioner initiated proceedings in the case of violation of the rights of citizen I. Requests were sent to prosecution authorities in the framework of proceedings. According to official notice from the Military Prosecution Service of the Southern Division, allegations of citizen I. found no confirmation during the inspection. Consequently, “there were no grounds for response by prosecution, entry of data on criminal offence into the ERDR”. Since this decision violates requirements of the current Criminal Procedure Legislation of Ukraine (according to Article 214§1 of the CPC of Ukraine, an investigator or public prosecutor shall be required immediately but no later than within 24 hours after submission of a report, information on a criminal offence that has been committed or after he has learned on his own from any source, about circumstances which are likely to indicate that a criminal offence has been committed, to enter the information concerned in the Integrated registry of pre-trial investigations, and to initiate investigation), the Commissioner addressed the Office of the Prosecutor General of Ukraine with a request for additional review of application submitted by citizen I. The Office of the Prosecutor General obliged the regional prosecution service to enter information on criminal offence provided by citizen I. into the Integrated registry of pre-trial investigations and conduct comprehensive investigation into the case.*

### **Implementation of the Commissioner’s recommendations for the State Court Administration in 2014**

Results of the dialogue with the State Court Administration, repeat visits, as well as the analysis of information received by the NPM Department on implementation of recommendations evidenced that in 2014 the court administration organized and conducted significant work on equipping the new and refurbishing existing premises for defendants (convicts) in courts.

For instance, new premises were equipped at *Bratsky district court of Mykolayiv region, Romny district court of Sumy region, Sambir city district court of Lviv region, Tyachiv district court of Zakarpattya region, and Ordzhonikidze district court of Mariupol city.*

Proper conditions for defendants/convicts have been created in 13 general local courts (*Brusyliv, Yemilchyn, Luhyn, Romaniv, and Chernyakhiv district courts and Korosten city district court of Zhytomyr region, Zinkiv and Lokhvytsya district courts of Poltava region, Kyiv district court of Poltava city, Frankivsky district court of Lviv city, Kryukivsky district court of Kremenchuk city, Seredyna-Buda district court of*

*Sumy region and Khrystynivka district court of Cherkasy region, Svitlovodsk city district court of Kirovohrad region).*

Ventilation systems were modernized in 7 district courts, including *Prydniprovsky and Sosnivsky district court of Cherkasy city* visited by the regional coordinator of the Commissioner in Cherkasy region in 2014.

The issue of heating was resolved in 7 district courts of Odesa region (*Artsy, Kiliya, Lyubashivka, Ovidiopol, Reni, Savran, and Shyryayeve districts*).

Separate rooms for confidential communication of attorneys and defendants/convicts were allocated in 3 courts (*Nadvirna district court of Ivano-Frankivsk region, Petrove district and Svitlovodsk city district courts of Kirovohrad region*).

During the year, there were 122 stationary metal barriers in courtrooms replaced with the special glass, *including 19 barriers in appellate courts, and 103 barriers in general local courts*.

In 2014, equipment of appellate and local courts of general jurisdiction with the system for video conference communication with the State Penitentiary Service institutions was completed.

*In the regulatory framework:*

– A draft Procedure for cooperation between the courts of general jurisdiction and remand prisons, penitentiary institutions of the State Criminal Executive Service on procedural actions in the video conference mode during criminal proceedings was developed;

– In cooperation with the National School of Judges of Ukraine, topics on prohibition of torture of detained persons were developed and included into the Model plans for the training of the judiciary apparatus staff, in particular the court registrars for 2015.

## **4.7. Results of monitoring of institutions of the Ministry of Education and Science of Ukraine**

### **4.7.1. Overview of the places of detention under the authority of the Ministry of Education and Science of Ukraine**

The following educational establishments are subject to monitoring by the staff of the national preventive mechanism:

General education boarding schools – 324 institutions, including 27 facilities for orphans and children deprived of parental care;

Specialized general education boarding school – 290 institutions, including 15 facilities for orphans and children deprived of parental care;

Centers for education and rehabilitation – 48;

General education healthcare boarding schools – 71;

Children's homes – 64;

General education schools for social rehabilitation – 2;

## Vocational training schools of social rehabilitation – 2.

At the beginning of 2014-2015 academic year, approximately 115 thousand of students and pre-school children were studying at boarding institutions of state and municipal type of ownership.

During 2014, staff of the NPM Department visited 7 educational institutions:

Bila Tserkva specialized general education school of I-II tiers (Kyiv region);

Kyiv specialized general education boarding school № 4 (for children with visual impairments);

Lviv specialized general education school #102;

Lviv specialized general education school of I-III tiers of Mary the Intercessor (for children with hearing impairments);

Novoaydar general education healthcare boarding school of I–III tiers (Luhansk region);

Khust specialized general education boarding school of I-II tiers (for children with decreased hearing) (Zakarpattia region);

Chernivtsi specialized general education boarding school № 2.

### **Typical violations of the rights of persons identified during monitoring visits**

International principles stipulate that a child and his/her parents have the right to choose the form of education. At the same time, monitoring of specialized general education boarding schools showed that children with special needs who, in addition to the main condition, have other chronic illnesses (epilepsy, urinary and rectal incontinence, suffering from vascular seizures resistant to therapy) only have the option of individual home schooling. The above restriction is established by the Regulation on specialized general education boarding school for the children in need of correction of physical and (or) mental development approved by the MES order #853 dated 15.09.2008p.

However, monitoring visits showed that school administrations, acting in the best interests of the child, often have to violate legal requirements and admit these children. School pedagogues conduct extensive work with the parents convincing them to undertake treatment of auxiliary conditions of their children. During some time, children often stay at the specialized boarding schools only during daytime, and later majority of them study and live with other children. The educators (deficiency specialists, hearing and speech specialists) emphasize that when a child with disabilities is among other children with no isolation from the society, it has a positive impact on rehabilitation in general.

At the moment, there are 23 specialized schools for the deaf and 18 schools for children with hearing impairments where 4192 children study. Children with disabilities in such boarding schools use hearing aids designed for the elderly (whose

hearing issues are related to age physiological changes) and do not support the speech hearing from children with inherent deafness or decreased hearing.

The issue is not an individual hearing aid or headphone, but the opportunity to choose the model and adjust the aid according to the character and degree of hearing impairments of an individual child. In the visited boarding schools, there were no children who had hearing aid implants at the state expense. Many children have bilateral decreased hearing and require binaural treatment.

According to the decree of the Cabinet of Ministers of Ukraine #1301 dated 03.12.2009 “On approving the procedure for providing people with disabilities and children with disabilities with technical and other means”, the child cannot receive two hearing aids directly after assignment of disability status. Thus, the time is lost, and the children are deprived of a chance to acquire acceptable level of hearing and speech, overcome the barriers in communication of deaf children with the world of people who hear.

Importantly, hearing tests for newborns at maternity homes are standard automated procedures of objective hearing examination worldwide. Late diagnostics of hearing impairments in children older than 18 months leads to development of deafness and muteness and subsequent disability.

Unfortunately, there are no programs for early detection and correction of hearing deficiencies in children in Ukraine through standards for these programs have been developed by the American Academy of Pediatrics in 2000 and are generally accepted worldwide.

Majority of children with severe hearing loss who receive quality hearing aid assistance successfully study in general schools.

This problem requires further research and detailed examination in the process of monitoring children’s institutions for recommendations with regard to possible solutions.

Results of monitoring visits to the above institutions of the Ministry of Education and Science of Ukraine revealed ***violations of the rights of the children to privacy and personal space, proper medical service and rehabilitation, as well as decent standard of living:***

– Rather often, despite sufficient number of premises, children are placed unequally with overcrowding – up to 12-14 sleeping places per room. The bedrooms are not equipped with bed-stands, wardrobes, desks and chairs;



– Bedrooms are often locked after wake-up until the night, and children keep their belongings in classrooms or playrooms;



– Lack of playrooms, rooms for recreation and communication of children in the evening in the residential buildings despite availability of vacant premises;  
– There is insufficient provision of specialized methodological literature and textbooks, modern free educational and developing computer programs (in particular, the “Visible Language” course), textbooks for pedagogues and children with special needs.

**A significant number of shortcomings identified during monitoring visits to educational institutions are linked with the need for refurbishment in bedrooms, shower rooms, bathrooms, laundry rooms, assembly halls and gyms:**

– Lviv specialized general education school of I-III tiers of Mary the Intercessor (for deaf children) needs urgent façade refurbishment and construction of a gym since at present time physical education classes take place in a basement room that is not fit for these purposes.



– There is a need to complete reconstruction of a school workshop, garage and storage areas into the center of vocational and physical rehabilitation of children started in 2009 at Khust specialized general education boarding school of I-II tiers (for children with decreased hearing). The plan provides for a swimming pool, therapeutic exercise, and carpentry and locksmith workshop for boys, sewing workshop for girls; sewing shop for 10 working places, carpentry shop for 3-4 working places, and an assembly hall. The future perspective includes reorganization of the school into a specialized general education boarding school of I-III tiers with specialized training in four profession: computer input operator, willow weaving specialist, tailoress and carpenter. The swimming pool could be used by Khust community since there is no swimming pool in the city where children can learn to swim.

– Sanitary facilities of institutions require replacement of the out-of-service toilets or installation of partitions. In additions, there are no doors in toilet cabins of certain institutions, which contradicts paragraph 7.5 of the State sanitary rules and norms 5.5.2.008-01 “Establishment and maintenance of general education establishments and organization of educational process” providing that girls’ bathrooms must have one cabin with doors and a lock.



At the same time, some of the boarding schools visited during monitoring showed strict compliance with international and domestic norms and requirements on equipment of institutions. These places provide comfortable living conditions as a component of the right to a decent standard of living foreseen by Articles 3, 16, 23, and 27 of the Convention on the Rights of the Child.



*Bedroom at Chernivtsi specialized general education boarding school #2; study room and gym at Khust specialized general education boarding school of I-II tiers (for children with decreased hearing).*

### **Implementation of recommendations of the Commissioner to the Ministry of Education and Science of Ukraine in 2014**

According to the Ministry of Education and Science of Ukraine, the following measures were implemented in accordance with the recommendations:

*At Kyiv specialized general education boarding school #17:*

- The territory is fenced by a fence with gates;
- Bars on windows and at the entrance to the 4<sup>th</sup> floor with bedrooms have been removed;
- Seven rooms on the 1<sup>st</sup> floor have been refurbished, the windows were replaced with plastic ones;
- An inspection and partial refurbishment of the foundation skirting to prevent catering facilities from ground water flooding;
- The medical unit was equipped with full set of medications;
- Sensor room and shoe shop were relocated;
- Rotten deck on the 1<sup>st</sup> floor was repaired;
- Information about the hotline numbers of state authorities and a box for complaints and suggestions have been placed at the information boards on the 1<sup>st</sup> floor of the boarding school;
- The school library was complemented with ABC-books for children with mental disabilities and textbooks for general education primary school

*At Kyiv general education healthcare boarding school #22:*

- Amendments introduced into the institution's statute and approved by Obolon district state administration in Kyiv;
- the working hours of the school have been modified to comply with the State sanitary rules and norms;
- The issue of the use of mobile phones was resolved.

*At Bila Tserkva specialized general education school of I-II tiers (for deaf children):*

- 118 plastic windows installed (70% of the total need);
- Two bedrooms for girls, the gym and 3<sup>rd</sup> floor hallway refurbished;
- Continuous access of children to drinking water ensured – coolers with drinking water put into study rooms and the dining room;
- The institution received textbooks and methodological materials in accordance with the list of recommended publications by the Ministry of Education and Science of Ukraine for the use at specialized general education institutions – in December 2014 the boarding school received new editions of study literature for the pre-school and 1-6 grades.

*At Horodnya general education boarding school of I-III tiers:*

- Measures have been taken to ensure proper condition of the premises, classrooms; the schedule of capital cleanings of the boarding school was approved by the sector of state epidemiological control of Chernihiv city department of the State Epidemiological Service of Ukraine in Chernihiv region;
- The boys' bathroom was refurbished;
- The ventilation hood at the chemistry room was refurbished;

- Current refurbishments of the total cost of over UAH 43 000 have taken place;
- In the fall of 2014, the anti-radiation cover was refurbished at a total cost of over UAH 41 000.

*At Horodnya specialized general education school of I-II tiers:*

- The study unit and dormitories have been refurbished;
- Modern windows were installed at the 2<sup>nd</sup> floor of the study unit (costs exceeding UAH 99 000);
- To ensure proper temperature conditions at the boarding school premises during winter, relevant refurbishments have taken place with replacement of the smoke stack at the boiler-room costing over UAH 90 000;
- Partitions have been installed at the shower room of the bathing and laundry unit to ensure the children's right to privacy;
- New bed stands for personal belongings have been purchased; free Internet access provided, the boarding school yard was paved, and the paths covered with pavement tiles; a permanent board "Psychological service" with hotline numbers was installed at the first floor of the study unit.

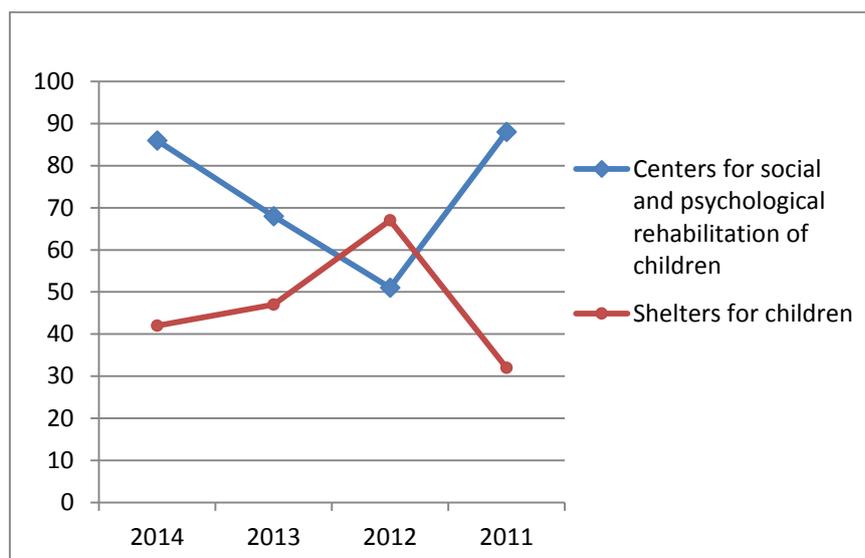
#### **4.8. Results of monitoring of institutions of the Ministry of Social Policy of Ukraine**

##### **Information about institutions of the social protection system subject to NPM monitoring**

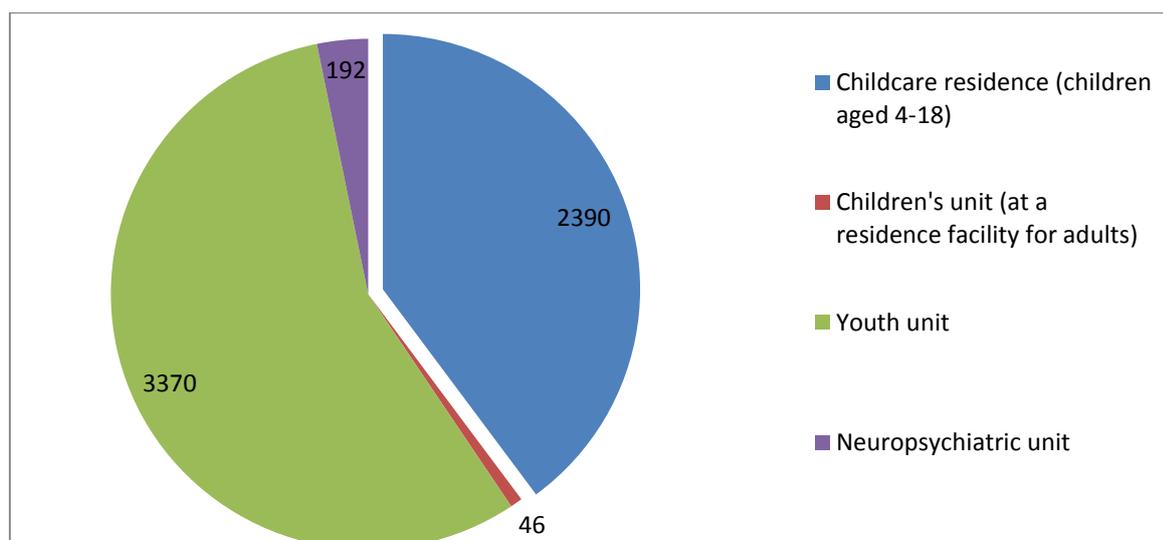
According to the information provided by the Ministry of Social Policy of Ukraine, the network of in-patient institutions of the system of social protection in 2014 included:

- Residences for elderly citizens and persons with disabilities – 67 institutions (7025 persons);
- Residences for war and labor veterans, geriatric residences – 28 institutions (5726 persons);
- Specialized residences – 2 institutions (256 persons);
- Neuropsychiatric residences – 144 institutions (28262 persons)
- Childcare residences – 49 institutions (2436 persons);
- In-patient units of the territorial centers of social services - 339 institutions;
- Centers for social and psychological rehabilitation of children – 86 institutions;
- Shelters for children – 42 institutions.

***The number of centers for social and psychological rehabilitation of children and shelters for children (2011-2014)***



**Number of residents in childcare residences (as of 01.01.2015)**



**Statistics on visits to institutions of the social protection system**

During 2014, the staff of the Department and regional coordinators of the Commissioner for Human Rights visited 28 institutions of the social protection system and the Children Services:

1. Vynohradiv geriatric residence (Zakarpattya region)
2. Kyiv neuropsychiatric residence (Kyiv)
3. Malyzhyno neuropsychiatric residence (Kharkiv region)
4. Pushcha-Vodytsya neuropsychiatric residence (Kyiv)
5. Romaniv childcare residence (Zhytomyr region)

6. Komarivsky childcare residence (Kharkiv region)
7. Pisky-Radkivski neuropsychiatric residence (Kharkiv region)
8. Chuhuyiv center for social and psychological rehabilitation of children (Kharkiv region)
9. In-patient unit of the territorial center of social services of Chuhuyiv district state administration (Kharkiv region)
10. Balta neuropsychiatric residence (Odesa region)
11. Ananyiv childcare residence (Odesa region)
12. Smila neuropsychiatric residence (Cherkasy region)
13. Kirove home for persons with (Zaporizhzhya region)
14. Lyubytske neuropsychiatric residence (Zaporizhzhya region)
15. Chernihiv childcare residence (Zaporizhzhya region)
16. Rivne geriatric residence (Rivne region)
17. Lviv geriatric residence (Lviv region)
18. In-patient unit of the territorial center of social services of Berezhan district (Ternopil region)
19. Nizhyn childcare residence (Chernihiv region)
20. Odesa childcare residence (Odesa region)
21. Rotmistrivka residence for elderly citizens and persons with disabilities (Cherkasy region)
22. Territorial center for social services of Chyhyryn district (Cherkasy region)
23. Stepove childcare residence (Mykolayiv region)
24. Vilshany childcare residence (Zakarpattia region)
25. Teple neuropsychiatric residence (Luhansk region)
26. Starobilsk neuropsychiatric residence (Luhansk region)
27. Kyiv geriatric residence (Kyiv)
28. Chernihiv geriatric residence (Chernihiv region)

Repeat visits were conducted to the following institutions:

1. Kyiv neuropsychiatric residence (Kyiv)
2. Komarivsky childcare residence (Kharkiv region)
3. Chernihiv childcare residence (Zaporizhzhya region)
4. Rivne geriatric residence (Rivne region)
5. Nizhyn childcare residence (Chernihiv region)
6. Stepove childcare residence (Mykolayiv region)
7. Vilshany childcare residence (Zakarpattia region)
8. Kyiv geriatric residence (Kyiv).

