

Report

**to the Ukrainian Government
on the visit to Ukraine
carried out by the European Committee
for the Prevention of Torture and Inhuman
or Degrading Treatment or Punishment (CPT)**

from 29 November to 6 December 2011

The Ukrainian Government has requested the publication of this report and of its response. The Government's response is set out in document CPT/Inf (2012) 31.

Strasbourg, 14 November 2012

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Copy of the letter transmitting the CPT's report

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Strasbourg, 30 March 2012

Dear Ms Lutkovska,

In pursuance of Article 10, paragraph 1, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, I enclose herewith the report to the Ukrainian Government drawn up by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) after its visit to Ukraine from 29 November to 6 December 2011. The report was adopted by the CPT at its 77th meeting, held from 5 to 9 March 2012.

The various recommendations, comments and requests for information formulated by the CPT are listed in Appendix I of the report. As regards more particularly the CPT's recommendations, having regard to Article 10 of the Convention, the Committee requests the Ukrainian authorities to provide **within three months** a response giving a full account of action taken to implement them.

The CPT trusts that it will also be possible for the Ukrainian authorities to provide, in the above-mentioned response, reactions to the comments formulated in this report as well as replies to the requests for information made.

The Committee would ask, in the event of the response being forwarded in Ukrainian, that it be accompanied by an English or French translation.

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

Yours sincerely,

Lətif HÜSEYNOV
President of the European Committee for
the Prevention of Torture and Inhuman
or Degrading Treatment or Punishment

I. INTRODUCTION

A. Dates of the visit and composition of the delegation

1. In pursuance of Article 7 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the Convention”), a delegation of the CPT carried out a visit to Ukraine from 29 November to 6 December 2011¹.

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

- Lətif HÜSEYNOV, President of the CPT (Head of delegation)
- Marija DEFINIS-GOJANOVIĆ
- George TUGUSHI
- Marika VÄLI.

They were supported by Michael NEURAUTER (Head of Division) of the Committee’s Secretariat and assisted by:

- Eric DURAND, medical doctor, former Head of the Medical Services at Fleury-Mérogis Prison, France (expert)
- Michael KELLETT, former Detective Chief Inspector in the Lancashire Constabulary, United Kingdom (expert)
- Denys DANYLENKO (interpreter)
- Vadim KASTELLI (interpreter)
- Dmytro KOPYLOV (interpreter)
- Larysa SYCH (interpreter).

¹ The CPT has previously carried out five periodic visits (in 1998, 2000, 2002, 2005 and 2009) and two ad hoc visits (in 1999 and 2007) to Ukraine. The reports on these visits and the responses of the Ukrainian authorities are available on the CPT’s website: <http://www.cpt.coe.int/en/states/ukr.htm>

B. Context of the visit and establishments visited

3. The visit was one which appeared to the CPT “to be required in the circumstances” (cf. Article 7, paragraph 1, of the Convention). The main objective was to review progress made regarding the treatment and conditions of detention of persons deprived of their liberty by the police. For this purpose, the delegation visited the following police establishments:

Kyiv region

- Irpin Temporary Holding Facility (ITT)
- Kyiv ITT
- Shevchenkivskyi District Police Division, Kyiv
- Solomianskyi District Police Division, Kyiv
- Vyshgorod Police Division

Kharkiv region

- Chuguyiv ITT
- Joint Special Detention Facility², Kharkiv
- Dzerzhinskyi District Police Division, Kharkiv
- Kyivskyi District Police Division, Kharkiv
- Leninskyi District Police Division, Kharkiv
- City Police Sub-Division of Leninskyi District Police Division, Kharkiv

In addition, the delegation carried out targeted visits to the Pre-Trial Establishments (SIZOs) in Kyiv and Kharkiv, in order to interview newly-arrived remand prisoners, and a follow-up visit to the Secure Ward of Kyiv Municipal Emergency Hospital.