### **Violations and deficiencies found during visits to the institutions of the social protection system**

*Use of physical restrictions and isolation not foreseen by any legislative norm:*

– Neuropsychiatric residences have rooms used for isolation of patients in acute psychiatric condition (Malyzhyno neuropsychiatric residence (Kharkiv region),

Kirove home for persons with disabilities and Lyubyske neuropsychiatric residence (Zaporizhzhya region);



*Malyzhyno neuropsychiatric residence*

– Some residents of Nizhyn childcare residence (Chernihiv region) were tied to wheelchairs as the latter did not meet their needs and physiological characteristics;



– The use of methods of fixation towards residents of Nizhyn and Vilshany childcare residences due to the lack of junior medical personnel and qualified specialists capable of involving these children in rehabilitation process;



*Nizhyn childcare residence*



*Vilshany childcare residence*

*Inadequate treatment and services for bedridden patients:*

– At the time of the visit, all group IV children of Komarivsky childcare residence (Kharkiv region) were lying in beds with sheets wet from urine;



– All bedridden women at Malyzhyno neuropsychiatric residence (Kharkiv region) were not wearing diapers, were lying on plastic covers under the sheets. The personnel's explanation was that they were preparing to bathe them. However, the repeat inspection revealed the same situation – the women were not wearing diapers, some of them lying on wet sheets;

– Residents of Lviv geriatric residence are not provided with sufficient amount of diapers (one diaper per day);

– Women at Vynohradiv geriatric residence did not have any hygiene items.

*There is no legal regulatory framework for the functioning of the units of residences depending on clinical condition and psychological state of persons under care.*

In addition, there are *violations of the rights of residents to healthcare and medical assistance*, in particular due to understaffing, especially with mid-level and junior personnel (Rotmistrivka residence for elderly citizens and persons with disabilities, Chernihiv childcare residence, Vilshany childcare residence etc.).

For instance, at Vilshany childcare residence, there are from 15 to 20 group III and IV children of school age in groups, whereas there is only one nurse during the day despite the norm stating that one nurse should service the group of 10 children.

The intensive care unit with capacity of 90 persons there are three junior nurses during daytime (two men and one woman), and two during nighttime. Consequently, it is very difficult to ensure proper care, services and outdoor walks for this number of residents (Kyiv neuropsychiatric residence, Pushcha-Vodytsya neuropsychiatric residence).

There is an acute issue of understaffing of facilities with junior nurses for bathing of the persons under care. For instance, there are two bathing nurses at Lviv geriatric residence with 346 residents. The same issue exists at Pushcha-Vodytsya neuropsychiatric residence.

*There is a problem with professional development, specialization and retraining of doctors and mid-level medical personnel of the system of social protection at their own expense since the salaries are very low. The development course (“Psychiatry” cycle) for mid-level personnel costs around 1200-1500 UAH.*

*Sanitary and anti-epidemic measures at residences are not organized properly.*

*There are no regulations on inspections of living rooms and examinations of residents:*

- - medical examinations of residents are conducted with violations of current legislation;
- Specialist examinations take place once in two years (Kyiv neuropsychiatric residence );
- Examinations of orphans in the custody of the director of the residence are held twice per year and once per year for other orphaned children (Nizhyn childcare residence).

*Persons under care are not provided even with primary dental care, notwithstanding specialized care.*

For instance, during several years during annual medical exam of the patients of Komarivsky childcare residence (Kharkiv region), the dentist recommended sanitation of the residents’ oral cavity; however the district hospital did not take any therapeutic and preventive measures. The hospital explained that the two dentists assigned to the childcare residence would only service the residents when a dental cabinet with necessary equipment and materials is established at the institution.

A visit to Kirove home for persons with disabilities revealed that conclusions of a dentist are missing from the detailed annual medical inspection of the residents since the district hospital does not have such specialist. In addition, at Lyubyske neuropsychiatric residence (Zaporizhzhya region) in the absence of a dentist at the district hospital it is suggested to conclude an agreement with Denta Aleks Plus LLC on paid services for the residents, which constitutes a violation of Article 49 of the Constitution of Ukraine and Article 25 of the Convention on the Rights of Persons with Disabilities.

#### *Inadequate medical record keeping*

Primary medical records are not kept in accordance with the forms established by the MoH of Ukraine, namely the Registry of Patients, the Medical record of a hospital patient (Komarivsky childcare residence, Lyubyske neuropsychiatric residence, Nizhyn childcare residence, Malyzhyno neuropsychiatric residence, Lviv geriatric residence etc.).

МИНИСТЕРСТВО ТРУДА И СОЦИАЛЬНОЙ ПОЛИТИКИ УКРАИНЫ  
Наименование дома-интерната (психоневрологического интерната) Любимый интернат  
История болезни № [redacted]  
Корпус [redacted] Комната [redacted]  
Фамилия [redacted] Имя [Виталий]  
Отчество [Александрович] Возраст [redacted]  
Адрес родственников [redacted]  
Профессия [механик]  
Группа инвалидности [redacted]  
Кем направлен [Специализированный центр для реабилитации людей с психическими заболеваниями]  
Диагноз при поступлении [redacted]  
Диагноз при поступлении [redacted]  
Диагноз заключительный клинический [redacted]  
б) осложнение основного [redacted]  
Дата поступления 8.08.08 Дата выписки (смерти) [redacted]

Министерство социального обеспечения Украины ССР  
Наименование дома-интерната Чухувский терцентр (психоневрологического интерната)  
ИСТОРИЯ БОЛЕЗНИ 40  
Корпус [redacted] Комната [redacted]  
Фамилия [redacted] Имя [Валентин] Отчество [Александрович]  
Возраст [redacted] Адрес родственников [redacted]  
Профессия [механик]  
Группа инвалидности [группа войны]  
Кем направлен [redacted]  
Диагноз заключительный клинический [redacted]  
а) основной [redacted]  
б) осложнение [redacted]  
Дата поступления 11.11.25

*Lyubyt'ske neuropsychiatric residence  
of the territorial center of Chuhuyiv district state administration*

*In-patient unit*

МИНИСТЕРСТВО ТРУДА І СОЦІАЛЬНОЇ ПОЛІТИКИ УКРАЇНИ  
НИЖИНСЬКА ДІТЯЧА БУДИНІОК-ІНТЕРНАТ  
Історія хвороби №733  
Корпус [redacted] Комната [redacted]  
Фамилия [redacted] Имя [Арина]  
Отчество [Александровна] Возраст [redacted]  
Адрес родственников [redacted]  
Профессия [redacted]  
Группа инвалидности [redacted]  
Кем направлен [redacted]  
Диагноз при поступлении [redacted]  
Диагноз при поступлении [redacted]  
Диагноз заключительный клинический [redacted]  
б) осложнение основного [redacted]  
Дата поступления 2014.09.29

*Nizhyn childcare residence*

*Inadequate provision of medical assistance to patients with tuberculosis and lack of tuberculosis prevention measures:*

- Every year the administration organizes transportation of only 100-150 persons to the healthcare institution. Bedridden patients do not undergo any fluorography examination (all residences in Kyiv); according to 2012-2013 statistics, there were no tuberculosis cases at Komarivsky childcare residence though 29 patients receive anti-tuberculosis medication as persons who had contact with tuberculosis patients and bacteria source persons;
- During 2011-2013, there were 13 cases of tuberculosis at Kirove home for persons with disabilities, and during 2014, there were 14 residents who contracted pulmonary tuberculosis with three fatal outcomes. This situation took place following the spread of infection at Novozlatopil'ya psychiatric hospital of Hulyaypole district of Zaporizhzhya region where the residents had undergone treatment.

Persons under care have a large number of mechanic injuries that do not undergo disinfection – scratches, rashes, insect bites (Komarivsky childcare residence, Pushcha-Vodytsya neuropsychiatric residence).

The lack of funding forces residents to purchase medication, hygiene items, including toothpaste, shampoo, and toilet paper, which constitutes a violation of paragraph 2.2. of the Model regulation on a residence for elderly citizens and persons with disabilities, geriatric residence, residence for war and labor veterans adopted by the order of the Ministry of Labor of Ukraine #549 dated 29.12.2001 (Vynohradiv geriatric residence, Pisky-Radkivski neuropsychiatric residence etc.).

*Violation of the right of persons with special needs to rehabilitation:*

– The order of the Ministry of Labor of Ukraine #411 dated 01.10.2008 “The norms on time and number of staff at residence (of all types) and in-patient units of territorial centers of social services for retired persons and single persons unfit for work of the system of labor and social protection” lacks positions such as rehabilitation specialist, psychotherapist, psychologist etc.;

– There are no developed modern and accessible methodologies for rehabilitation programs at residences;

– There are no qualified specialist to conduct rehabilitation activities with the persons with special needs (Chernihiv childcare residence, Vilshany childcare residence);

– Documentation on labor therapy is not regulated by legislative norms and thus is kept in free format;

Табель обліку робочого часу підопічних КУ "Любичків ПНІ" ЗОР *Сервіс*

№ з/п	П.І.П	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
1	Басаржук О	0	0	0	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
2	Меркуць В	+	-	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
3	Біда-Корнієв С	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
4	Міхалюк С	0	0	0	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
5	Таран Е	+	-	-	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
6	Ситник С	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
7	К...	0	0	0	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+

*Lyubyske neuropsychiatric residence*

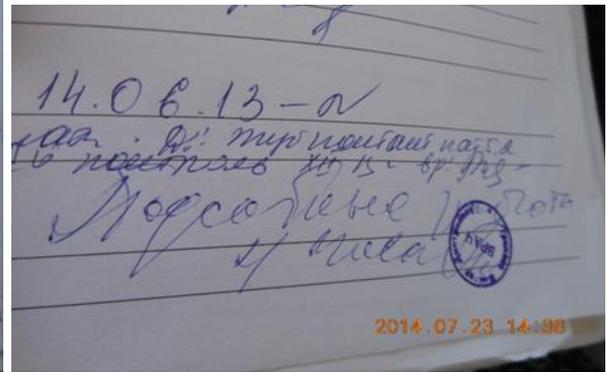
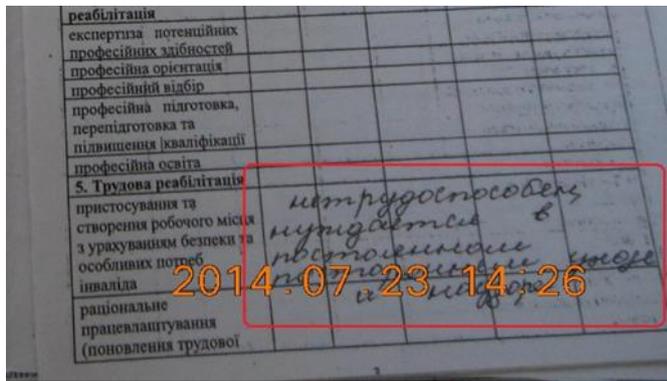
26.06.2014			27.06.2014			1.07.2014		
години	вид трудової діяльності	підпис відповідального	години	вид трудової діяльності	підпис відповідального	години	вид трудової діяльності	підпис відповідального
2	ПЕРЕБІГ ПРАЦІ	Бондарь С.	2	НОСІВ СІНО	Леонюк Л.	2	НОСІВ СІНО	Леонюк Л.
4	ПЕРЕБІГ ПРАЦІ	Бондарь С.	4	СИЛА ПРАЦІ	Леонюк Л.	4	СИЛА ПРАЦІ	Леонюк Л.
4	ПЕРЕБІГ ПРАЦІ	Бондарь С.	4	СИЛА ПРАЦІ	Леонюк Л.	4	СИЛА ПРАЦІ	Леонюк Л.
4	ПРАЦЯ	Глушченко Г.	4	ПРАЦЯ	Глушченко Г.	4	ПРАЦЯ	Глушченко Г.
4	ДОПМОГА НА ЧОЗ ДВОРИ	Машев М.	4	ДОПМОГА НА ЧОЗ ДВОРИ	Машев М.	4	ДОПМОГА НА ЧОЗ ДВОРИ	Машев М.
4	ЧОБКА ТЕРИТОРИЇ	Голуб Г.	4	ЧОБКА ТЕРИТОРИЇ	Титаренко Т.	4	ЧОБКА ТЕРИТОРИЇ	Титаренко Т.
4	ПЕРЕБІГ ПРАЦІ	Бондарь С.	4	НОСІВ СІНО	Леонюк Л.	4	НОСІВ СІНО	Леонюк Л.
4	ДОПМОГА НА ЧОЗ ДВОРИ	Машев М.	4	ДОПМОГА НА ЧОЗ ДВОРИ	Машев М.	4	ДОПМОГА НА ЧОЗ ДВОРИ	Машев М.
4	ЧОБКА ТЕРИТОРИЇ	Короткова К.	4	ЧОБКА ТЕРИТОРИЇ	Машев М.	4	ЧОБКА ТЕРИТОРИЇ	Машев М.
2	ДОПМОГА НА ЧОЗ ДВОРИ	Машев М.	2	ЧОБКА ТЕРИТОРИЇ	Машев М.	2	ДОПМОГА НА ЧОЗ ДВОРИ	Машев М.
4	ДОПМОГА НА ЧОЗ ДВОРИ	Машев М.	4	ДОПМОГА НА ЧОЗ ДВОРИ	Машев М.	4	ДОПМОГА НА ЧОЗ ДВОРИ	Машев М.

*Pisky-Radkivski neuropsychiatric residence*

Дата	Температура	Вітряний	Вологість	Висота	Вітер	Вологість	Висота
18.12	11°	11	11	11	11	11	11
19.12	11°	11	11	11	11	11	11
20.12	11°	11	11	11	11	11	11
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22.12	11°	11	11	11	11	11	11
23.12	11°	11	11	11	11	11	11
24.12	11°	11	11	11	11	11	11
25.12	11°	11	11	11	11	11	11
26.12	11°	11	11	11	11	11	11
27.12	11°	11	11	11	11	11	11
28.12	11°	11	11	11	11	11	11
29.12	11°	11	11	11	11	11	11
30.12	11°	11	11	11	11	11	11
31.12	11°	11	11	11	11	11	11

*Starobilsk neuropsychiatric residence*

- Neuropsychiatric residence only provide social and household rehabilitation in the form of work at a subsidiary enterprise and cleaning of the territory (Balta neuropsychiatric residence, Lyubyske neuropsychiatric residence, Pisky-Radkivski neuropsychiatric residence). There are no workshops, and rehabilitation measures in the form of physical education and sports is held only partially (Malyzhyno neuropsychiatric residence, Smila neuropsychiatric residence, Dilyatyn neuropsychiatric residence, Vynohradiv geriatric residence);
- The residents work at the subsidiary enterprise for 6-8 hours daily, especially during summer (Pisky-Radkivski neuropsychiatric residence, Kirove home for persons with disabilities);
- Involvement of some residents in labor therapy despite recommendations of the medial and social expert board (Pisky-Radkivski neuropsychiatric residence);



- Complete lack of rehabilitation measures for bedridden patients (Smila neuropsychiatric residence, Lviv geriatric residence);
- Social and household rehabilitation at geriatric residences and residences for elderly persons and persons with disabilities is limited to self-service (Vynohradiv geriatric residence, Rotmistrivka residence for elderly citizens and persons with disabilities, Lviv geriatric residence);
- Individual rehabilitation programs (IRP) are formally filled by the medical and social expert board, the limits of their implementation are not observed, and results not indicated (Malyzhyno neuropsychiatric residence, Pisky-Radkivski neuropsychiatric residence, Pushcha-Vodytsya neuropsychiatric residence). In some institution, there are sealed and signed copies of IRPs for different patients with identical recommendations (Balta neuropsychiatric residence, Kirove home for persons with disabilities). In violation of Article 7 of the Law of Ukraine “On Rehabilitation of Persons with Disabilities”, the medical and social expert board does not control effectiveness of implementation of the IRP upon its design.

*Insufficient number of small-scale mobility means, in particular wheel chairs, complicates the conduct of regular walks for bedridden patients (Pushcha-Vodytsya neuropsychiatric residence, Balta neuropsychiatric residence).*



*The use of buckets and pots etc. due to the absence of chairs with sanitary equipment* (Lyubytske neuropsychiatric residence, in-patient unit of Chyhyryn territorial center).

*Lack of organization of the residents' leisure time* (in-patient unit of Chyhyryn territorial center), including for bedridden patients.

*Inadequate condition of living rooms:*

– Violations of international standards on the living space per person is typical for neuropsychiatric and childcare residences within the system of social protection. Due to an intent to eliminate the que for placement to the residences, capacity of these institutions was constantly arbitrarily increase leading to violations of the rights of their residents to personal space and decent living conditions. Bedrooms are overcrowded, in some rooms 3-4 beds are standing next to each other (Romaniv childcare residence). Despite the established norm of 7-8 sq. m. of floor space per person, the actual size does not exceed 2.5 – 3 sq. m. (Romaniv childcare residence, Ananyiv childcare residence, Kirove home for persons with disabilities, Pisky-Radkivski neuropsychiatric residence, Balta neuropsychiatric residence, Odesa childcare residence, Nizhyn childcare residence, Teple neuropsychiatric residence);



*Nizhyn childcare residence*



*Balta neuropsychiatric residence*

– The quality of lighting in living rooms is unsatisfactory (Malyzhyno neuropsychiatric residence, Vynohradiv geriatric residence, Pisky-Radkivski neuropsychiatric residence);

– Due to the lack of bed stands and wardrobes, personal clothes and belongings are stored on beds, hangers, windowsills or storage rooms accessed by personnel only (Pisky-Radkivski neuropsychiatric residence, Lyubytske neuropsychiatric residence, Balta neuropsychiatric residence, Romaniv childcare residence);

– Living rooms and recreation premises are in unsatisfactory condition, there are no ventilation frames, the lighting is insufficient, household appliances are out of order, walls are covered with mold) (Pushcha-Vodytsya neuropsychiatric residence, Pisky-Radkivski neuropsychiatric residence, Malyzhyno neuropsychiatric residence);



*Malyzhyno neuropsychiatric residence residence*



*Pushcha-Vodytsya neuropsychiatric residence*



*Pushcha-Vodytsya neuropsychiatric residence residence*



*Pisky-Radkivski neuropsychiatric residence*

– Accessories are extremely worn: the clothes, mattresses, pillows and bed linen. Bed linen is usually not marked. There is no personal marking on clothing and footwear of the residents (Pisky-Radkivski neuropsychiatric residence, Lyubyske neuropsychiatric residence, Rotmistrivka residence for elderly citizens and persons with disabilities, in-patient unit of Chyhyryn territorial center).

*Clothing and footwear of the residents are not appropriate for the season:* often, residents wear winter boots in the summer. The clothes are worn and do not fit specific individuals. Many residents work at the subsidiary enterprise and have no possibility of changing clothes after the “labor therapy”. Consequently, they are forced to go to the dining room and residential units in dirty work clothes during the day (Pisky-Radkivski neuropsychiatric residence, Starobilsk neuropsychiatric residence);



*Pisky-Radkivski neuropsychiatric residence*

*The doors of living rooms of the residents are locked at night or are missing (Balta neuropsychiatric residence, Odesa childcare residence). The above was found during a visit by the regional public relations coordinator of the Ukrainian Parliament Commissioner for Human Rights in Odesa region A.P. Tolopilo.*



*Balta neuropsychiatric residence*

*Residential units lack proper ventilation – there is persistent unpleasant smell of urine (Romaniv childcare residence, Balta neuropsychiatric residence);*

*Residential units have large covered terraces that are not equipped the residents' walks during rain, they are also used for drying clothes and bed linen (Kirove home for persons with disabilities);*



*The outdoor court is not equipped with rain and sunlight canopies, benches or parlor (Romaniv childcare residence, Balta neuropsychiatric residence, Malyzhyno neuropsychiatric residence, Kirove home for persons with disabilities, in-patient unit of the territorial center of Chuhuyiv district state administration). These problems were identified at the in-patient unit of the territorial center of Chuhuyiv district state administration and Smila neuropsychiatric residence were identified during a visit by the regional public relations coordinator of the Ukrainian Parliament Commissioner for Human Rights in Cherkasy region V.K. Batchayev.*



*Malyzhyno neuropsychiatric residence*



*Balta neuropsychiatric residence*

*There is no equipment for temperature treatment of the residents' clothes at the bathing and laundry unit, which complicates the tasks of staff (Romaniv childcare residence, Balta neuropsychiatric residence, Rotmistrivka residence for elderly citizens and persons with disabilities).*

*The residents have no way of storing their parcels due to the lack of refrigerators for food (in-patient unit of the territorial center of Chyhyryn district, Pisky-Radkivski neuropsychiatric residence, Balta neuropsychiatric residence);*

*The residents have no continuous unimpeded access to drinking water: the outdoor courtyard and living premises have no containers for drinking water (Rotmistrivka residence for elderly citizens and persons with disabilities, Romaniv childcare residence, and Vynohradiv geriatric residence).*

*Inadequate equipment and functioning of sanitary rooms:*

- The condition of bathroom equipment is unsatisfactory; the number of toilets per group is insufficient which interferes with ensuring fulfillment of the residents' basic needs (Malyzhyno neuropsychiatric residence, Pisky-Radkivski neuropsychiatric residence);
- Sanitary rooms do not have toilet paper, disinfectants; some residents have no toothbrushes or toothpaste (Balta neuropsychiatric residence, Malyzhyno neuropsychiatric residence, Pisky-Radkivski neuropsychiatric residence);
- The sanitary room of the youth unit has extremely difficult access to hygienic procedures for persons on wheelchairs due to narrow door frames and absence of special equipment (Nizhyn childcare residence, Romaniv childcare residence);



*Nizhyn childcare residence*

- In violation of the right to privacy, there are no partitions in showers and toilets (Malyzhyno neuropsychiatric residence, Pushcha-Vodytsya neuropsychiatric residence, Pisky-Radkivski neuropsychiatric residence, Balta neuropsychiatric residence, Kirove home for persons with disabilities, Nizhyn childcare residence).



*Nizhyn childcare residence  
neuropsychiatric residence*



*Balta*



*Malyzhyno neuropsychiatric residence*

*Violations of the right to equality:*

In Lviv geriatric residence, the residents are segregated during food intake in different rooms according to their neatness and social habits.

*Violation of the right to unimpeded communication and maintaining family relations:*

When issuing permits for visits and temporary leave of residents to their relatives (caretakers), the administration of Nizhyn childcare residence (Chernihiv region) requires family members (caretakers) to provide fluorography conclusions referring to inexistent “decree of the Ministry of Health of Ukraine dated 1 October 2010”.

*Violation of the right to access to information:*

– There are no remedies for exercising the right to complain: there is no information on visiting hours of the director, visitors’ registries, registry of complaints

and suggestions. There is no access to information on human rights and addresses of state authorities for petitions (Pisky-Radkivski neuropsychiatric residence, in-patient unit of the territorial center of Chuhuyiv district state administration, Balta neuropsychiatric residence, Rotmistrivka residence for elderly citizens and persons with disabilities, in-patient unit of Chyhyryn territorial center);

– Possibility, time and duration of viewing TV programs is controlled by the personnel;

– The list of periodicals received by the institution is limited (usually, periodicals are only for the staff) (Rotmistrivka residence for elderly citizens and persons with disabilities).

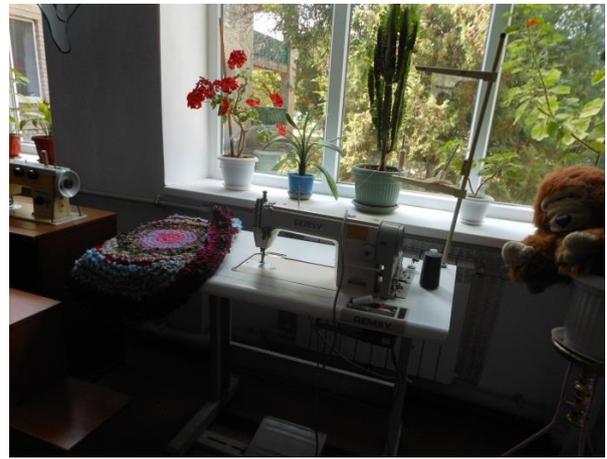
*Positive practices of ensuring the rights of residents:*

1. We should note the proper organization of medical and psychological rehabilitation of persons with disabilities, record keeping for rehabilitation activities in accordance with the cards of individual needs of the resident filled out by the doctor and psychologist at Smila neuropsychiatric residence (Cherkasy region). In addition, individual rehabilitation plans with concrete recommendation and names of responsible persons are developed based on individual rehabilitation programs. These plans are approved by the director of the institution. The doctor and the psychologist review these plans once per year and provide recommendations on changes or continuation of the IRP.

2. At Lyubyske neuropsychiatric residence (Zaporizhzhya region), rehabilitation through physical education and sports is on a high level, particularly for youth: there is a room with exercise equipment, table tennis, billiard, and a field for volleyball and football.



3. The experience of social rehabilitation of residents of the youth unit of Kirove home for persons with disabilities (Zaporizhzhya region) is a practice worth replicating. In particular, it includes methods of fairy-tail, doll- and garden therapy, as well as applied folk arts. There are functioning sports and arts clubs, residents of the institution take part in competitions, festivals, and contests. Every unit has libraries, and the youth unit has free Internet access.



4. Management of Vilshany childcare residence (Zakarpattya region) applies significant effort to purchase rehabilitation equipment, organize costly treatment of the residents abroad, involves volunteers and specialists to support residents of the youth unit (Tyachiv). For instance, administration of the institution engaged in cooperation with Bodaj NGO from Prague, Czech Republic, for the purposes of providing quality services to the residents of the youth unit. Bodaj experts (doctors, rehabilitation specialists) provide practical, social and medical support to the residents.



5. There are no strict regulations for residents at Malyzhyno neuropsychiatric residence (Kharkiv region), and relations between them and the personnel are friendly. Particular attention at the institution is paid to organizing the leisure time of bedridden patients – the cultural staff member reads to them books from his own library.



6. Kirove home for persons with disabilities and Lyubyske neuropsychiatric residence (Zaporizhzhya region) include units of supported living. The residents of these units are free to manage their time (within the institutions' schedule) and have the right to visit the store, use household appliances etc. freely.

### **Implementation of recommendations following monitoring visits to institutions of the social protection system**

We should note that management of some residences responded promptly to recommendations of the group after monitoring visits. In particular, within a week, the administration of Pisky-Radkivski neuropsychiatric residence (Kharkiv region) provided the NPM department with photographs evidencing elimination of shortcomings.



*23.07.2014.*



*01.08.2014*



23.07.2014



01.08.2014



23.07.2014



04.08.2014

### *Repeat visits*

In May 2014, NPM Department staff and public monitors conducted a repeat visit to Kyiv neuropsychiatric residence with the purpose of monitoring observance of human rights in its operations (the first visit took place on 22 May 2013).

The group found that majority of recommendations following the previous visit were taken into consideration, in particular:

The institution established cooperation with Kyiv city clinical neuropsychiatric hospital #1, including the psychiatric ambulance service of the city of Kyiv;

A dining room and walking courtyard were equipped at the intensive care unit with supervision;



A room for visitations was equipped, including the fridge for food, TV set, boards with the residents' artworks;



A sports ground was equipped;



Containers with drinking water were installed at the units;



Rooms for clothes storage were equipped with new racks;



*May 2013*



*May 2014*

A greenhouse and a workshop for labor therapy were established.



Representatives of the Secretariat of the Commissioner visited Komarivsky childcare residence (Kharkiv region) on 23 July 2014 and twice in 2013.

Positive changes at the institution in response to comments from previous visits include the following:

Residents with severe mental disabilities and serious physical impairments who cannot move or service themselves independently have been transferred to other rooms of the main unit. Now the children can be outside more often since these rooms are located closer to the stairs and have better ventilation. The doorframe of the sanitary facility allows the unit staff to conduct washing without carrying children in their hands (as was done earlier) but use wheelchairs. There are “rooms for walks” with special mattresses equipped next to the bedrooms of children with severe illnesses;

Resident Andriy K. underwent two surgeries at the district hospital with a diagnosis of right-side inguinoscrotal hernia. His condition is satisfactory;

The bathroom for staff of the laundry room was refurbished.

#### *Petition by the Ukrainian Parliament Commissioner for Human Rights*

On 29 January 2014, the Commissioner for Human Rights addressed the Ministry of Social Policy of Ukraine and the head of Zaporizhzhya regional state administration on the matters of ensuring the rights of residents of Chernihiv childcare residence of Zaporizhzhya regional council.

It was established that Chernihiv childcare residence also had youth and neuropsychiatric units for men in addition to children’s unit. However, the Model regulation on a childcare residence states that only youth units can be established at these institutions. The childcare residence is located 40 km away from the district and 150 km away from the regional hospital, which makes it impossible to provide the full range of necessary medical services.

Given the absence of proper medical care for children with severe illnesses at Chernihiv childcare residence and fruitless efforts to solve the problem for many years the Commissioner for Human Rights offered to take immediate steps for the protection of the rights of children with severe illnesses from cruel, inhuman, or degrading treatment by means of transferring them to another institution and changing the specialization of Chernihiv childcare residence.

In response, the head of Zaporizhzhya regional state administration informed the Commissioner of a decision on gradual transformation of the institution into a neuropsychiatric residence and transfer of the children to institutions closer to the regional center. Pursuant to this decision, 27 children have already been transferred to Zaporizhzhya childcare residence and 8 children – to Kirove home for persons with disabilities.

### *Information from the Ministry of Social Policy*

Based on the outcomes of the monitoring of observance of the residents' rights at institutions of the social protection system, the leadership of the Ministry of Social Policy sent letters to regional and Kyiv city state administration in providing the residents with living space that meets the norms, equipment of rooms for ritual, ensuring unimpeded access to fresh air and drinking water, installing partitions in sanitary rooms, as well as equipping these rooms with benches, shelves and hooks for toiletries and underwear.

Together with the MoH, the Ministry of Social Policy have planned to take joint measure for the purpose of providing and using certified primary medical records by residence institutions, ensuring individual approach to development and full implementation of individual rehabilitation programs for people with disabilities and children with disabilities, establishing cooperation between residence institutions and specialized healthcare facilities providing psychiatric help, conducting annual medical service for the residents of in-patient units of territorial centers for social services.

To harmonize the norms regulating the stay of elderly, people with disabilities and children with current international and national standards, the Ministry of Social Policy developed new draft model regulations on neuropsychiatric residences and childcare residences published on the website of the Ministry of Social Policy<sup>63</sup>.

The above drafts include indications and contraindications for placement of persons with residence institutions of the social protection system, as well as certain regulations on internal records.

The Ministry of Social Policy has developed draft Minimum norms for provision of items, materials and accessories to elderly citizens, persons with disabilities and children with disabilities in residence institutions and territorial centers of social services of the social protection system.

The Ministry of Social Policy prepared relevant amendments to the decree of the Cabinet of Ministers of Ukraine #1417 dated 29 December 2009 "Some matters related to the functioning of territorial centers of social services". The amendments concern changes to the List, conditions and procedure for provision of social services by the in-patient unit for temporary or permanent stay of the territorial center.

To ensure the rights and freedoms of persons in the custody of residences, the Ministry of Social Policy has developed a card of the residents' individual needs.

In addition, the Ministry has approved the terms of reference for modification of the software for recording the needs of people with disabilities and the Passport of

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<sup>63</sup> [http://www.mlsp.gov.ua/labour/control/uk/publish/article?art\\_id=171927&cat\\_id=102036](http://www.mlsp.gov.ua/labour/control/uk/publish/article?art_id=171927&cat_id=102036),  
[http://mlsp.kmu.gov.ua/labour/control/uk/publish/article?art\\_id=175019&cat\\_id=102036](http://mlsp.kmu.gov.ua/labour/control/uk/publish/article?art_id=175019&cat_id=102036)

residence institutions (pursuant to a decision by the Ministry of Justice) that would facilitate prompt response to problem of residences, including issues related to observance of rights and freedoms.

At the same time, there has been no legislative instrument developed for improving the level of social, household, and other rehabilitation services to elderly citizens, persons with disabilities and children with disabilities in residence institutions and in-patient units of territorial centers of social service. In particular, the Special report of the Commissioner for Human Rights “Monitoring of Custodial Settings in Ukraine: Status of implementation of the national preventive mechanism. Report for 2013” included a recommendation for the Ministry to develop the procedure for personal spending (25 % of the pension) of incapable residents and the list of materials and services to buy at own expense. However, this recommendation has not been fulfilled.

#### **4.9. Results of monitoring of institutions of the Ministry of Health of Ukraine**

##### **Information about monitoring visits to institutions of the healthcare system**

According to the Ministry of Health of Ukraine, at the beginning of 2014 there were following institutions operating in Ukraine: 84 psychiatric/neuropsychiatric hospitals for 37856 persons, 46 children’s homes for 4880 persons, 60 palliative and hospice care units, 40 narcological institutions/units.

During 2014, staff of the NPM Department conducted 25 visits to institutions of the healthcare system – 10 psychiatric/neuropsychiatric hospitals, 8 palliative and hospice care units, 3 narcological institutions and 4 children’s homes, including:

- palliative care unit Kyiv city clinical hospital № 10;
- palliative care unit Kyiv city clinical hospital № 2;
- palliative care unit Kyiv city oncology center;
- palliative care unit of Mykolayiv regional tuberculosis dispensary;
  
- palliative care unit of Lviv municipal 4<sup>th</sup> city clinical hospital;
- Vynnytsya regional O.I. Yushchenko neuropsychiatric hospital #2;
- Volyn regional psychiatric hospital № 1 in Lutsk;
- Volyn regional psychiatric hospital № 2;
- Zhytomyr regional narcological dispensary;
- Kyiv clinical city narcological hospital “Sotsioterapiya”;
- Kyiv regional psychiatric hospital № 1;
- Kyiv regional neuropsychiatric hospital #2;
- Kyiv psychiatric hospital № 3;
- Lviv municipal city hospital “Hospice”
- Lviv children’s home № 1;
- Lviv children’s home № 2;
- Mykolayiv regional children’s home;

Mukachevo district clinical hospital (gerontology department “Hospice” and oncology department)  
Regional children’s home in Svalyava;  
Palliative care unit at Sheptytsky hospital;  
Poltava regional Maltsev clinical psychiatric hospital;  
Ukrainian psychiatric hospital with intensive supervision of the MoH of Ukraine (Dnipropetrovsk)  
Cherkasy regional psychiatric hospital;  
Chernivtsi regional psychiatric hospital.

### **Violations and shortcomings found during monitoring visits to institutions of the healthcare system.**

#### ***Monitoring of psychiatric (neuropsychiatric) institutions***

There has been no solution found for the issue of regulating the use of physical restraint measures towards patients with psychiatric disorders.

During monitoring visits, makeshift instruments of restraint were found, including at the children’s units of hospitals, which may cause significant harm to the patients’ health, namely: at Cherkasy regional psychiatric hospital, Ukrainian psychiatric hospital with intensive supervision of the MoH of Ukraine, Kyiv regional neuropsychiatric hospital #2 (children’s unit), Poltava regional clinical psychiatric hospital, Poltava regional clinical psychiatric hospital, Children’s unit of Kyiv regional psychiatric hospital #2.

For instance, during the visit of the regional public relations coordinator of the Ukrainian Parliament Commissioner for Human Rights in Rivne region V.V. Svirets, to Volyn regional psychiatric hospital № 2 one patient was in an isolated ward. The staff explained that he was on the floor due to his condition, namely severe mental disability. However, the room was clearly unfit for isolation and, moreover, locked.



That patient has been staying at the hospital for a long period as the court deprived his mother of a right to custody due to alcohol abuse. The custody and trusteeship agency did not prepare the documents for transfer to a neuropsychiatric residence, and the hospital is unable to solve the problem. Necessary measure were

taken during the visit, and an act of response was forwarded to the head of the regional state administration with the aim of finding solution.

On 24 September 2014, the Secretariat of the Ukrainian Parliament Commissioner for Human Rights hosted a roundtable titled “Issues related to applying physical restraint towards to persons with psychiatric disorders” organized in cooperation with the Ukrainian Research Institute of Social and Forensic Psychiatry and Drug Abuse of the MoH of Ukraine. Results of the Commissioner’s monitoring were presented at the roundtable and taken into consideration during development of a draft MoH order on regulation of the procedure of physical restraint.

However, the above MoH order has not been adopted.

### *Violations of children’s rights in the process of psychiatric assistance*

Paragraph 4 of the Procedure for provision of psychiatric assistance to children approved by the MoH order #400 dated 18.05.2013 states that custody and trusteeship agencies ought to be informed about admission of an orphaned child or a child deprived of parental care to a psychiatric institution.