4. On the occasion of this visit and in the light of reports recently received by the CPT, the delegation also examined the health care being provided to certain persons held at the Kyiv SIZO, in particular Valeriy IVASHENKO, Yuriy LUTSENKO and Yulia TYMOSHENKO (see paragraphs 48 and 49).

² The establishment comprises an ITT and a detention facility for administrative detainees.

C. Consultations held by the delegation and co-operation

5. In the course of the visit, the delegation held consultations with Oleksandr LAVRYNOVYCH, Minister of Justice, Serhii CHERNYKH, First Deputy Minister of Internal Affairs, and Oleksandr LISITSKOV, Head of the State Penitentiary Service of Ukraine, as well as with other senior officials of the Ministries of Justice and Internal Affairs.

Further, the delegation met Viktor PSHONKA, Prosecutor General, Renat KUZMIN, First Deputy Prosecutor General, and Anatolii PRYSHKO, Yevhen BLAZHIVSKYI and Viktor VOITSYSHEN, Deputy Prosecutors General.

The delegation also had talks with Nina KARPACHOVA, Parliamentary Commissioner for Human Rights.

In addition, it had a meeting with representatives of non-governmental organisations (NGOs) active in areas of interest to the CPT.

A list of the national authorities and NGOs met by the delegation is set out in Appendix II to this report.

6. The co-operation received by the delegation throughout the visit was generally good. The delegation generally enjoyed rapid access to all the establishments visited. Further, it was promptly provided with all the information necessary for carrying out its task and was able to talk in private to all persons it wished to interview.

The CPT wishes to express its appreciation for the assistance provided before, during and after the visit by its liaison officer, Ms Valeria Lutkovska, from the Ministry of Justice.

7. However, there were some exceptions to this generally favourable state of affairs. In particular, at the ITT and the Solomianskyi District Police Division in Kyiv, as well as at Kyivskyi District Police Division in Kharkiv, access to the establishment was granted with a delay of some 30 minutes and only after the delegation had intervened with the delegation's contact person from the Ministry of Internal Affairs.

8. The most serious problem of co-operation was encountered during the visit to the Secure Ward of the Kyiv Municipality Emergency Hospital. The delegation's access to the ward was delayed for some ten minutes. Police officers present in the ward subsequently told the delegation that patients were never handcuffed to their bed; however, when the delegation then checked the CCTV recordings of the ward, it became apparent that, during the ten minutes it had had to wait outside, police officers had hastily removed the handcuffs of all the patients held in the ward. From the fact that patients themselves initially categorically denied the use of handcuffs, the CPT cannot but conclude that police officers had exerted pressure on them not to reveal the truth to delegation members.

The Committee is very concerned by the fact that the practice of handcuffing patients to hospital beds has continued since the 2009 visit, despite the assurances given to the contrary by the Ukrainian authorities in their response to the report on that visit³.

³ See CPT/Inf (2011) 30, page 8.

9. During the end-of-visit talks with the Ukrainian authorities, the delegation made an immediate observation under Article 8, paragraph 5, of the Convention and called upon the Ukrainian authorities to put an immediate end to the practice of handcuffing patients to hospital beds in the Secure Ward of the Kyiv Municipality Emergency Hospital. The Ukrainian authorities were requested to confirm within one month that this had been done.

In this regard, reference is made to the remarks made in paragraph 53.

10. The CPT has repeatedly stressed that the principle of co-operation as set out in Article 3 of the Convention is not limited to facilitating the work of visiting delegations, but also requires that recommendations made by the Committee are effectively implemented in practice.

The delegation observed significant improvements in certain areas (in particular, as regards material conditions in police establishments). However, hardly any progress has been made in combating the phenomenon of police ill-treatment and in implementing many key recommendations repeatedly made by the Committee after previous visits to Ukraine (in particular, as regards the fundamental safeguards against police ill-treatment, the conditions of detention and contacts with the outside world of remand prisoners, and the situation of detained persons held in the Secure Ward of the Kyiv Municipality Emergency Hospital).