Treatment of children at the Ukrainian psychiatric hospital with intensive supervision of the MoH of Ukraine constitutes a gross violation of the rights. As of 1 November 2014, there were two underage patients in this hospital held together with the adults, which is a serious breach of Standards 29 and 30 of the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT/Inf/E (2002) 1 - Rev. 2004), according to which “juvenile psychiatric patients should be accommodated separately from adults”. At the same time, the institution does not have experts in treatment and rehabilitation of children with mental disorders.

### *Violations of human rights in relation to the use of coercive medical treatment measures*

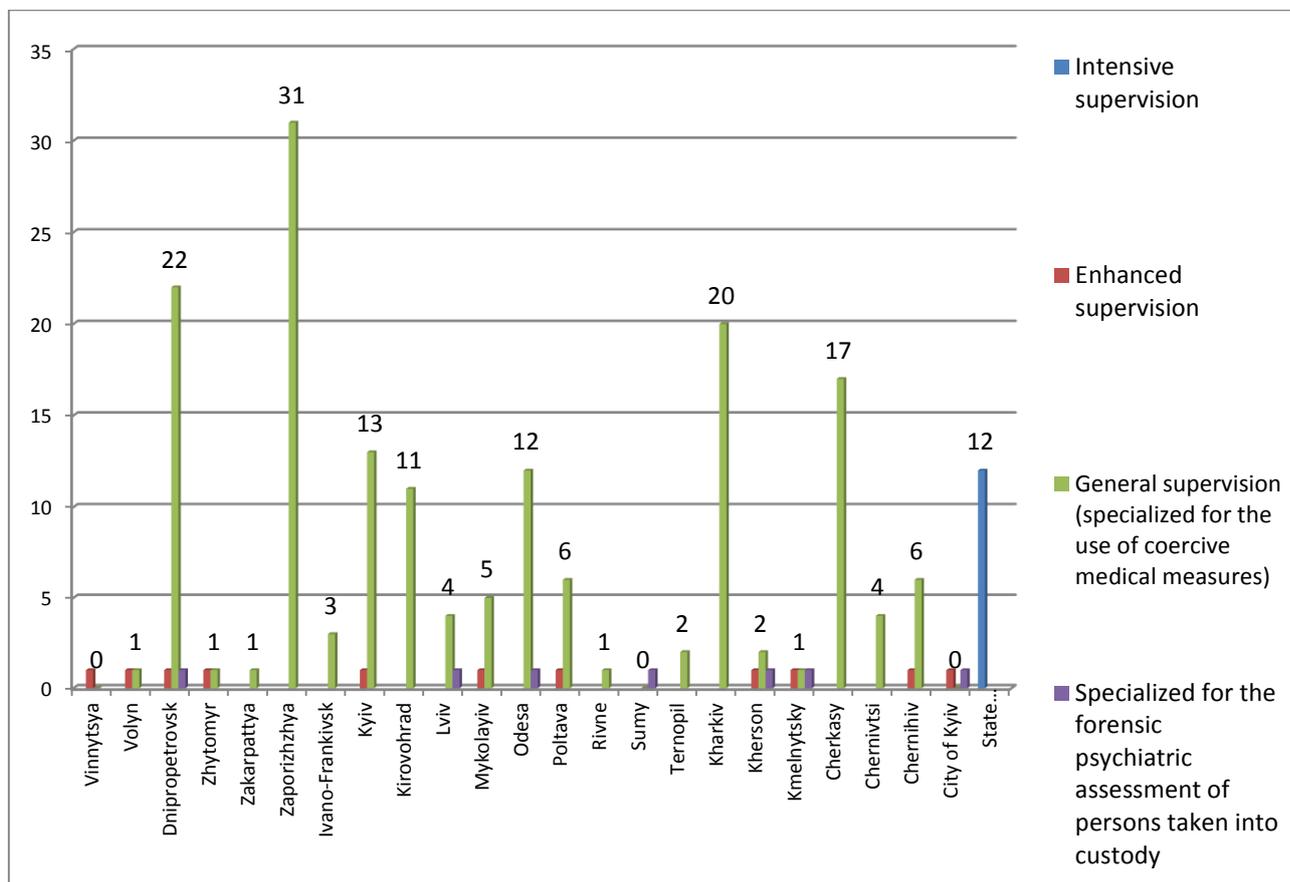
In 2014, coercive medical treatment was used at:

The Ukrainian psychiatric hospital with intensive supervision of the MoH of Ukraine;

14 departments of enhanced supervision;

239 departments of general supervision.

As of 1 January 2015, there were 1690 psychiatric patients in Ukraine who had been subjected to coercive treatment, including 787 at the Ukrainian psychiatric hospital with intensive supervision of the MoH of Ukraine (Dnipropetrovsk).



*Violations of the right to be present in court during review of the matters of extension, alteration or termination of the use of coercive medical measures.*

For instance, patients of Volyn regional psychiatric hospital № 2 do not participate in court hearings, and the court takes decisions in relation to extension, alteration, or termination of the use of coercive medical treatment measures based on submission by the chief physician, examination conclusion, and conclusion of a medical supervisory committee.

Unfortunately, such practice was also found in other healthcare institutions, in particular in the Ukrainian psychiatric hospital with intensive supervision of the MoH of Ukraine. Only following the Commissioner’s intervention, people started to be brought to court. *At the same time, the process of bringing to court organized by the administration can be viewed as degrading treatment.* The patients are accompanied by the staff of the State Penitentiary Service without a doctor and handcuffed at all time.



It was established that patients were handcuffed also during transfer and stay at in-patient units of other hospitals, particular during treatment of somatic diseases. *Yet handcuffing of patients with psychiatric disorders is not foreseen by any regulatory instrument in the field of healthcare.*

In this regard, we should point out a positive practice used by Vinnytsya city court. To decide on the matters of extension, alteration, or termination of the use of coercive medical treatment measures, the court conducts field hearings at the specially equipped room of Vinnytsya regional O.I. Yushchenko neuropsychiatric hospital #2. The lawyer and hospital administration are diligent in following time limits, and cooperate with local authorities, prosecution and the court for the protection of patients' rights.

There is an important *issue of the judges' expertise in cases involving persons with psychiatric disorders*. For instances, court cases of the patients of Kyiv regional psychiatric and narcological union #1 prior to introduction of electronic distribution were reviewed by judges of Vasylkiv district court specialized in such cases who conducted field hearings at the hospital. However, today only the judges "selected" by the system review these cases, yet the practice shows that by far not all of them have relevant training for working with this category of persons.

There are also problems related to *the absence of passports in clients transferred for treatment from remand prisons*. The Procedure for application of coercive means of medical treatment (adopted by the MoH of Ukraine order #397 dated 08.10.2001), contains a requirement for providing a passport. At the same time, the monitoring revealed multiple instances when persons subjected to coercive medical measures were brought to the psychiatric institution without passports (Kyiv regional psychiatric and narcological union #1, Kyiv city neuropsychiatric hospital #3).

In addition, *there is no mechanism for the use of pension and social payments by the patients subjected to coercive measures of medical treatment.*

The procedure for receipt, safekeeping and withdrawal of money belonging to patients adopted by the MoH order #64 dated 02.03.2007 is very outdated as it was

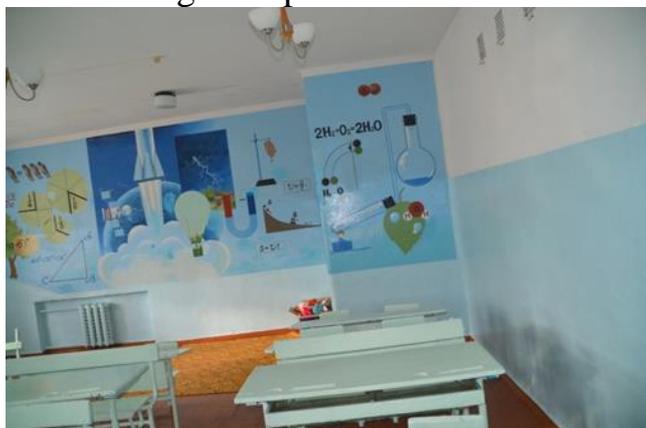
adopted on the basis of legal instruments of Soviet time – the Procedure of cash transactions adopted by the decree of the USSR Council of Ministers #552 dated 06.08.1973 and the MoH order #643 dated 21.08.1973.

During visits to Kyiv regional psychiatric and narcological union #1, Ukrainian psychiatric hospital with intensive supervision of the MoH of Ukraine, Kyiv city neuropsychiatric hospital № 3, it was found that custodians receive pension and/or assistance for the persons with legal incapacity subjected to coercive medical measures. In case of their absence, the money is kept on private accounts of the patients. Patients stay in these hospitals for long time, usually, during several years. Some of them have no relatives or visitors. Consequently, these patients in fact have no possibility to use their money even to purchase necessities, and they are fully dependent on the custodian for these matters.

*There are obstacles to ensuring the right to education for the children undergoing treatment at in-patient units.*

As a rule, there are only counselors at children's units, and they do not ensure proper educations. The juvenile unit of Kyiv regional psychiatric hospital #2 does not even have a staff counselor.

Vinnitsya regional neuropsychiatric hospital #2 and Poltava regional clinical psychiatric hospital display positive example of organizing educational process at children's units. In particular, there are agreements signed between hospitals and secondary schools providing for individual learning that allows children to go through educational programs while being at in-patient units.



Poltava regional clinical psychiatric hospital

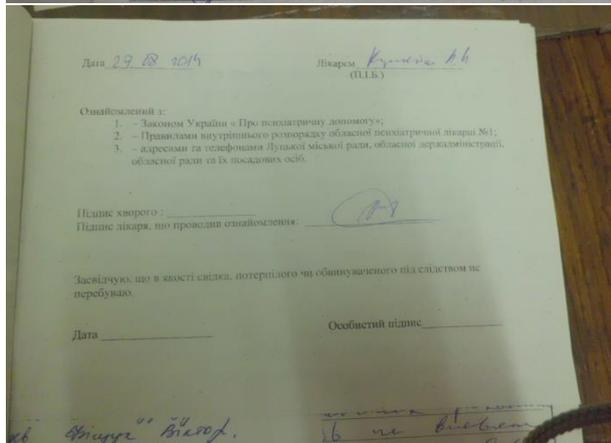
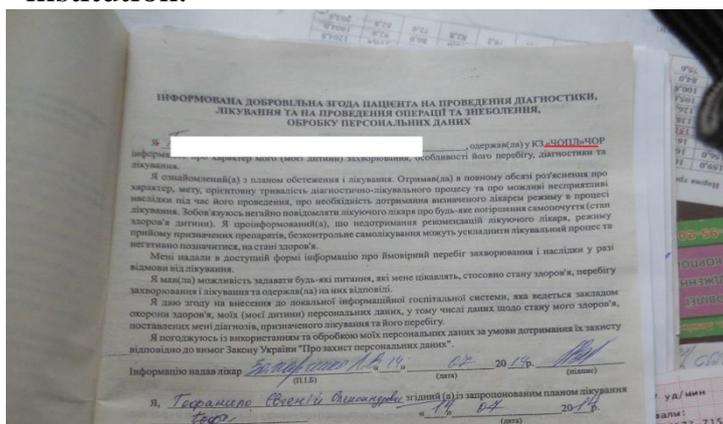
*Human rights violations during provision of informed consent to hospitalization to a psychiatric institution*

Modern international standards for protection of the rights of persons with mental disorders recognize that “forced treatment by psychiatric and other health and medical professionals is a violation of the right to equal recognition before the law and an infringement of the rights to personal integrity (art. 17); freedom from torture (art. 15); and freedom from violence, exploitation and abuse (art. 16)” (General comment No. 1 (2014), UN Committee on the Rights of Persons with Disabilities, Eleventh session 31 March–11 April 2014). The Committee recommended that States parties

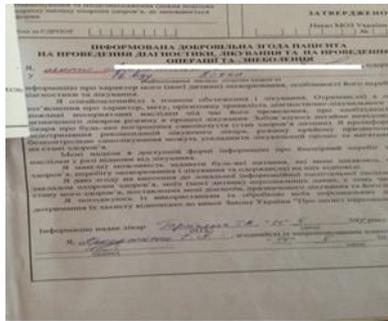
“ensure that decisions relating to a person’s physical or mental integrity can only be taken with the free and informed consent of the person concerned”.

Ukrainian legislation, in particular Article 13 of the Law of Ukraine “On Psychiatric assistance”, requires informed consent for voluntary hospitalization to a psychiatric institution.

As there is no unified consent form for these purposes, the psychiatric institutions use the form of informed voluntary consent of a patient of the Form of primary documentation №003-6/o approved by the MoH order #110 dated 14.02.2012. However, contrary to Article 1 of the Law, the form does not ensure availability of this information. In addition, abbreviated names of psychiatric institutions are often used, which does not inform the patient in accessible way about his admission to a psychiatric institution.

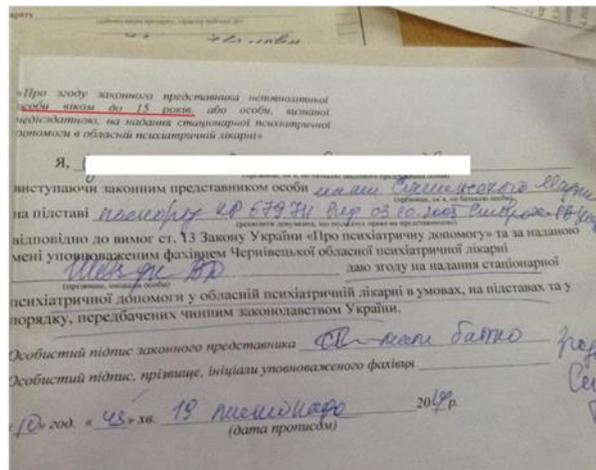


The monitoring identified multiple violations during provision of informed consent for hospitalization of children aged 14-18 (underage). In accordance with paragraph, 3.5 of the Procedure for provision of psychiatric assistance to children (approved by the MoH order #400 dated 18.05.2013), for children of this age category “the written consent for hospitalization is attested in medical records *with the signature of the child*, his/her parents, legal guardians and child psychiatrist at the reception office (unit)”. However, children’s units of Kyiv regional neuropsychiatric hospital #2, Vinnytsya regional neuropsychiatric hospital #2, Cherkasy regional psychiatric hospital and others, have demonstrated that underage persons do not sign the consent form, and consent is given by parents only.



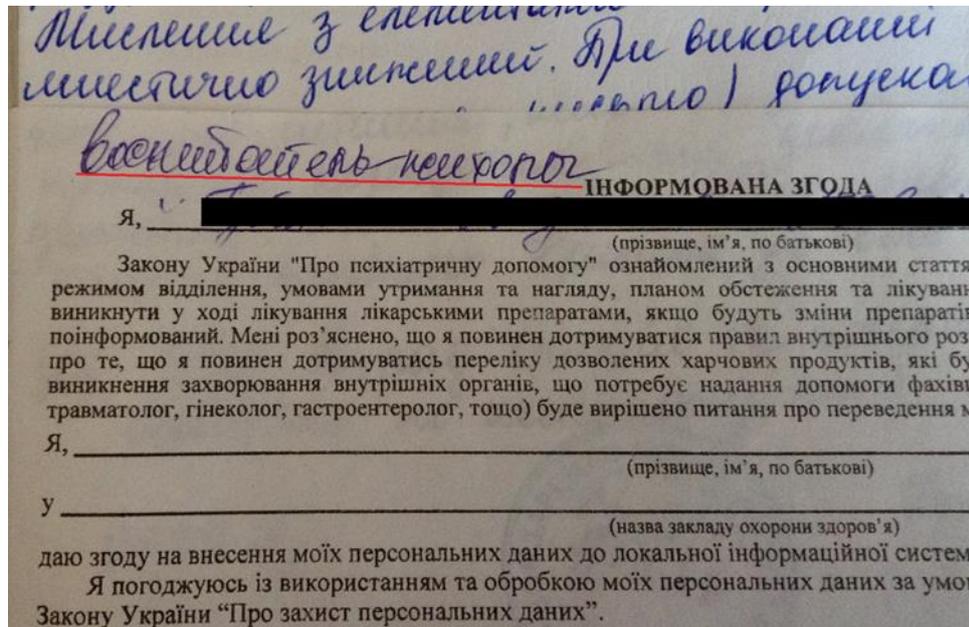
Some hospitals have the rule to collect Informed voluntary consent for treatment of an underage persons starting with 15, instead of 14, years of ages (likely, in analogy to Article 26 of the Law of Ukraine “On psychiatric assistance” whereby children aged 15 and above have the right to review their medical records).

While in general the norms on hospitalization were adhered to at Chernivtsi regional psychiatric hospital, there was use of consent forms of legal representatives of an underage person under the age of 15 years.



In addition, even when underage children provide informed voluntary consent for the treatment, such practice is omitted during hospitalization of orphans and children deprived of parental care: the consent is only provided by their legal guardians.

Moreover, representatives, not heads of boarding facilities bring children for admission to a hospital and consent to treatment without having a status of a legal guardian.



Also, according to psychiatrists, contents of the informed voluntary consent form are unclear and inaccessible to children.

#### *Violation of the right to proper conditions of treatment*

Overcrowding of wards in most visited hospitals, lack of chairs, bed stands, desks and other appliances renders impossible the establishment of proper therapeutic environment.



Cherkasy regional neuropsychiatric hospital

*The doors in wards are missing at Vinnytsya neuropsychiatric hospital #2 and Volyn regional psychiatric hospital #2.*

Unit #21 of Vinnytsya neuropsychiatric hospital #2 and the narcology unit of Cherkasy regional psychiatric hospital have *beds in hallways* due to the lack of free space.



Narcology unit, Cherkasy regional neuropsychiatric hospital

*Lack of free access and proper equipment in sanitary rooms.* For instance, a bathroom at Volyn regional psychiatric hospital was locked even during the visit. To use the bathroom, patients need to find a competent official of the unit.



At the geronto-psychiatric unit (unit#7) of Poltava regional clinical psychiatric hospital, *there are not ventilation frames or the glass is smoked* at the bathroom and shower premises.

*Bathrooms, showers, and toilets are not separated with partitions.*



Volyn regional psychiatric hospital № 2

### *Restrictions of the right to communication*

*In the absence of a unified procedure for using mobile phones*, different hospitals introduce arbitrary restrictions.

For example, there are no limitations on the use of mobile phones at the unit #8 of Cherkasy regional psychiatric hospital, whereas in other units the medical staff keep phones and only give them out in accordance with a set schedule of half an hour per day. Storage and control of mobile phone by medical personnel represents a common method for regulating conversations in other hospitals as well, such as Volyn regional psychiatric hospital #2, Poltava regional clinical psychiatric hospital etc.

Sometimes, there are *arbitrary restrictions on visitations*; in particular, at unit #7 of Poltava regional clinical psychiatric hospital visiting is possible only until 16:00.

*Visits by relatives are prohibited on weekends and holidays* at Ukrainian psychiatric hospital with intensive supervision of the MoH of Ukraine. *Visits on workdays are possible only in presence of a staff of the criminal executive service*, which constitutes a gross violation of both the national legislation, and also relevant international standards.

Meanwhile, there is understanding of the positive impact of communication at Vinnytsya regional neuropsychiatric hospital, and consequently communication is unrestricted (with exceptions). Relatives can take children and adults for a walk upon agreement with the doctors not only on the hospital premises but also around the city.

### *Lack of conditions for recreation and rehabilitation*

Monitoring showed that there are no or very small recreation rooms at Vinnytsya regional neuropsychiatric hospital, Chernivtsi regional neuropsychiatric hospital, and in Volyn regional neuropsychiatric hospital the hallways is used as a recreation room.

Outdoor courtyards are not properly equipped: there are no rain/sunlight canopies or parlors, in particular at Chernivtsi regional psychiatric hospital, Kyiv

regional neuropsychiatric hospital #2. A visit to the latter found that children patients could not walk for a long time (the personnel explained it with the decrease in temperature and risk to fall ill though the weather during October visit was sunny).



There are *no rehabilitation measures* at the units of psychiatric hospitals for patients subjected to coercive medical measures, in particular at the Ukrainian psychiatric hospital with intensive supervision of the MoH of Ukraine.

In Vinnytsya regional neuropsychiatric hospital, organization of cultural and rehabilitation measures serves as a positive example. The patients do origami and paper crafts, drawing and embroidery; they play musical instrument, visit museums, theatres, excursions, lectures, and dance events.

This was made possible due to the work of a public council comprised of facility staff, but also of relatives, human rights activists and media professionals. Annual anonymous survey of patients and their relatives and a follow-up discussion with the personnel also fosters improvement of conditions at the facility.

### ***Monitoring of institutions providing palliative care***

Monitoring groups visited 8 palliative care units in different regions.

While sharing a common name “hospice”, palliative care units differ both in their operations, and also in conditions of stay. For instance the “Hospice” palliative care unit of Kyiv city clinical hospital #10 in practice provides services of a geriatric institution since patients stay there sometimes during 2-3 years. For admission to this unit, one has to provide a smaller set of documents than in case of admission to a residence of the social protection system. In addition, it is free of charge to stay at the facility. This creates room for abuse by dishonest relatives who have the chance to get rid of elderly family members for a long time.

The problem of regulating operations of facilities providing palliative and hospice care remains unresolved.

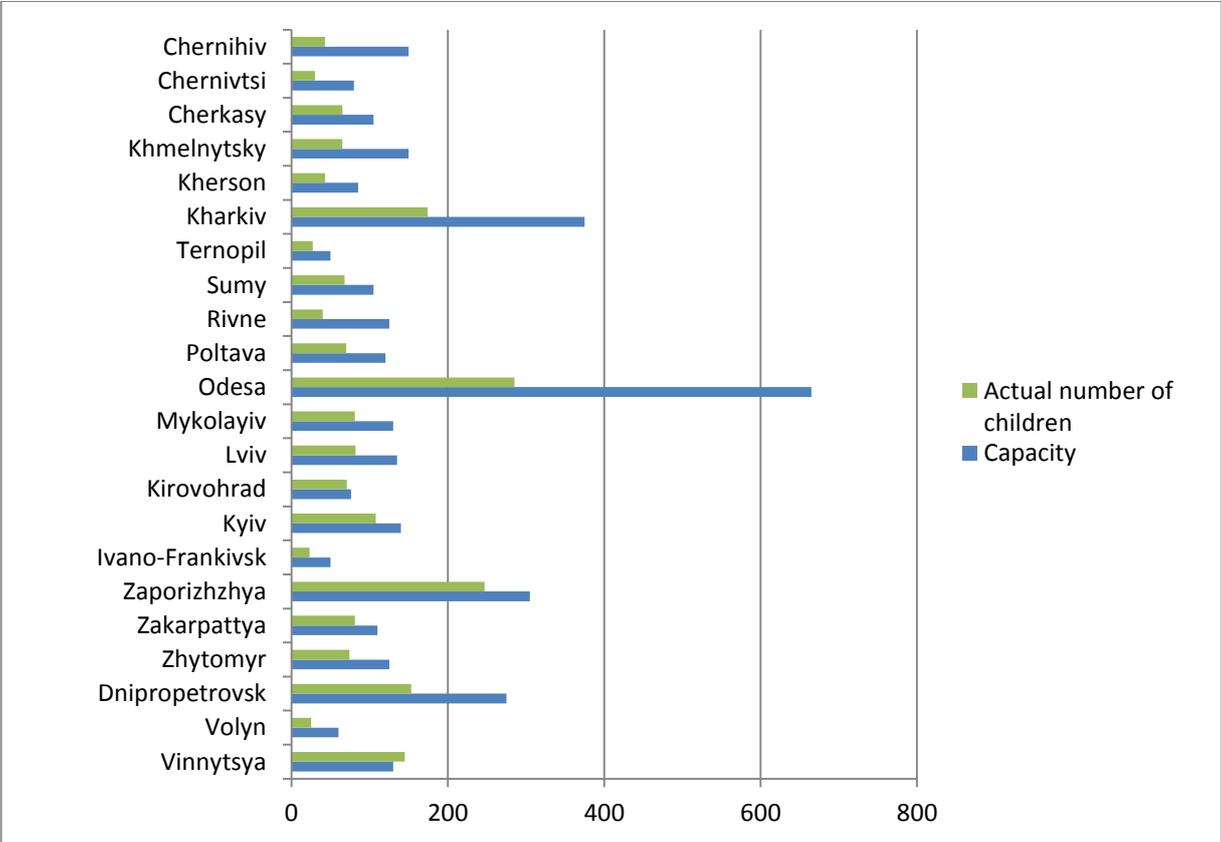
There is a lack of cooperation between the Kyiv city narcological hospital “Sotsioterapiya” with the AIDS Center or patient testing for HIV-infection.

### ***Monitoring children’s homes***

The number of children aged from birth to 3(4) years at children’s home has been gradually decreasing. Children are given for adoption, returned to their natural parents, or taken under guardianship or a foster family (family-type children’s home), or transferred to educational or social-care institutions upon reaching certain age.

According to paragraph 3.1.2 of the Model regulation on children’s home, children with physical and mental development impairments can remain in rehabilitation groups until four years of age. Upon turning four, these children are resettled to childcare residences of the social protection system pursuant to a conclusion by a psychiatric, medical and pedagogical commission and referral by the Main directorate of labor and social protection of regional (city) state administration. These are severely ill children with disabilities who require not only proper care but also qualified medical assistance. Childcare residences of IV class are located mostly in rural areas far from the nearest healthcare institution. Social protection institutions are not licensed to provide medical services, therefore, positions of doctors therein are usually vacant, or doctors work there part-time several hours per week. Monitoring data shows that a significant number of severely ill children of IV group die in childcare residences during the first year following their transfer from children’s homes.

According to information about occupation of children’s homes provided by Healthcare departments of state regional administrations, these institutions are filled at 57.8% on average. Additional rehabilitation groups/daycare groups for children from family settings have been created at many childcare homes. At the same time, doctors welcome the idea of opening palliative care units for terminally ill children with inherent disorders and discontinuing the practice of transferring them to childcare residences.



## **Response to recommendations of the Commissioner based on monitoring visits to healthcare system facilities**

We should note that management of the MoH of Ukraine for a long period has failed to fulfill the Commissioner's recommendations based on several visits to Ukrainian psychiatric hospital with intensive supervision of the MoH of Ukraine, first of which took place in July 2012.

In 2014, a repeat visit took place in the framework of the Commissioner's proceedings on protection of the rights of patients in this hospital. The monitoring group included experts in psychiatry. A number of new breaches were identified along with the lack of response to violations found during the previous visit. Namely:

- Security and oversight of patients in the units is conducted by a penitentiary service unit, which constitutes a gross violation of the requirements of national legislation and international standards;
- Violations of the terms of stay of individuals for whom types of coercive measures were changed by the court;
- Restrictions of the patients' rights to communication, including interference with confidential communication of the patient with an attorney or legal representative;
- Inadequate medical assistance;
- Overcrowded wards, lack of free access to sanitary facilities etc.

Multiple acts of response of the Commissioner were sent to the Ministry of Health of Ukraine requiring in-depth inspection and relevant response measures. However, instead of conducting an inspection, the MoH officials referred the Commissioner's letters to the hospital itself, which is a gross violation of current legislation and casts doubt in relation to objectivity of the inspection results. In fact, it shows that the Ministry's management keeps aloof from solving patients' problems. Consequently, on 24 November 2014, the Commissioner for Human Rights sent an application to the Office of the Prosecutor General of Ukraine for the purposes of verification and relevant response.

The Commissioner's firm stance on the matter, along with response acts by prosecution authorities, led to improvements in the state of observance of the patients' rights. In particular, visitation schedule was amended, and their right to be present at court hearings was ensured.

There is an acute issue of *providing patients with nutrition*. The MoH order #931 dated 29.10.2013 "On improvement of organization of hospital meals and functioning of nutritional system in Ukraine" included changes that lead to decreased norms of breadstuffs, crops and pasta, and potatoes (particularly for the "hypertrophic" patients). During financial crisis and growing prices, hospitals could not fulfill daily nutrition norms. Given the side effects from medication administered to patients with psychiatric disorders, those who had no opportunities to receive food parcels were underfed. There were complaints about this problem in virtually all visited psychiatric hospitals, and the chief physician of Lviv regional psychiatric hospital also addressed the Commissioner for Human Rights in relation to this matter.

The Commissioner for Human Rights sent a petition on this matter to the Ministry that at first denied the possibility of deviating from the norms established by the MoH order #931 dated 29.10.2013 and insisted on the need to increase funding. However, due to difficult financial situation in the country, the Ministry informed about the planned review of amendments to this order with chief consultants on psychiatry and nutrition, as well as experts of the Ukrainian Research Institute of Social and Forensic Psychiatry and Drug Abuse of the MoH of Ukraine.

Analysis of response to recommendations shows that **majority of recommendations are not followed, or response acts are being prepared**. This also applies to the Special report of the Commissioner for 2013 titled “Monitoring of Custodial Settings in Ukraine: Status of implementation of the national preventive mechanism”. In particular, there is no Procedure for application of restraint measures foreseen by Article 508 of the CPC, which was recommended for immediate development with the view to possible human rights violations. There has been no response to all 12 recommendations to the Ministry stated in the Report.

The Ministry’s response in relation to implementation of these recommendations contains a number of measures on improving the quality of psychiatric help in Ukraine pursuant to ECHR decisions in the field of psychiatry related to Ukraine. However, these measures are general.

The Department of healthcare of Cherkasy regional state administration has adopted **a systemic approach to taking measures of response to recommendations**. In response to recommendations on ensuring children’s rights, the department sent letters to district and city psychiatrists with detailed account on issues of hospitalization of children to psychiatric institutions; to the children’s service – on the issue of differentiated approach to hospitalization to psychiatric institutions; letters to directors of boarding schools and residences on obligatory informed consent (petition) during hospitalization of children to psychiatric institutions. In addition, a seminar on the procedure of children’s hospitalization was held at the psychiatric hospital. This positive case is the only example of effective and systemic response we would like to see from the Ministry.

During 2014, there have been repeat visits to the enhanced supervision unit of *Kyiv city neuropsychiatric hospital #3, Poltava regional Maltsev clinical psychiatric hospital*. It was established that partial refurbishment took place at several units, including children’s unit #9, of Poltava regional clinical psychiatric hospital since May of previous year.

## CHAPTER 5. Recommendations for improving observance of human rights based on monitoring results in 2014

### 5.1. For Verkhovna Rada (Parliament) of Ukraine

1. To regulate by law the establishment of an independent body of pre-trial investigation of instances of torture and other cruel, inhuman or degrading treatment or punishment committed by officials.

2. To amend Article 5 of the Law of Ukraine “On Militsiya” with the purpose of ensuring prompt and unconditional notification of a defender (Center for free secondary legal aid on each case of apprehension, arrest, or detention), in accordance with Article 208§4 and 213§4 of the CPC of Ukraine.

3. Introduce amendments to the Criminal Procedure Code of Ukraine:  
Article 277 – to require obligatory indication in the notice of suspicion of the date and time of actual apprehension of a person, as well as the date and time of serving the notice of suspicion.

Article 212 – on ensuring operational independence form pre-trial investigation agencies of competent officials responsible for the persons in custody of the internal affairs bodies.

4. To prohibit by law the stay of apprehended person in any other premises of the internal affairs bodies except for rooms for investigative actions and rooms for persons apprehended and taken into custody of the unit.

5. Introduce a legal definition of the moment of actual apprehension of the person for commission of administrative offence, as well as the moment of termination of administrative detention.

6. To regulate the procedure of serving administrative arrest at the special reception centers for persons under administrative arrest.

7. In accordance with Article 327§3 of the Administrative Code of Ukraine, develop a draft law governing the procedure of serving administrative arrest.

8. Introduce amendments to Article 9 of the Law of Ukraine “The basis of Ukrainian legislation on healthcare” to supplement the list of grounds for restricting citizens’ rights in relation to their health condition with the use of measures of restraint towards persons in whose respect it is provided to apply compulsory medical measures or the matter of applying was considered in accordance with Article 508 of the Criminal Procedure Code of Ukraine.

9. Introduce relevant amendments to Article 93 of the Criminal Executive Code for the following formulation:

“A person sentenced to imprisonment serves the entire sentence, as a rule, at one correctional prison or correctional juvenile facility within the administrative unit in accordance with his/her place of residence prior to conviction or the place of permanent residence of his/her relatives.

Assignment of the convicted person to a prison in another administrative unit is allowed solely in case of absence of a facility of relevant security level.

Transfer of a convicted person for further serving of punishment from one correctional facility to another is only allowed in exceptional circumstances impeding further stay at this correctional facility, or upon personal request of the convicted person on his/her transfer to a facility located within the administrative unit in accordance with his/her place of residence prior to conviction or permanent place of residence of the convicted person's relatives. The procedure of transfer is regulated by legal acts of the Ministry of Justice of Ukraine”.

#### 11. Introduce amendments to the Law of Ukraine “On Preliminary Detention”

a) Article 4 – provide for treatment of detained persons with contagious forms of tuberculosis at anti-tuberculosis facilities in specially designated premises.

The need for such amendment stems from the discrepancy between provisions of the Law and the Law of Ukraine “On response to tuberculosis” leading to violations of the right to healthcare of detained persons suffering from tuberculosis as these persons are placed into remand prisons despite Article 10§4 of Chapter III of this Law whereby anti-tuberculosis facilities re responsible for treatment of these individuals.

b) article 7 – to provide for the transfer of money or valuable items seized from persons taken into custody during their preliminary detention, only in accordance with a relevant court ruling, as under Article 41 of the Constitution of Ukraine the right to private property is inviolable and confiscation of property may be applied only pursuant to a court ruling. In such instances, the court is to receive a report on seizure of money or valuable items made by a relevant official;

c) article 9 - to provide for daily outdoor time of two hours for pregnant women and women with children, for minors and also for the ill, with doctor's permission and on their own consent. Scheduling of specific time for daily outdoor exercise will exclude any shortening of such time (two hours);

to provide for the right of detained persons to receive parcels or packages and money transfers with restrictions in quantity. The present language of Article 9 of the Law of Ukraine “On Preliminary Detention” is the reason why paragraph 2.1 of Section 2 of Chapter VI of the Provisions on internal procedures for remand prisons of the State Penitentiary Service of Ukraine (approved by Ministry of Justice of Ukraine on March 18, 2013, #460/5, and registered with Ministry of Justice on 20 March 2013 under #445/ 22977) provides that prisoners are allowed parcels with a total weight of no more than 50 kg per month. This violates the right of detained persons to adequate (quality) nutrition;

d) Article 11 – to introduce a minimum standard of at least 4 square meters of space per detainee in a cell, and at least 5 square meters for pregnant women or women with children, as well as for medical units. For cases of solitary confinement, the minimum standard of space per detainee should constitute at least 7 square meters.

There is an ongoing issue of discrepancy of the set norms on space in preliminary detention facilities with current human rights standards. In particular, according to the Law of Ukraine “On Preliminary Detention”, it should not be less than 2.5 square meters whereas current international standards provide for at least 4 square meters;

e) article 12 – regarding the right of persons taken into custody to visits from relatives or other persons.

Decisions on restricting visits by relatives are to be well founded and based on transparent criteria, limited in time and subject to regular review.

f) article 13 – to provide delivery of replies to applications, complaints and letters directly to persons taken into custody.

Decisions on restricting correspondence are to be well founded and based on transparent criteria, limited in time and subject to regular review.

Current procedure under Article 13 provides that remand prison administration inform persons taken into custody, against their signature added to their personal files, about the replies to their applications, complaints and letters. This procedure contradicts Article 34 of the Constitution of Ukraine that entitles everyone to freely collect, store, use and disseminate information, orally, in writing or otherwise, at own choice.

## **5.2. For the Cabinet of Ministers of Ukraine**

1. To develop a regulatory act that would define uniform national standards of custody for persons detained for administrative offenses and the procedure for restriction of their rights and freedoms by the authorities of the Ministry of Internal Affairs, the State Migration Service and the State Border Guard Service of Ukraine.

2. To develop uniform national rules and standards for conditions of custody for persons detained for criminal offenses in places of detention subordinate to different ministries and agencies (Ministry of Internal Affairs, Ministry of Defense, State Penitentiary Service, State Security Service, State Border Guard Service of Ukraine) in view of leading domestic and international practices.

3. To develop uniform state rules and standards for equipment of transport means (special vehicles, special railcars, patrol cars) used for transportation of apprehended, detained and convicted persons, in accordance with the relevant international standards, and to bring the available transport means into conformity therewith.

4. To develop and approve by a joint regulation of the OPG, SSU, MIA and the State Fiscal Service the uniform templates of registration documents to be maintained by officials responsible for persons in custody in accordance with Article 212 of the CPC, as well as identify the procedure for controlling observance of the rights of detainees by officials responsible for persons in custody.

5. To identify the procedure for calculating the time for bringing a person into custody and maximum duration of this process in case of administrative apprehension.

6. To introduce the system of effective investigation of illegal apprehensions on suspicion of a crime in violation of requirements of Article 208 of the Criminal Procedure Code of Ukraine following a significant period after occurrence of the crime.

7. To develop and introduce a uniform template for comparative revisions by pre-trial investigation units of the MIA, SSU, SFS and prosecution authorities conducting apprehension with the Centers for free secondary legal aid in accordance with paragraph 10 of the Procedure adopted by the CMU decree #1363 dated

28.12.2011. To include requirement for individual comparative revision of the time of apprehension, call for and arrival of attorneys to each apprehended persons.