Having regard to Articles 3 and 10, paragraph 2, of the Convention⁴, the CPT calls upon the Ukrainian authorities to take resolute action to improve the situation in the light of the Committee's recommendations.

⁴ Article 10, paragraph 2, reads as follows: "If the Party fails to co-operate or refuses to improve the situation in the light of the Committee's recommendations, the Committee may decide, after the Party has had an opportunity to make known its views, by a majority of two-thirds of its members to make a public statement on the matter."

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Police custody

1. Preliminary remarks

11. The legal framework governing deprivation of liberty by the police in Ukraine has remained basically unchanged since the last periodic visit in 2009.

According to the Code of Criminal Procedure⁵, criminal suspects may be held in police custody (before being seen by a judge) for a maximum of 72 hours; persons remanded in custody are in principle transferred to a SIZO, but may be held, for logistical reasons⁶, in a police establishment (ITT) for up to ten days.

The delegation was informed that a new draft Code of Criminal Procedure was being prepared. **The CPT would like to receive updated information on this point.**

12. Persons suspected of having committed an administrative offence may be deprived of their liberty by the police for up to three hours (in order to draw up a protocol) or for up to three days (when this is considered necessary to establish the identity of the person concerned or to clarify the circumstances of the offence)⁷; if found guilty the persons may be sentenced by a judge for up to 15 days of administrative detention.

13. As was the case during previous visits, remand prisoners were, on occasion, returned from a SIZO to police detention facilities if this was considered necessary for investigative purposes. The CPT must stress once again its serious reservations about this practice. As indicated in paragraph 15, such transfers clearly increase the risk of detained persons being subjected to ill-treatment by police officers.

The CPT reiterates its recommendation that the Ukrainian authorities take steps to ensure that the return of prisoners to police detention facilities is sought and authorised only very exceptionally, for specific reasons and for the shortest possible time. Such a return should in each case be subject to the express authorisation of a prosecutor (or judge).

⁵ See Section 155.

⁶ Such as “long distances or lack of appropriate roads”.

⁷ See Section 11 (5) of the Law on the Militia and the Code of Administrative Offences.

2. Torture and other forms of ill-treatment

14. In the course of the visit, the delegation was inundated with allegations from detained persons (including women and juveniles) that they had been subjected to physical or psychological ill-treatment and/or excessive use of force by police officers. The alleged physical ill-treatment consisted in the main of punches, kicks, or inappropriate use of batons, at the time of apprehension or during subsequent questioning by operational officers and/or investigators.

In several cases, the ill-treatment alleged was of such a severity that it can easily be considered to amount to torture (e.g. infliction of electric shocks; asphyxiation with a plastic bag or gas mask; suspension in a hyperextended position; death threats with a gun put to the head, etc.).

The above-mentioned allegations concerned various police establishments in the Kyiv and Kharkiv regions. However, without wishing to detract from the seriousness of the allegations received in respect of other establishments, the Shevchenkivskyi District Police Division in Kyiv appeared to be particularly problematic, in terms of the severity of the ill-treatment alleged and also its frequency.

15. Allegations of ill-treatment were received from persons interviewed individually who had had no possibility of contacting each other; the accounts were often highly detailed and frequently displayed consistent features (e.g. placing a gas mask on the head, followed by filling with smoke). A number of the persons interviewed by the delegation members were clearly reluctant to speak about their experiences in police custody and only did so after much hesitation. In addition, the delegation met a few persons still held in a police establishment who displayed visible injuries, but who, when asked about the causes of those injuries, refused to give any explanation.

In a number of cases, the medical examination of the persons concerned and/or the consultation of medical files by the delegation revealed injuries which, in the view of the delegation's doctors, were consistent with the allegations of ill-treatment made.

Moreover, at both SIZOs visited, the delegation was told by senior members of staff that it was not uncommon for remand prisoners, who had been temporarily taken to a police establishment for investigative purposes, to subsequently return to the SIZO with visible fresh injuries.