8. Develop and introduce at the pre-trial investigation units of the MIA, SSU, SFS and prosecution authorities a “uniform personal file of an apprehended person” that would allow to supervise observance of the person’s right from the moment of actual apprehension.

### 5.3. For the Office of the Prosecutor General of Ukraine

1. To ensure proper investigation of instances of torture and ill-treatment in cases where the person submits a justified complaint that s/he had suffered ill-treatment by the authorities.

2. To prohibit the prosecution authorities to forward applications and complaints for inspection to authorities and institutions when actions of these authorities/institutions are subject of complaint.

3. To exclude illegal concealment of crimes by prosecution authorities via failure to enter data into the ERDR on torture and other forms of ill-treatment with characteristics of a criminal offense.

4. To ensure proper oversight of observance of human rights during application of coercive measures related to detention, in particular:

- to ensure strict compliance of pre-trial investigation authorities with Article 208 of the CPC during apprehension of a person without a decision by an investigating judge or court. Take immediate prosecutorial response measure upon identification of illegal apprehension without a decision by an investigating judge or court when such apprehension **did not take place during or immediately after occurrence of a crime;**
- ensure control of observance of the right to defense, in particular, on immediate notification of the Centers for free secondary legal aid immediately after the actual apprehension as defined by Article 209 of the CPC;
- on ensuring the right of detainees to inform a third party of their choice about apprehension;
- on compliance with the CPC norms in the process of drawing up reports on apprehension on suspicion of a crime, in particular, in relation to indicating time and place of actual apprehension;
- on the stay of apprehended persons and conduct of investigative actions in premises not foreseen by law;
- on exceeding allowed time limits of detention of apprehended persons (persons brought into custody) at the bodies of internal affairs.

### 5.4. Specific recommendations for ministries and agencies

#### 5.4.1 Ministry of Internal Affairs of Ukraine

***1. Examine feasibility of special reception centers of the internal affairs bodies for custody of persons under administrative arrest, taking into consideration:***

- absence of any legal instruments regulating the procedure for serving the sentence of administrative arrest, as required by Article 327§2 of the Administrative Code of Ukraine;
- existence of a wide network of temporary holding facilities of the IABs that can be used for custody of administrative arrestees given the small number of persons at the special reception centers;
- significant costs of the operation and maintenance of the special reception centers and their personnel.

In case of a positive decision, the funds assigned for operation of these institutions may be used to improve material conditions of custody at temporary holding facilities.

***2. Take exhaustive measures on preventing of human rights violations during application of coercive measures related to apprehensions***

2.1. Terminate illegal apprehensions of persons on suspicion of a crime (pursuant to Article 208 of the CPC without a decision by an investigating judge, court) within long period after the actual crime.

2.2. Organize systematic trainings with competent officials who conduct apprehensions at all city, district and line departments subordinate to the MIA of Ukraine on the procedure of applying Article 208 of the CPC of Ukraine during apprehension without a decision by an investigating judge, court.

2.3. Organize systematic trainings with officers on duty of all city, district, and line departments subordinate to the MIA on compliance with paragraph 6.6.2 of the Instruction #181 approved by the MIA order dated 28.04.2009 on verification of lawfulness of bringing persons into IAB custody, as well as notification of an authority authorized by law to provide free legal aid.

***3. Ensure the apprehended persons' right to defense***

3.1. According to Article 208, 213 of the CPC of Ukraine, the Procedure for notification of free secondary legal aid centers approved by the decree #1363 of the Cabinet of Ministers of Ukraine dated 28 December 2011, ensure unconditional and immediate notification of free legal aid centers promptly after the actual apprehension of a person as defined in Article 209 of the CPC of Ukraine<sup>64</sup>.

3.2. Organize additional trainings with competent officials conducting apprehension, officers on duty, as well as persons responsible for persons in custody of all city, district and line departments subordinate to the MIA on the procedure for

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<sup>64</sup> According to Article 209 of the CPC of Ukraine, the moment of an individual's apprehension is when s/he with the use of force or through obedience to the order, has to stay next to the competent official or in premises prescribed by the competent official.

ensuring the right to defense, including the procedure of notifying Centers for free secondary legal aid.

3.3. Ensure immediate notification of relatives and next of kin about administrative apprehension of persons, as well as apprehension on suspicion of a crime, as well as further notification on transfer of persons from one detention facility to another.

3.4. Ensure unconditional notification of apprehended persons on the grounds for apprehension and the alleged crime.

3.5. Pursuant to Article 209 of the CPC of Ukraine, to ensure obligatory indication of the place, date and exact time (hours and minutes) of apprehension in the protocol of apprehension on suspicion of a crime.

3.6. Prohibit bringing apprehended persons to city, district and line departments that do not have rooms for persons apprehended and taken into custody and rooms for investigative actions.

3.7. To prevent exceeding the set time limits for detention of persons apprehended and taken into custody at the internal affairs bodies. To stop falsification of information on the actual time of stay of persons, particularly detainees, at the bodies of internal affairs.

3.8. Ensure proper registration of persons at the premises of city, district, and line departments, as well as daily oversight of upkeep of the registries of persons taken into custody, visitors, and invitees in accordance with the Instruction (amended) approved by the MIA order #181 dated 28.04.2009.

#### **4. Ensure observance of the right to healthcare and medical assistance**

4.1. Organize proper medical and urgent care to persons at city, district and line departments, special facilities or vehicles.

4.2. In accordance with Article 3 of the Law of Ukraine “On Healthcare” on organization of urgent care, define the list of persons whose duties should include key practical skills for saving and preserving life of a person in critical condition, as well as minimizing impacts of this condition on the person’s health, at the place of event prior to arrival of an ambulance. Organize relevant training of these officials.

4.3. Provide the rooms for persons apprehended and taken into custody of duty stations of the internal affairs bodies and remand prisons with medical equipment and expense materials in accordance with norm 2 approved by the MIA order #946 dated 25.09.2006.

4.4. Equip first-aid kits foreseen by Norm #2 approved by the MIA order #946 dated 25.09.2006 with instructions for use of medications.

4.5. Equip all city, district and line departments and special facilities of the MIA with a list of healthcare facilities that provide substitute maintenance therapy<sup>65</sup> and train officers on duty on cooperation with healthcare institutions in case of apprehension of persons undergoing the SMT.

4.6. Amend the Registry (annex 16 of the MIA order #181 dated 28.04.2009 to ensure registration of provision of medical care to all persons at the internal affairs bodies, not just those detained therein.

4.7. Ensure proper records in the Registry of medical assistance to persons detained at the duty station, in particular:

- Indicated the time of calling and arrival of an ambulance;
- Data on existence of contraindications to detention;
- Inclusion of information on follow-up measures pursuant to doctors' referrals for examination at a healthcare institution.

4.8. Ensure strict compliance with recommendations on additional examination made by doctors called to the bodies of internal affairs and remand prisons.

#### **5. To ensure proper records on observance of the rights of persons in custody of special institutions and internal affairs bodies of the MIA**

Keep proper records of actions and measures taken to protect the rights of persons in custody at the MIA places of detention. Ensure official record-keeping at duty units, investigation units of city, district, and line departments, temporary holding facilities, special reception centers for persons under administrative arrest, in accordance with current legal instruments of the MIA of Ukraine.

#### **6. To ensure full implementation of measures for the prevention of torture and ill-treatment in all city, district, and line departments and special facilities of the MIA**

6.1. To organize proper registration of the stay of all persons at the IAB premises. To oblige the management of city, district and line departments to conduct continuous oversight of the upkeep of the registry of persons brought into custody, visitors, and invitees in accordance with the MIA order #181 dated 28.04.2009.

6.2. To appoint one or several officials responsible for custody of detainees at the units of all pre-trial investigation agencies in accordance with Article 212 of the CPC of Ukraine. Guarantee due diligence of these officials in their functions, particularly provided by Article 212§3 of the CPC of Ukraine. Prevent cases of involvement of these persons to performance of other duties unrelated to the above functions.

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<sup>65</sup> Annex 1 to the Procedure of cooperation between healthcare institution, internal affairs bodies, remand prisons and correctional facilities on ensuring uninterrupted substitute maintenance therapy approved by the joint order of the MoH, MIA, MJ, ДСКХ #821/937/1549/5/156 dated 22.10.2012.

6.3. Install signs with names of units (sectors), titles and names of officials on all doors of the offices at city, district, and line departments so that in case necessary it would be possible to identify the exact location of apprehended or detained persons who allege ill-treatment by law enforcement.

6.4. Pursuant to paragraph 5 of the MIA order #404 dated 16.09.2009 and the MIA directive #329 dated 31.03.2011, ensure installation of video surveillance system at all city, district, and line departments of the internal affairs, duty stations, hallways, investigation room with records archived for at least one month.

6.5. Remove all items that can be used for psychological or physical coercion from the offices of IAB officials.

6.6. Exclude instances of bringing persons from remand prisons or THFs to the premises of internal affairs units for investigative actions, and use investigation rooms at remand prisons and THFs for these purposes. In case of the need to conduct these actions with involvement of apprehended or arrested persons outside of special facilities (crime reconstruction, bringing the person before prosecution authorities, court, or forensic expertise etc.) these persons shall be convoyed directly to the locations, and returned to the special facility without placement to the premises for apprehended and detained persons at the city, district, and line departments.

6.7. In accordance with Article 10 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, include the prohibition of torture into terms of reference (duties) of all law enforcement officials. Include education and information regarding the prohibition against torture in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

6.8. Provide free access to the registry of complaints and suggestions at the internal affairs bodies, as well as ensure objective, comprehensive and prompt review of applications and complaints therein. Inform citizens about the results of the review and contents of the decision in accordance with Article 19 of the Law of Ukraine “On Citizens’ Petitions” and paragraph 7.4 of the Regulations adopted by the MIA order #1177 dated 10.10.2004.

6.9. Prohibit inspection and censorship of correspondence of apprehended, detained persons, persons under administrative arrest addressed to the Ukrainian Parliament Commissioner for Human Rights, the European Court of Human Rights, as well as other relevant bodies of international institutions to which Ukraine is a party or member state, competent officials of these institutions, prosecutors, defense counsel in the case, as well as correspondence received by detainees from the above entities and persons. Provide alternative methods of addressing correspondence to the above

institutions and persons without passing through the administration of the detention facility.

6.10. Ensure functioning of helplines at the bodies and units of internal affairs that would allow persons detained on suspicion of a crime or under administrative procedure to provide information about the rights and legitimate interests of citizens at special institutions and rooms for persons apprehended and taken into custody of duty stations of the internal affairs bodies. Ensure provision of information about availability and procedure for contacting the helpline.

**7. To bring conditions of custody of detained, apprehended and convicted persons in detention facilities subordinate to the MIA into conformity with the national and international standards.**

7.1. To bring the occupancy of cells in rooms for persons apprehended and taken into custody of the duty stations of the internal affairs bodies, in temporary holding facilities and in special reception centers for persons under administrative arrest into conformity with the national and international standards that require at least 4 square meters of usable floor area per person, excluding the sanitary unit and the area for items of common usage.

7.2. To prohibit holding of detained, arrested or convicted prisoners or persons under administrative arrest in any cells of temporary holding facilities, reception centers for persons under administrative arrest, rooms for persons apprehended and taken into custody at the duty stations of the internal affairs bodies where the total area is less than 7 square meters, distance between walls is less than two meters, and the distance between the floor and the ceiling is less than 2.5 meters.

7.3. To foresee funding of the city, district, and line departments for state procurement of hot meals – three meals per day for persons held in custody at the rooms for persons apprehended and taken into custody at the duty stations of the internal affairs bodies.

7.4. To provide the temporary holding facilities, special reception centers for persons under administrative arrest, and rooms for persons apprehended and taken into custody at the duty stations of the internal affairs bodies with household, medical appliances and expendable property in accordance with the norms established by the MIA order #946 dated 25.09.2006.

7.5. Provide continuous access to running and drinking water in cells of the temporary holding facilities, special reception centers for persons under administrative arrest, and rooms for persons apprehended and taken into custody at the duty stations of the internal affairs bodies.

7.6. To equip cells of special institutions with dining tables, stools (benches), wall cabinets and bed stands for food products and personal hygiene items.

7.7. Equip beds in the rooms for persons apprehended and taken into custody of duty stations and temporary holding facilities in accordance with the standards (size 1.9x0.7 meters, with a matchboard next to the bed etc.).

7.8. Provide hot running water in the cells of special MIA institutions in accordance with paragraph 5.3.1 of the State norms on construction (BBH) B.2.2-49-2004.

7.9. Equip the cells of special institutions and rooms for persons apprehended and taken into custody at the duty stations of the internal affairs bodies with alarm system (personnel call buttons)<sup>66</sup>.

7.10. To bring the level of natural lighting in the cells of temporary holding facilities, reception centers for persons under administrative arrest and rooms for persons apprehended and taken into custody at the duty stations of the internal affairs bodies into conformity with the relevant domestic and international standards.

7.11. To equip the windows in cells of special facilities and in the rooms for persons apprehended and taken into custody at the duty stations of the internal affairs bodies with vents for fresh air inflow and with appliances for their opening by inmates.

7.12. To equip the toilets in the cells of temporary holding facilities and reception centers for persons under administrative arrest and in the rooms for persons apprehended and taken into custody at the duty stations of the internal affairs bodies in accordance with the relevant domestic and international standards and requirements.

7.13. Exclude any instances when the toilets are within surveillance of CCTV cameras.

7.14. To remove excess humidity and fungus infection from walls, floors and ceilings of the cells of THFs and rooms for persons apprehended and taken into custody at the duty stations of the internal affairs bodies.

7.15. To equip temporary holding facilities and special reception centers for persons under administrative arrest with shower rooms with sufficient capacity for simultaneous showering of all persons held in the largest cell.

7.16. To provide temporary holding facilities and special reception centers for persons under administrative arrest with the necessary number of exercise areas and equip them in accordance with the State norms on construction BBH B.2.2-49-2004 approved by the MIA order #775 dated 12.07.2004.

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<sup>66</sup> Foreseen by paragraph 2(c) of the European Prison Rules whereby in all buildings where prisoners are required to live, work or congregate there shall be an alarm system that enables prisoners to contact the staff without delay. The rooms are not equipped with such system (there are no personnel call buttons etc.), which was also noted in the 12<sup>th</sup> General Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment [p.48 CPT/Inf (2002) 15].

- 7.17. To equip the offices of investigators and defense attorneys in temporary holding facilities with videoconferencing means for conducting relevant procedural actions during pre-trial investigation and court proceedings in accordance with Articles 232 and 336 of the Criminal Procedure Code of Ukraine.
- 8.1. Ensure observance of the right to visitation. To equip designated rooms for visits in all temporary holding facilities.
- 8.2. Ensure the right to access to information on public affairs for persons held at the temporary holding facilities. To equip the cells with broadcasting antennas or radio receivers with connection to radio broadcasting.
- 8.3. To exclude arbitrary denials of delivering parcels to detainees during weekends.
- 8.4. To provide temporary holding facilities with sets of men's and women's civilian clothes and footwear to be provided in relevant cases (persons taken into custody in military uniform, officials of the internal affairs bodies, security service, justice agencies, and prosecution).
- 8.5. To bring conditions at the temporary holding facilities and special reception centers for persons under administrative arrest into conformity with relevant sanitary norms, in particular remove excess humidity fungal infection of the walls, floors and ceilings of the cells.
- 8.6. To remove metal cages from temporary holding facilities, duty units and rooms for investigative actions.
- 8.7. Ensure advice on rights for all persons placed into custody of temporary holding facilities.
- 8.8. To conduct proper quartz treatment of premises at the temporary holding facilities.
- 8.9. To ensure strict compliance with paragraph 9.3. of the Regulations adopted by MIA order #638 dated 02.12.2008 on comprehensive decontamination procedure, including washing, clothing disinfection etc. prior to placement to the THF cells
- 8.10. To ensure immediate notification of prosecution authorities on bodily injuries of persons in custody at the THF.

**10. To guarantee free access for persons with reduced mobility to administrative buildings of the internal affairs bodies. According to the Law of Ukraine “On foundations of social protection of persons with disabilities in Ukraine”, equip ramps at the entrances to bodies and units of internal affairs bodies and special facilities in conformity with the State norms on construction (ДБН В.2.2-**

## **17:2006) “Houses and buildings. Accessibility of houses and buildings for groups of persons with reduced mobility».**

### **5.4.2. Ministry of Justice of Ukraine (based on the results of monitoring facilities subordinate to the State Penitentiary Service of Ukraine):**

1. According to the Law of Ukraine “On Free Legal Aid” to guarantee access to secondary legal aid for persons in penitentiary facilities.

2. The right to submit petitions (complaints) must be guaranteed in practice. There should be no content censorship for such complaints or arbitrary delays in their review. Thus, convicted persons and prisoners should have the possibility to address a competent authority with applications (complaints) on treatment towards him/her, including disciplinary measure, without fear of persecution or repressions during inspections.

3. To create a more consistent and comprehensive template for entry of information into medical records. In particular, medical personnel working with persons deprived of their liberty must have basic profession training in description and assessment of injuries in accordance with the Istanbul Protocol.

4. To take measures that are more effective to improve material and living conditions in penitentiaries with realistic implementation deadlines. Underfunding of penitentiary facilities and remand prisons must be stopped. There should be sufficient funding to ensure proper operations regardless of possibilities of funding from other sources.

#### ***In particular, the following issues have to be solved:***

- Conduct of statewide audit of material conditions of penitentiaries and remand prisons with the purpose of providing prisoners and convicts with living conditions in accordance with sanitary regulations;
- Provide minimum floor space per person, sufficient number of beds and personal space (*Standard minimum rules, Rule 19*)
- Ensure availability of ventilation systems, necessary cubic content of air, lighting and natural lights, as well as proper heating in cells and premises for sleeping and recreation (*Standard minimum rules, Rules 10 and 11*).
- Improve general access to drinking water and personal hygiene items. Every inmate should have access to clean drinking water at any time when it is necessary;
- Proper equipment of showers, bathrooms and sanitary facilities with respect to cleanliness and decency, establishing space for washing undergarments and disposing waste;
- Improve organoleptic properties of the food that has to be nutrient, prepared and served in cleanliness and with decent treatment;
- Eliminate the practice of withholding expenses for meals and utilities from funds and payments received by prisoners and convicts. Instead, part of the income should be saved by the administration and issued at release.

- Humanization of procedure and conditions of custody of prisoners and convicted persons at the disciplinary isolation units and cell-type premises, and solitary confinement wards, as well as bringing it into conformity with international standards (*Standard minimum rules, Rule 31*).

- To ensure proper exercise of the right to at least one hour of physical exercise per day for all persons held in penitentiary facilities, as well as their engagement in socially valuable activities, sports, trainings, and studies;

- To create conditions for educational and cultural activities, the libraries should have sufficient number of newspapers, textbooks and fiction literature, as well as legal publications;

- To create decent working conditions for convicted persons; conditions of work at industrial enterprises should be in conformity with occupational safety and sanitary norms. To ensure fair compensation with consideration of workload and hazards;

- Medical assistance should be guaranteed and available for all persons in detention and convicted persons, upon their request.