16. The information gathered during the visit leaves little doubt that the phenomenon of police ill-treatment remains widespread and that, more specifically, persons run a significant risk of being subjected to ill-treatment when they do not rapidly confess to the criminal offence(s) of which they are suspected.

In fact, the existence of the problem of ill-treatment by police officers in Ukraine has recently been openly acknowledged by the Minister of Internal Affairs who stated that “shameful facts of cruel or ill-treatment and torture by Militia officers have not been eradicated up to now” (see also paragraph 19).

17. By way of illustration, descriptions are given below a selection of the allegations received by the delegation:

- A detained person claimed that he had been kicked and punched by a police investigator during questioning (approximately one week before the delegation's visit), as a result of which he had allegedly sustained injuries to both ankles and his head and arms.

Upon examination by a medical member of the delegation, the person concerned displayed the following injuries:

- both ankles were swollen and displayed dark purple haematomas with greenish-yellow edges; on the right foot, the haematoma measured 13 cm x 21 cm, and in the middle of it there was a dark red skin abrasion with a crust; on the left foot, the haematoma measured 11 cm x 12.5 cm;
 - on the right side of the back in the area of the lower edge of the shoulder blade, there was a yellow haematoma, irregular in shape (measuring 5 cm x 4 cm);
 - on the middle third of the left upper arm, there was a purplish yellow haematoma measuring 4 cm x 7 cm.
- A detained person claimed that, during his apprehension (a few days before the delegation's visit), he was punched and kicked to the head by police officers.

Upon examination by a medical member of the delegation, he displayed the following injuries:

- on the outer corner of the lower lid of the right eye, there was a purplish-yellow haematoma measuring 3 cm x 1.5 cm; there was an oedema in the same place;
 - on the forehead, there was a dark red skin abrasion with a thick crust (measuring 0.2 cm x 0.6 cm).
- One woman claimed that, during her apprehension a few days before the delegation's visit, she was beaten and kicked, whilst handcuffed, by police officers.

Upon examination by a medical member of the delegation, the person concerned displayed the following injuries:

- on both wrists, there were discontinuous circular dark purple haematomas (on the inner and outer surface), with greenish-yellow edges (measuring 1.5 cm x 2.5 cm);
 - on the back surface of the lower third of the left thigh, there was a dark purple haematoma, irregular in shape and with greenish-yellow edges.
- A detained person claimed that, upon arrival at a police station, he was immediately handcuffed tightly with his hands behind his back and pushed to the floor. He was then allegedly kicked and punched by several operational officers. After this, one of them allegedly stood on his hands and then stretched his arms with a foot in an effort to make him confess. As a result, his wrists were allegedly wounded (with severe bleeding). During questioning by an investigator the following day, he allegedly complained about the "treatment" he had received by operational officers, but the investigator allegedly told him not to disclose it.