### **5.4.3. State Border Guard Service of Ukraine**

*On improving regulatory framework:*

- To harmonize the Instruction on the procedure of holding of individuals detained by the State Border Service of Ukraine under administrative proceedings for violation of the legislation on the state borders of Ukraine and on suspicion of a criminal offence to achieve conformity with the current minimum standards for the treatment of persons taken into custody;

- To adopt a list of disciplinary measures towards persons held in custody of the border agency, conditions and procedure for their application, as well as guarantees for prevention of torture during their application;

- In view of ensuring proper conditions of stay in transit areas of international airports and fulfillment of essential needs of persons denied entry into Ukraine, to review the question of amending relevant regulations (for instance, paragraph 19 of the Regulation on state border checkpoints approved by the decree of the Cabinet of Ministers of Ukraine #751 dated 18.08.2010 and paragraph 16 of General rules for equipping state border checkpoints approved by the decree of the Cabinet of Ministers of Ukraine #1142 dated 17.08.2002).

*On improving treatment and material conditions:*

- Amend the leaflet for advice on rights and duties to include information on the right to notify a next of kin about the fact and grounds for apprehension, the person's whereabouts, the right to contact a center for free secondary legal aid to receive legal assistance;

- To equip rooms for detained persons with desks and chairs at Zhulyany and Lviv-airport units;
- To include education on international norms for the prevention of torture, cruel, inhuman or degrading treatment or punishment into the training programs for personnel guarding the detained persons.

#### **5.4.4. State Migration Service of Ukraine**

To review the possibility of periodic review of feasibility of the duration of stay at the centers for temporary stay of foreigners (not less than once in two months).

To amend the current Regulation on the center for temporary stay of foreigners and stateless persons illegally staying in Ukraine in relation to the following:

- The requirement for immediate provision of sufficient relevant information to support adaptation in conditions of deprivation of liberty to a foreigner or stateless person at the time of placement into the TAC in a native or other language that s/he understands;
- Definition of a clear list of items allowed (prohibited) for use at the TAC;
- Exclusion of the possibility of placement of foreigners and stateless persons to the so-called localized rooms (as a form of disciplinary punishment);
- Obligatory written permission of a medical staff for the placement of foreigners or stateless persons to these rooms, and daily medical supervision of mental and physical health of these persons;
- Guarantees for confidentiality of medical examination of foreigners and stateless persons;
- Possibility to submit personal belonging and items to the competent TAC official at any time at one's will;
- Possibility for the families for spending time together during the day.

#### **5.4.5. Ministry of Defense of Ukraine**

*On proper treatment of convicted, detained, and apprehended military personnel and conscripts:*

- To explain to military conscripts the right to use mobile phone during personal time, pre-weekend, weekend, pre-holiday and holidays, as well as ensure full exercise of this right in regular practice;
- To ensure unconditional recording in the relevant journal of every use of physical restraint measures towards patients in the MMCH psychiatric clinics;
- To ensure continuous unimpeded access of the patients of MMCH psychiatric clinics to the bathroom, and prohibit its use for smoking.

*On improving conditions of stay for convicted, detained, apprehended military personnel and conscripts:*

- To ensure access to fresh air (possibility to open cell windows) for convicted, detained, and apprehended military personnel;
- To ensure the possibility of daily outdoor walks for military personnel at the MMCH psychiatric clinic;
- To bring the number of beds in wards of the MMCH psychiatric clinic into conformity with international and national legal instruments (no more than four);
- To equip the bathroom at the MMCH psychiatric clinic with effective ventilation.

*At the military unit A0139 (Kyiv):*

- To the extent possible, to provide 4 square meters of floor space per person in bedrooms;
- To equip all bedrooms with intake-exhaust and forced mechanical ventilation;
- To take measures to provide continuous access to hot running water for the personnel, as well as possibilities to shower after service or physical labor.

#### **5.4.6. State Court Administration of Ukraine**

*On amendments to legislation:*

To amend the State norms on construction (ДБН В.2.2-26:2010) “Houses and buildings. Courts” to ensure:

- Floor space of at least 4 sq. m. and content of air of at least 9 cubic meters per persons in premises for defendants (convicted persons);
- Equipping rooms for confidential communication of defendants (convicted persons) with an attorney at court houses;
- Equipment of smoking areas for defendants (convicted persons).

For the Ministry of Justice of Ukraine, to complete development of an action plan for protection of the rights of participants of criminal proceedings in accordance with the Order of the Ukrainian Parliament Commissioner for Human Rights #1.1-1074/13-119 dated 11.06.13 and the Order of the Cabinet of Ministers of Ukraine #24003/1/1-13 dated 20.06.2013.

#### **5.4.7. Ministry of Education and Science of Ukraine**

1. To amend the Regulation on specialized general education boarding school for children in need of correction of physical and(or) mental development adopted by the order of the Ministry of Education and Science #852 on 15.09.2008 with the purpose of reviewing a number of contraindications for admission and ensuring children’s right to education at educational institutions.

2. To provide choice of technical measures for rehabilitation, medical measure in view of individual needs of children with disabilities, and cooperate with the MoH and the Ministry of Social Policy of Ukraine to jointly initiate amendments to the Procedure for provision of technical and other means for rehabilitation for certain categories of population and placement of the government order approved by the decree of the Cabinet of Ministers of Ukraine #1652 dated 29.11.2006. To foresee the possibility of providing children with hearing disabilities with two hearing aids (following medical recommendation) at the state expense.

3. To ensure operations of an optimal network of children's institutions with family-type conditions of upbringing by reforming the existing and establishing new boarding facilities.

#### **5.4.8. Ministry of Social Policy of Ukraine**

*On the regulatory framework:*

- To take measures for licensing of medical services at residence institutions in accordance with uniform qualification requirements for the purpose of providing proper medical assistance and services;

- To establish, by regulation the procedure for physical restraint and isolation of persons with psychiatric disorders at the social protection institutions (neuropsychiatric residences and childcare residences) in accordance with Article 8 of the Law of Ukraine “On Psychiatric Assistance”;

- To improve the norms on number of medical staff at residences of all types and in-patient units of territorial centers of social service of the social protection system with the purpose of improving social services and provision of rehabilitation services to residents;

- To develop sanitary regulations and norms for establishing, maintaining and organizing the functioning of residence institutions of the social protection system;

- To expedite adoption of the new Model regulation on a neuropsychiatric residence and amendments to Model regulations on a residence for elderly citizens and persons with disabilities and childcare residence with the purpose of bringing them into conformity with current international and national standards for custody of the elderly, persons with disabilities, and children;

- To regulate functioning of units and “supervision rooms” and their equipment;

- To regulate organizations of sanitary and hygienic and anti-epidemic measures at residence institutions;

- To adopt a regulation on indications and contraindications for placement of elderly citizens and persons with disabilities into residence institutions of the social protection system;

- To develop the procedure for personal spending (25 % of the pension) of incapable residents for whom the institution serves as a caretaker;
- To develop the Model internal regulations for residence institutions of specific types;
- To establish uniform regulatory requirements for internal documentation (records of visitors, duty shift logs, registers of injuries, journals of incoming and outgoing correspondence of residents etc.) at residence institutions;
- To bring the order of the Ministry of Social Protection of the USSR #62 dated 25.04.1983 “On approving the Instruction for inventory count of garments, bedding, clothing and footwear” into conformity with current legislation.

*On organizational and material support for social protection institutions:*

- To take measure on fulfilling individual needs of residence in view of capacity of residences healthcare institutions providing proper qualified medical assistance.
- To take measure to ensure full funding of residences for major and regular refurbishments, provision of proper nutrition, medications, clothing, footwear and hygiene items to residents etc.
- To conduct regular courses for professional development of personnel in relation to observance of the rights and freedoms of persons at residence institutions.
- To take measures to eradicate discriminatory actions towards certain categories of residents and their relatives.
- To take measures to raise the issue of legal capacity of resident P. from Balta neuropsychiatric residence before the guardianship and custody agency;
- To conduct medical examinations with involvement of specialists in accordance with current legislation.
- To take measure to ensure free primary dental care, including specialized treatment, for residents of institutions.
- To take measures to provide medical assistance to patients with tuberculosis, as well as to ensure tuberculosis prevention measures.
- To take measures to ensure annual fluorography examination of all residents.
- To organize and implement rehabilitation measures for bedridden residents.
- To initiate field meetings of medical and social expert commissions.
- To establish cooperation between residences and rehabilitation facilities (centers) for exchanging experience.
- To take measures for providing residents with necessary technical means for rehabilitation.
- To equip sports grounds, gyms etc.
- To improve organization of cultural activities.

- To take measure to provide residence with sufficient space in accordance with the legislation.
- To create conditions of free access of persons with special needs to objects of physical environment.
- To equip recreation rooms at every residence.
- To provide residents with bed stands, desks, chairs, and wardrobes etc.
- To equip sanitary rooms with special devices and barrier-free access to hygiene procedures for persons in wheelchairs.
- To install partitions in showers and bathrooms.
- To provide residents with personal hygiene items.
- To organize labeling of all clothing and footwear of residents.
- To take measures to construct fences around the residence territory.
- To organize free access of residence to drinking water and bathrooms at nighttime.
- To take measures to install doors between rooms.
- To take measures to ensure sufficient lighting and ventilation.
- To take measures to equip dining rooms with sinks and bathrooms.
- To equip outdoor courtyards with bathrooms, rain and sunlight canopies, benches and parlors.
- To equip residential units with fridges for residents' food.
- To take measures to provide bathing and laundry units with appliances for thermal treatment of clothes.
- To store the working clothes of residents participating in labor therapy in a separate room (corner), as well as ensure changing into clean clothes.
- To provide bedridden residents with diapers in accordance with their needs.
- To introduce stricter control by the administration of the performance of medical, household, and catering staff.
- To take measures to ensure free continuous access to drinking water.
- To place boards with information on human rights, addresses and phone numbers of state authorities for residents' petitions.
- To make available information on visiting hours of the administration of the residence.
- To supplement the list of subscriptions to periodicals for the use by residents.
- To take measures to create own webpages or pages in social networks.

#### **5.4.9. Ministry of Health**

1. To develop an informed consent form for voluntary hospitalization for psychiatric assistance in view of accessibility for persons with mental disorders, particularly for children.

2. To amend the MoH order #359 dated 19.12.1997 by adding “Forensic psychiatry” into the list of specializations.
3. To develop and approve model regulations for psychiatric and neuropsychiatric hospitals.
4. To amend the Procedure for provision of psychiatric assistance to children (approved by the MoH order #400 dated 18.05.2013) in relation to specifying the procedure of notification of custody and trusteeship agencies on hospitalization of children.
5. To review clinical protocols for provision of psychiatric assistance in view of current developments in medical field.
6. To facilitate the use of videoconferences and equipment of rooms for field court hearings at psychiatric/neuropsychiatric hospitals *during review of the matters of extension, alteration or termination of the use of coercive medical measures.*
7. *To review the possibility of amending the MoH order #931 dated 29.10.2013 “On improvement of organization of hospital meals and functioning of nutritional system in Ukraine” considering the lack of funding for catering in hospitals.*
8. *To develop a new Model regulation on a children’s home providing for possibility of establishing palliative care units.*
9. To take measures to implement recommendations provided in the Special report of the Commissioner for Human Rights “Monitoring of Custodial Settings in Ukraine: Status of implementation of the national preventive mechanism. Report for 2013”.

## **Annex 1**

### **Definitions of places of detention of different bodies of the executive branch**

#### ***MIA:***

**Bodies of internal affairs** – law enforcement bodies of the executive branch that takes part in state functions aimed and ensuring law and order, protection from unlawful infringements of life, health, rights and freedoms of citizens, property, environment, interests of society and the state.

**Bodies of internal affairs include** the Ministry of Internal Affairs, main directorates/directorates of the MIA of Ukraine, MIA Directorate in the Autonomous Republic of Crimea, departments (directorates), units, institutions, educational facilities and research institutions that comprise the integrated system of the MIA of Ukraine.

#### **Key tasks of the bodies of internal affairs:**

1. Ensuring personal security of citizens, protection of their rights, freedoms and legitimate interests.
2. Implementation of the state policy on combating crime through preventive, operational, and detective measures aimed at preventing, identifying, discontinuing and investigating offences.
3. Crime prevention. The MIA and its local authorities submit recommendations to central and local executive bodies, enterprises, institutions and organizations on the need to eliminate reasons and conditions that contribute to offences, organize public awareness raising activities on protection of public order and combating crime.
4. Protecting and maintaining public order. Internal affairs bodies have relevant authority in the field of protecting public order on the streets, squares, parks, public parks, and other public places, as well as in the field of control over compliance with the rules on stay of foreigners and stateless persons in Ukraine.
5. Identification and investigation of offences.
6. Protection of rights and legitimate interests of citizens, enterprises, institutions, and organizations regardless of the form of ownership.

**Premises for apprehended and detained persons at the duty units** of the bodies of internal affairs – special premises at city, district and line units of internal affairs designated for temporary custody of persons apprehended for administrative and criminal offenses.

**Temporary holding facilities (THF)** are special police facilities for custody of:  
– persons apprehended on suspicion of crime

- detained persons, for up to 3 days (if bringing them to a remand prison (SIZO) over this period is not possible due to remoteness or absence of proper means for transportation such persons may be held at THFs for no more than 10 days);
- criminal defendants (convicts) who arrived from SIZO and penitentiary institutions in connection with court hearings or participation in investigative actions;
- persons under administrative arrest, in the absence of a special reception center for such arrestees.

**Special reception centers for persons under administrative arrest** are police institutions for custody of persons under administrative arrest.

**Reception centers for juveniles** are special police institutions for temporary custody of certain categories of minors that have to be confined.

Reception centers for minors are established for temporary holding of minors aged from 12 to 18

1 to 18 who:

- committed socially dangerous acts when aged from eleven to fourteen, if there is an immediate need to confine them (following a decision by an inquest authority, investigator sanctioned by prosecutor, or pursuant to a court order);
- are referred to special institutions for juveniles by a court ruling;
- intentionally left the special educational institution where they had stayed previously.

**Special wards at medical institutions** are designated for in-patient treatment of apprehended and detained persons at district (city) hospitals, wards (hospitals) for patients with infectious diseases and anti-tuberculosis institutions of the Ministry of Health of Ukraine

Special vehicles (avtozak) and special railcars of ST type serve for transportation of persons who are apprehended, detained, and convicted.

### ***SECURITY SERVICE OF UKRAINE (SSU):***

**Regional bodies of the Security Service of Ukraine** are the specialized law enforcement state authorities that take part in performing state functions aimed at prevention, identification, detection, discontinuation, and investigation of crimes against peace and security of humankind, terrorism, corruption and organized crime in the spheres of administration and economy, as well as other illegal activities that pose a direct threat to vital interests of Ukraine.

**Specially designated areas for temporary detention (temporary detention facilities)** are special SSU institutions for custody of:

- persons apprehended on suspicion of crime
- detained persons, for up to 3 days (if bringing them to a remand prison (SIZO) over this period is not possible due to remoteness or absence of proper means for transportation such persons may be held at the specially designated area for temporary detention (THF) for no more than 10 days);
- criminal defendants (convicts) who arrived from SIZO and penitentiary institutions in connection with court hearings or participation in investigative actions;
- criminal defendants (convicts) who arrived from SIZO in connection with court hearings or participation in investigative actions.

### **Definitions of places of detention of the tax police:**

**Regional tax police authorities** are state law enforcement bodies that take part in state functions aimed at preventing criminal and other offences in taxation and budgeting fields, detecting, investigating and proceeding in cases on administrative violations, searching for persons absconding investigation or trial for criminal and other offenses in taxation and budgeting spheres, preventing and combating corruption in the State Tax Service and identifying corruption, safeguarding the security of employees of state tax authorities and protecting them against unlawful acts in their line of duty.

#### *State Penitentiary Service*

**Remand prison (SIZO)** is a penitentiary facility designed to hold persons restrained by detention at any stage of criminal proceedings (pre-trial, after the verdict before transfer to an arrest house, correction center or correction prison), except military personnel who are held at guardhouses.

**Correctional colonies** enforce deprivation of liberty and life imprisonment sentences.

Convicted persons serve sentences in correctional colonies, as follows:

*Correctional colonies with minimum level of security and lenient conditions* for individuals sentenced to prison for the first time for crimes committed by negligence, for crimes of minor and medium gravity, as well as prisoners transferred from prisons with minimum level of security and general conditions, and prisons of medium level of security in accordance with the procedure outlined in the Criminal Executive Code;

*Correctional colonies with minimum level of security and general conditions* hold men sentenced to prison for the first time for crimes of minor and medium gravity, women sentenced for crimes of minor and medium gravity, grave and particularly grave crimes. Prisons of this type may also hold convicted prisoners transferred from

juvenile correctional facilities in accordance with the procedure specified by Article 147 of the Criminal Executive Code

*Correctional colonies with medium level of security* hold women sentenced to life imprisonment and women whose sentence of death or life imprisonment was commuted to imprisonment for a definite period following pardon or amnesty, and men sentenced to prison for the first time for grave and particularly grave crimes, men who had previously served prison sentences, men convicted of an intentional crime of medium gravity during their prison sentence, as well as convicts transferred from maximum security penitentiaries in accordance with the procedure outlined in the Criminal Executive Code;

*Correctional colonies with maximum level of security* hold men sentenced to life imprisonment, men whose death sentence was commuted to life imprisonment, men whose death or life imprisonment sentence was commuted to imprisonment for a definite period of time following pardon or amnesty, men convicted for intentional particularly grave crimes, men convicted for premeditated grave or particularly grave crimes during their prison sentence, as well as men transferred from penitentiaries with medium level of security in accordance with the procedure outlined in the Criminal Executive Code.

**Correction centers** enforce punishments of restriction of liberty of persons convicted for offenses of minor and medium gravity, as well as convicted persons punished in accordance with Articles 82 and 389 of the Criminal Code of Ukraine (2341-14).

1. Sentences of restriction of liberty are served at correction centers that are open-type criminal executive institutions open type.
2. Legal framework for operation of correction centers includes the Criminal Executive Code of Ukraine, Provisions on internal procedures of penitentiary institutions, other regulations, as well as the Instruction on the procedure and conditions for enforcement of sentences of restriction of liberty approved by order no. 27 of the State Department of Ukraine for Execution of Punishments on February 16, 2005 (registered with the Ministry of Justice of Ukraine on March 5, 2005, reg. no. 290/ 10570).
3. The tasks of correction centers are:
  - to organize execution of sentences of restriction of liberty and to ensure optimal conditions for serving sentences with the purpose of correction and re-socialization of convicts;
  - to prevent commission of new crimes by convicts;
  - to ensure lawfulness and order, and security of convicts, as well as staff, officials and other persons on their territory;
  - to involve convicts into socially useful work with regard to their health, general development and professional level;
  - to provide convicts with proper health care;
  - to perform operational and detective activities in accordance with the legislation.

4. It should be noted that since restriction of liberty may, in accordance with Articles 69 and 82 of the Criminal Code of Ukraine, be imposed for grave and especially grave crimes, correction centers also execute sentences for this category of convicted persons.

**Arrest houses** are sentence enforcement institutions where prisoners serve their arrest sentences. Since this type of punishment implies confinement (Article 60 of the Criminal Code of Ukraine), arrest houses provide conditions for physical isolation of prisoners from the outer world and others. Conditions in arrest houses must meet the regime requirements for such sentences and ensure separate detention of certain categories of prisoners and oversight. An arrest house must have the necessary material, technical and living conditions. Requirements for establishment of internal and spatial arrangements at arrests houses are established by law. Arrest houses hold adults as well as juveniles who had turned 16 years old by the moment of pronouncement of their sentences and convicted for crimes of minor gravity

#### *State Border Guard Service*

**Temporary detention facilities** are intended to hold offenders apprehended under administrative law on suspicion of an offense pursuant to a decision of the investigator and in accordance with the procedure established by the Criminal Procedure Code of Ukraine. Such facilities operate in locations of the state border guard authorities (border guard units, special checkpoint “Kyiv”).

**Special premises** are arranged at the units directly involved in protection of the state border (border control units) and are designated for temporary custody of offenders apprehended under administrative law.

#### *State Migration Service of Ukraine*

**Temporary accommodation centers for foreigners and stateless persons** are state institutions designated for temporary custody of foreigners and stateless persons who are illegally staying in Ukraine and are subject to forced expulsion.

#### *The Ministry of Defense of Ukraine*

**Disciplinary battalion** is custodial facility for military personnel sentenced to detention at such battalion.

**Guardhouses** are places of preliminary detention of the military personnel and execution of criminal punishments by arrest.

Such institutions hold the military personnel who:  
are serving arrest sentences;  
are detained pending court decision;

are restrained by detention during reserve training (including persons subject to military draft);

are referred to the disciplinary unit upon conviction;

apprehended for violation of military discipline in the state of intoxication (until sobering) or without identification documents (until identification).

**Rooms for temporarily detained military personnel** are equipped in the buildings (premises) of the command bodies of the Military Policing Service of the Armed Forces of Ukraine that are not equipped with guardhouses.

**Special wards at medical institutions** of the Armed Forces of Ukraine are wards designated for treatment of ill military personnel who were convicted, detained or apprehended.

**Military units** are organizationally independent combat, training and administrative units of the Armed Forces of Ukraine where citizens of Ukraine undergo military conscription.

### *State Court Administration of Ukraine*

**Facilities for defendants/convicted persons in courts** are cells (rooms) equipped at appellate and local courts of general justice for the purposes of temporary custody of the defendants/ convicts during their stay at premises (buildings) of appellate and local courts for participation in court hearings or familiarization their case files.

### *Ministry of Education and Science*

**Children's home** is an educational institution for development, upbringing, education and social adaptation of orphans and children without parental care, of preschool and school age.

**General education boarding schools for orphans and children deprived of parental care** are institutions for upbringing, education and social adaptation of orphans and children deprived of parental care.

**General education specialized boarding schools for orphans and children deprived of parental care** are institutions for orphans and children deprived of parental care who require correction of physical and/ or mental development.

**General education boarding school** is a secondary educational institution of I-II, I-III tiers that ensure the right to secondary education to the children in need of social assistance.

**General education health care boarding schools** are secondary schools of I-II, I-III tiers with relevant medical profile that grant the right to secondary education to the children in need of lengthy treatment and rehabilitation.

Special general education boarding school is a secondary school that provides a certain level of education, vocational guidance and training, correction and development activities for children in need of correction of physical and/ or mental development, and full accommodation and services at the expense of the state.

**General education schools** are public educational institutions under the MES for children in need of special conditions of upbringing. Such schools admit children (residents) who are referred by courts for socially dangerous offenses committed at the age from 11 to 14. Children (residents) are held at the schools' custody within the term established by court but no more than three years. The schools create proper conditions for living, education and upbringing of students (residents), raising their educational and cultural level, developing individual abilities and inclinations, providing necessary health care, social rehabilitation, legal awareness and social protection, on the basis of a continuous pedagogical regime. Specifics of pedagogical regime and conditions of upbringing and custody are determined by special daily regime and educational system, continuous oversight and pedagogical control, and restrictions on leaving the territory without competent officials in accordance with the procedures established by the MES.

**Vocational training school of social rehabilitation** is a state vocational training institution under the MES for children in need of special conditions of upbringing.

A specific condition for the school is the same gender of its residents, the number of which may not exceed 200.

The main task of the school is protection of the rights of children who require special upbringing conditions to vocational training, mastering working occupations and specializations, and qualifications according to their interests, abilities and state of health. Specifics of pedagogical regime and the conditions of upbringing and custody of students (residents) are determined by special daily routines, and the system of education and upbringing, continuous oversight and pedagogical control, and exclusion of free exit without administration's permission and competent officials, in accordance with the procedure established by the MES.

**Centers for education and rehabilitation** are general education institutions the purpose of which is to enable children with special educational needs caused by severe development deficiencies to exercise their right to education, and to integrate them into society through comprehensive rehabilitation measures aimed at restoration of health, attainment of a proper level of education, development and correction of deficiencies.

Such centers admit children in adversity, or referred by childcare homes, or without family care, or victims of child abuse in need of social and psychological assistance

***Ministry of Social Policy:***

Residence for elderly citizens and citizens with disabilities, geriatric residence and residence for war and labor veterans is a general inpatient social and health care institution for permanent accommodation of the elderly, people with disabilities, and war and labor veterans who require third-party care, livelihood and medical support.

The residence admits, for accommodation at state expense, the elderly of retirement age and people with disabilities of the first and second categories over 18 years old who require third-party care, livelihood and medical support, have no medical contraindications confirmed by medical conclusion regarding accommodation at a residence and have no able-bodied relatives obliged to take care of them under the law.

**Special residence** is a social and medical facility for permanent accommodation of the released elderly and people with disabilities of the first and second categories who require third-party care, livelihood and medical support and rehabilitation services due to their health condition.

Such residence admits, free of charge, the elderly and people with disabilities of I-II categories over 18 years old who were released from other custodial settings, requiring third-party care, livelihood and medical support and have no able-bodied children or other relatives obliged to take care of them under the law.

The residence may also admit, on a fee basis, individuals who have able-bodied children or other relatives obliged to take care of them under the law.

**Neuropsychiatric residence** is an inpatient social and health care facility for permanent accommodation of persons with neuropsychiatric disorders who require third-party care, livelihood and medical support.

Such residence admits, for accommodation at state expense, people with psychiatric disorders of retirement age and people with disabilities of the first and second categories with mental disorders over 18 years of age who require continuous third-party care, livelihood and medical support, have no medical contraindications regarding accommodation at a residence in accordance with indications and contraindication for admission to residential facilities, regardless of whether there are parents or relatives obliged to take care of them under the law.

**Childcare residence** is a social and health care facility for permanent accommodation of children from 4 to 18 years of age (with establishment, if necessary, of a structural youth unit within the childcare residence for those aged from 18 to 35) with physical or mental disabilities or psychiatric disorders in need of third-party care, livelihood and medical support, education and rehabilitation services. Such homes function as structural subdivisions of the above-described residences.

**In-patient unit for permanent or temporary accommodation at the territorial center** is established for no less than 10 and no more than 50 single persons (limitations for number of residents at the inpatient unit enters into force on January 1, 2015). The unit provides permanent or temporary accommodation fully covered by the state for single elderly persons, persons with disabilities (over 18 years of age), persons with illnesses (of working age for the period of assignment of disability category for

no more than 4 months) if such persons, according to the opinion of a medical commission of a health care institution, are unable to take care of themselves and require third-party care and assistance, as well as social, livelihood, medical and other services.

**Shelter for children** is a social protection institution established for temporary accommodation of children aged from 3 to 18.

The shelter accommodates children who got lost, were abandoned by parents or caregivers, or those begging when the parents' whereabouts are unknown, left without parental or foster care or guardians (caregivers), or those who left their family or educational institution, or those taken by the police unit for the matters of children from families where conditions posed a threat to their life and health, or those who lost contact with parents during natural disasters, industrial accidents, catastrophes or other emergencies, or those with no permanent residence and means of sustenance, or foundlings, or homeless children, or those who on their own requested help from the administration of an institution, or those who contacted the shelter administration, as well as those who had served their custodial sentence.

**Center for social and psychological rehabilitation of children** of the Children Service is a social protection institution for long-term (stationary) or day care of children in adversity aged from 3 to 18 years that provides social, psychological, educational, medical, legal and other assistance.

The center accommodates children in adverse circumstances, or those transferred from shelters for children, or left without familial environment, or victims of violence and in need of social and psychological support.

### ***Ministry of Health:***

**Psychiatric institution** – a specialized healthcare institution with functions related to provision of psychiatric care.

**Children's home**– is a specialized municipal healthcare institution for medical and social protection of orphans, children without parental care, as well as children with physical and mental disabilities.

Categories of children's homes:

1. *general children's home* – for medical and social protection of healthy orphaned children (I-II health groups), children without parental care from birth to three years of age. In addition, the home may accommodate children with families where care and upbringing by the family is not possible for compelling reasons (illness of a caregiver, lengthy business travel, study etc.), as well as children with arrested physical or mental development;
2. *specialized children's home* - for medical and social protection of orphaned children, children without parental care, children with disorders

of physical and mental development (III-V health groups) aged from birth to four years old, as well as with:

- organic damage to nervous system;
- malfunctions of nervous system and psychiatric disorders;
- organic damage to the central nervous system, including infantile cerebral palsy with no psychiatric disorders;
- malfunction of locomotor system and other physical development disorder with no psychiatric disorders;
- hearing and speech impairments
- speech impairments;
- visual impairments (blind, low-vision);
- infected with tuberculosis, patients with mild and declining forms of tuberculosis, with HIV infection.

## Annex 2

### Awareness-raising and educational activities

Date	Location	Organizer	Event	Audience
28.02.2014	Kyiv	Taras Shevchenko Kyiv National University	International Scientific and Practical Conference “Interdisciplinary Issues in Social Work: Psychological, Sociological, and Legal Aspects”	Scholars, NGO, experts in social services
18-23.05.2014	Warsaw, Lublin (Poland)	The Helsinki Foundation for Human Rights with the support of the International Solidarity Foundation of the Ministry of Foreign Affairs of the Republic of Poland	“Increasing the standard of protection of rights of children placed in isolation and care facilities in Ukraine”	Staff of the Department for Implementation of the NPM Public monitors
26.06.2014	Kyiv	Secretariat of the Ukrainian Parliament Commissioner for Human Rights, Ukrainian Research Institute of Social and Forensic Psychiatry and Drug Abuse of the MoH of Ukraine	Roundtable “State of implementation of European standards for ensuring the rights of persons with psychiatric disorders”	Staff of the Department for Implementation of the NPM, representatives of the Office of the Prosecutor General, MOH, Ministry of Justice, MES, Ministry of Social Policy, State Penitentiary Service, Parliamentary Committee on Health Care, psychiatry experts from Ukraine and Germany, NGO

23.06. 2014	Kyiv	Secretariat of the Ukrainian Parliament Commissioner for Human Rights	Session of the Inter-agency working group on the Report by Ukrainian Parliament Commissioner for Human Rights “Monitoring of custodial settings in Ukraine: Status of implementation of the National Preventive Mechanism”	Staff of the Secretariat of the Ukrainian Parliament Commissioner for Human Rights, representatives of the State Court Administration, Office of the Prosecutor General, Ministry of Health of Ukraine, Ministry of Defense of Ukraine Ministry of Internal Affairs of Ukraine, State Migration Service, State Penitentiary Service, Main Directorate of the Military Policing Service of the Armed Forces of Ukraine, Main Department of Investigations of the Security Service of Ukraine, Department of general secondary and primary education, Department of Border Security of the State Border Guard Service, Ministry of Justice of Ukraine
July 2014	Kyiv	Secretariat of the Ukrainian Parliament Commissioner for Human Rights	Roundtable “Use of state coercion towards juveniles with psychiatric and behavioral disorders”	Representatives of the Office of the Prosecutor General, MOH of Ukraine, Ministry of Justice of Ukraine, Association of Psychiatrists of Ukraine, State Penitentiary Service, the Commissioner of the President of Ukraine for Children's Rights, Higher Specialized Court of Ukraine for Civil and Criminal Cases
15.09.14	Lviv	OSCE Project Co-ordinator in Ukraine, Ukrainian Parliament Commissioner for Human Rights, Kharkiv	Training for MIA officials “Standards and safeguards for the rights of apprehended persons	Staff of the Public Safety Department of the MIA of Ukraine from western and central regions

		Institute for Social Research	and police obligations in the view of NPM activities”	
16-18.09.2014	Lviv	Secretariat of the Ukrainian Parliament Commissioner for Human Rights Public Organization “Kharkiv Institute for Social Research” with the support of OSCE Project Co-ordinator in Ukraine	3-day working meeting with public monitors of places of detention	Staff of the Department for Implementation of the NPM of the Ukrainian Parliament Commissioner for Human Rights; Public monitors of places of detention
19-21.09.2014	Lviv	Secretariat of the Ukrainian Parliament Commissioner for Human Rights Public Organization “Kharkiv Institute for Social Research” with the support of OSCE Project Co-ordinator in Ukraine	3-day working meeting with public monitors of places of detention	Staff of the Department for Implementation of the NPM of the Ukrainian Parliament Commissioner for Human Rights; Public monitors of places of detention
24.09.2014	Kyiv	Secretariat of the Ukrainian Parliament Commissioner for Human Rights, Ukrainian Research Institute of Social and Forensic Psychiatry and Drug Abuse of the MoH of Ukraine	Roundtable “Issues related to applying physical restraint towards to persons with psychiatric disorders”	Staff of the Department for Implementation of the NPM Representatives of the Office of the Prosecutor General, the MOH, Ministry of Justice, MES, Ministry of Social Policy, State Penitentiary Service, Parliamentary Committee on Health Care, psychiatry experts, NGO
30.09.2014	Kyiv	Secretariat of the Ukrainian Parliament Commissioner for Human Rights	Inter-agency meeting on the state of observance of rights of persons in custody of penitentiary facilities, institutions of the systems of health care and social protection on the territory of conduct of the anti-terrorist operation	Staff of the Department for Implementation of the NPM, representatives of the MES, MOH, Ministry of Defense, Ministry of Social Policy, State Penitentiary Service, State Border Guard Service.

01.10.2014	Kyiv	Secretariat of the Ukrainian Parliament Commissioner for Human Rights	Lecture “Specifics of Implementation of the National Preventive Mechanism in the Ombudsman+ Format”	Staff of the Department for Implementation of the NPM, personnel of the special facility for temporary custody (THF) of the SSU in Kyiv
24.10.2014	Kyiv	Secretariat of the Ukrainian Parliament Commissioner for Human Rights	Meeting of an inter-agency working group on the protection of rights and freedoms of convicted and detained persons taking part in court hearings	Staff of the Secretariat of the Ukrainian Parliament Commissioner for Human Rights, Ministry of Finance of Ukraine, Ukrainian Government Agent before the European Court of Human Rights, Ministry of Justice of Ukraine, State Penitentiary Service, State Court Administration, Ministry of Infrastructure, Department of Public Safety of the MIA and Convoy Directorate of the Main Directorate of the National Guard of Ukraine
5-6.11.2014.	Kyiv	Secretariat of the Ukrainian Parliament Commissioner for Human Rights, Helsinki Foundation for Human Rights with the support of the International Solidarity Foundation of the Ministry of Foreign Affairs of the Republic of Poland	Training “Custodial settings for children” in the framework of the program “Understanding Human Rights” of the Helsinki Foundation for Human Rights	Representatives of the Helsinki Foundation for human Rights (Warsaw, Poland), Secretariat of the Ukrainian Parliament Commissioner for Human Rights, Association of Ukrainian Human Rights Monitors on Law Enforcement, Human Rights Information Center, Kharkiv Human Rights Protection Group
7.11.2014	Kyiv	Secretariat of the Ukrainian Parliament Commissioner for Human Rights	Training “Monitoring observance of the rights of residents of children’s homes and patients of palliative care institutions”	Staff of the Department for Implementation of the NPM of the Ukrainian Parliament Commissioner for Human Rights

12.11.20 14	Kyiv	Secretariat of the Ukrainian Parliament Commissioner for Human Rights, International Renaissance Foundation	Working meeting with the Coordination Center for Legal Aid “Possible Cooperation Streams between the Coordination Center and the Ombudsman’s Office in the field of rights protection”	Staff of the Coordination Center for Legal Aid and the NPM Department, Roman Romanov, Human Rights and Justice Program Initiative Director, International Renaissance Foundation, Vasylyna Yavorska, Human Rights and Justice Program Initiative Manager, International Renaissance Foundation
13- 14.11. 2014	Lviv	Association of Ukrainian Human Rights Monitors on Law Enforcement with the financial support from the UN Development Program in Ukraine	International Conference “Fifth Eastern European NPM Conference”	NPM representatives from ten European countries, representatives of the Secretariat of the Ukrainian Parliament Commissioner for Human Rights, central executive authorities with functions related to ensuring rights and freedoms of persons in detention, experts of international and nongovernmental organizations
4-5.12. 2014	Vyshhorod district, Hlibovka village	Association of Ukrainian Human Rights Monitors on Law Enforcement with the support from the International Renaissance Foundation	Annual meeting of the National Preventive Mechanism monitors	Representatives of the Department for Implementation of the NPM of the Ukrainian Parliament Commissioner for Human Rights, representatives of the Association of independent monitors of places of detention
16.12. 2014	Kyiv	Secretariat of the Ukrainian Parliament Commissioner for Human Rights	Roundtable “Observance of juveniles’ rights in correctional facilities of the State Penitentiary Service of Ukraine”.	Staff of the Department for Implementation of the NPM of the Ukrainian Parliament Commissioner for Human Rights
21- 25.12. 2014	Republic of Serbia	Office of the Ombudsman of the Republic of Serbia, and the CoE Project “The	5-day study visit for exchange of experience in implementation of the national	Staff of the Department for Implementation of the NPM of the Ukrainian Parliament

		package of urgent measures for Ukraine”	preventive mechanism	Commissioner for Human Rights
26.12. 2014	Kyiv	Ukrainian Parliament Commissioner for Human Rights	Roundtable “Key human rights issues in the penitentiary system in Ukraine in the context of legal framework” and discussion of recommendations for amendments of criminal executive legislation	Staff of the Department for Implementation of the NPM of the Ukrainian Parliament Commissioner for Human Rights