- A detained person, apprehended in the act of breaking into a car, claimed that, upon his arrival at a police station, operational officers began to punch and kick him in an effort to get him to admit to other crimes. He said that he was put on the floor and that electric shocks were applied to him by two officers (with the electrodes placed against his neck). He further alleged that, whilst handcuffed behind his back, an iron bar was placed through his arms and that he was then suspended between two tables, during which time he lost consciousness three times. On the following day, operational officers allegedly told him that they would kill him if he did not sign a confession.
- A detained person claimed that, during his stay at a police station, police officers asked him to undergo a “lie detector” test. He said that he initially agreed to it, but then found out that it was in fact a special “torture method”. He was allegedly placed on the floor, handcuffed behind his back and two police officers allegedly sat on his back. Subsequently, one of the officers put a plastic bag on his head, while the other twisted his legs. In addition, he was allegedly punched and kicked by police officers.
- A number of detained persons (including one woman) claimed that they had been subjected to electric shocks prior to their questioning. One of them stated that, during his stay at a police station, he was struck with a baton and that electric shocks were applied to him, during which time he fainted twice. When he screamed in pain, police officers allegedly turned on loud music so that nobody could hear him screaming. Afterwards a police officer allegedly said to him: “Why did you lose consciousness? You have missed the most interesting part!”
- Several detained persons claimed that, in order to extract a confession from them, they had been handcuffed behind their back and suspended by the arms (with a metal bar placed between his arms, on the top of two tables).
- A detained person claimed that, after his apprehension, he was taken to a forest, where a police officer put a gun to his head and threatened to pull the trigger if he did not confess. He subsequently signed a confession (without having been physically ill-treated).
- A considerable number of detained persons (including women) claimed that, prior to their questioning, a gas mask was placed on their head and filled with cigarette smoke through a hose. In some cases, the persons concerned were allegedly punched in the back to force them to inhale the smoke.
- Several female detained persons claimed that police officers threatened to use violence against other members of their family if they did not sign a confession. In one case, the woman was shown on an officer’s mobile phone a video recording documenting how her detained son had been beaten by police officers. She was allegedly told that “something would happen to her son if she did not agree to testify against members of her family”.
- One juvenile claimed that, following his refusal to sign a confession, several police officers placed three pens between the fingers of both hands and squeezed them with force until he agreed to confess. He said that he had complained about the ill-treatment to custodial staff of an ITT but did not know anything about the action subsequently taken. He also indicated that his ex officio lawyer “went mad” after hearing about the complaint and reproached him, saying “You have screwed up all your chances of getting out of here – you should not have done this!”

18. In contrast, the delegation received hardly any allegations of ill-treatment by custodial staff working in the ITTs visited.

3. Action to combat torture and ill-treatment

- a. clear instructions to police officers including from the highest political level

19. By Order No. 329 of 31 March 2011⁸, the Minister of Internal Affairs acknowledged the existence of the problem of police ill-treatment and ordered the introduction of various organisational measures to prevent torture and ill-treatment by police officers, including the creation of a special observation mission to monitor the activities of police officers, the introduction of uniform statistical reports on human rights violations by law enforcement agencies, the carrying-out of unannounced inspections of police establishments, the organisation of joint meetings of senior police officers and public prosecutors officers and the drawing of the “attention of all personnel to the need of radical change of the situation and [the fact] that torture, ill-treatment and other violations of citizens’ rights and freedoms in activities of the law enforcement agencies shall not be tolerated”.

The CPT welcomes the frankness of the Minister of Internal Affairs and the concrete measures he has taken. To reinforce this initiative and to enhance its prospects of success, **the Committee recommends that a clear and firm message of “zero tolerance” of ill-treatment be delivered by the highest political authority, namely the President of Ukraine.**

20. The information gathered during the visit indicated that police ill-treatment all too often appeared to be related to an overemphasis on confessions during criminal proceedings and pressure on the part of police officers to obtain high “clear-up” rates (as was the case during all previous visits).

The CPT reiterates its recommendation that the Ukrainian authorities further improve the professional training of operational police officers and investigators as well as of prosecutors. During the training, particular emphasis should be placed on advanced methods of crime investigation, thereby reducing reliance on information and confessions obtained via questioning.

As regards more particularly Shevchenkivskyi District Police Division in Kyiv, the Committee recommends that a thorough and independent investigation be carried out without delay into the methods used by its staff when detaining and questioning criminal suspects.

⁸ This Order contains the following introductory remarks: “According to the Order No. 90 of the MIA of 26 March 2010, measures aimed at securing constitutional human and civic rights and freedoms, respect for honour and dignity of every person and at prevention of commission of unlawful acts by Militia officers are being taken.

At the same time, shameful facts of cruel or ill-treatment and torture by Militia officers have not been eradicated up to now. Some Authorities and Units cultivate practices of detection of crimes by any, even unlawful, means. There are more than one cases of abuse of powers as the result of misunderstanding of the service interests, disrespect for rights, freedoms and legitimate interests of the citizens. [...] It is not seldom when citizens looking for help from the law enforcement agencies become victims of ill-treatment. [...] There were facts when the leaders themselves resorted to blows and humiliation of citizens.

The issues of improvement of response to cases of torture and ill-treatment were reviewed by the Collegium of Prosecutor General’s Office, which drew attention to mass scale of use of violence by Militia officers during detective operations, preliminary and pre-trial investigation [...]. Examples were given when applications and notifications concerning torture and ill-treatment committed by Militia officers were not registered or were registered and referred to the prosecutor’s office by the Law enforcement agencies with significant delays.”

b. role of judges and prosecutors in the prevention of ill-treatment

21. The CPT recalls the important role played by judges and prosecutors, but also by other competent authorities⁹, in preventing ill-treatment by police officers through the diligent examination of all relevant information regarding alleged ill-treatment which may come to their attention, whether or not that information takes the form of a formal complaint. If the emergence of information of ill-treatment is not followed by a prompt and effective response, those minded to ill-treat persons deprived of their liberty will quickly come to believe – and with very good reason – that they can do so with impunity.

22. In this regard, it is a matter of concern that several detained persons (including juveniles) affirmed to the delegation that when they had complained to a judge or prosecutor about instances of ill-treatment by police officers, the judge/prosecutor had shown little interest and had taken no further action on the matter.

As stressed by the CPT in the previous visit reports, whenever criminal suspects brought before judicial authorities allege ill-treatment, the allegations should be recorded in writing, a forensic medical examination immediately ordered, and the necessary steps taken to ensure that the allegations are properly investigated. Such an approach should be followed whether or not the person concerned bears visible injuries. Further, even in the absence of an express allegation of ill-treatment, a forensic medical examination should be requested whenever there are other grounds to believe that a person could have been the victim of ill-treatment.

The CPT calls upon the Ukrainian authorities to take appropriate steps to ensure that the precepts set out above are systematically applied in practice.

23. The procedures for processing complaints about ill-treatment by police officers were discussed by the delegation during meetings with prosecutors and the Head of the Department of Internal Security of the Ministry of Internal Affairs. The delegation was informed that, in July 2011, the former Internal Security Service of the Ministry of Internal Affairs (established in 1992) was transformed into the Department of Internal Security¹⁰. It is now a separate entity within the Ministry, affiliated directly to the Minister of Internal Affairs¹¹.

24. In order to have a better insight in the manner in which complaints about police ill-treatment were processed in practice, the delegation requested the Ukrainian authorities after the visit to provide information regarding the investigative steps taken in certain individual cases where detained persons had lodged a complaint about ill-treatment by the police. More specifically, the delegation requested copies of the investigation files which had been opened in respect of four cases (including copies of any forensic medical reports drawn up), as well as information on the outcome of these investigations and, where appropriate, on the action taken at criminal and/or disciplinary levels against the police officers involved.

⁹ See also Section 3c.

¹⁰ By Order No. 310 of 8 July 2011.

¹¹ See Section 112 of the Code of Criminal Procedure.

By letter dated 26 January 2012, the Ukrainian authorities informed the CPT that, in all four above-mentioned cases, a decision had been taken by the relevant prosecutor not to initiate a criminal investigation against police officers “due to the absence of components of crime in their actions, as provided for in art. 364 and 365 of the Criminal Code of Ukraine”. That said, the authorities did not provide copies of any of the related inquiry files.

The CPT requests the Ukrainian authorities to transmit copies of all the documents compiled in the context of the preliminary inquiries which had been opened in respect of the above-mentioned four cases (including copies of any forensic medical reports drawn up) without further delay.

25. During the visit, the delegation was provided with the following statistical data concerning investigations into cases of possible police ill-treatment:

In 2010, 6,817 allegations and notices of possible crimes related to the use of violence by officers of internal authorities during their performance of official duties were registered by regional prosecutors. However, only in 100 of these cases, were criminal proceedings initiated (three under Section 127 of the Criminal Code (“torture”), 90 under Section 365 of the Criminal Code (“excess of authority or official powers”) and seven under other articles), while in 6,717 cases it was decided not to open a criminal investigation. In 88 cases (involving a total of 167 law enforcement officers), criminal investigations led to an indictment, and in 85 of them a court judgment had been delivered. In 71 cases, a total of 133 officers have been convicted (76 to imprisonment, 52 to conditional imprisonment, four to “restraint of liberty” and one to a fine).

In 2011 (until October), 3,999 allegations and notices of crimes related to the use of violence by officers of internal authorities were registered by regional prosecutors.

In 61 of these cases, criminal proceedings were initiated (one under Section 127 of the Criminal Code (“torture”), 42 under Section 365 of the Criminal Code (“excess of authority or official powers”) and 18 under other sections, while in 3,938 cases it was decided not to open a criminal investigation. 88 cases (involving a total of 167 law enforcement officers) were referred to the court with an indictment, and in 42 cases the pre-trial investigation was still pending.

In 62 cases¹², the trial was completed; out of a total of 114 officers, 72 were convicted (36 to imprisonment, 33 to conditional imprisonment or “restraint of liberty”, two to “restraint of liberty” and one to a fine).

The CPT would like to receive the following additional information:

- (a) an update on the number of allegations/notices of possible police ill-treatment, the criminal investigations, trials and court decisions since 1 November 2011;**
- (b) information on the measures taken at disciplinary level in cases where police officers have been convicted of ill-treatment of detained persons under Section 365 of the Criminal Code since 1 January 2010;**
- (c) detailed information on the criminal and disciplinary sanctions imposed on officers convicted under Section 127 of the Criminal Code since 1 January 2010;**
- (d) information as to what extent disciplinary sanctions have been imposed on police officers since 1 January 2010 for having ill-treated detained persons without having been found guilty of a criminal offence.**

¹² Including some cases in respect of which the trial had started in 2010.

c. role of health-care staff in the prevention of ill-treatment

26. The CPT has repeatedly stressed the importance for the prevention of ill-treatment of effective medical screening whenever detained persons are admitted to an ITT or a SIZO (from a police establishment).

In this context, the CPT is very concerned by the continued lack of respect for the confidentiality of medical consultations in most of the establishments visited, despite the specific recommendations repeatedly made by the Committee in previous visit reports. The information gathered during the 2011 visit indicated that, in all the police establishments visited, medical examinations were usually carried out in the presence of police officers; clearly, this is not likely to encourage the person being examined to speak openly about injuries inflicted by police officers. As regards the SIZO visited, the situation was generally positive in Kyiv, whereas a prison officer was frequently present during medical examinations at the Kharkiv SIZO¹³.

The CPT once again calls upon the Ukrainian authorities to take immediate steps to ensure that, in all ITTs and SIZOs in Ukraine, medical examinations of detained persons are always conducted out of the hearing and – unless the health-care staff concerned requests otherwise in a particular case – out of the sight of police/prison officers.

27. Already in the report on the 2009 visit¹⁴, the CPT expressed its misgivings about the formal position of feldshers working as police employees in ITTs.

The information gathered during the 2011 visit demonstrated once again that feldshers are likely to face conflicts of interest and that are usually not perceived by detained persons as being independent, which clearly has a detrimental effect on the prevention of ill-treatment.

Virtually all the detained persons met by the delegation who claimed that they had sustained injuries as a result of police ill-treatment indicated that they had not informed the feldsher in the ITT of the injuries or had given false explanations about the real causes of the injuries. A number of persons also claimed that they were pressurised by police officers to sign a statement that they had sustained injuries prior to their apprehension.

By way of example, when consulting the injuries book of the ITT in Kyiv, the delegation found that, in November 2011, 48 persons were registered as having arrived with injuries; according to the register, all of them had “no complaints”, in about one third of the cases, explanations were added such as “fallen on the street”, “fallen at home”, “fallen from bicycle”, “injured at work” or “injured on day before arrest”. At the same time, several of the persons concerned stated on their arrival at the SIZO that the injuries had been inflicted by police officers.

Whilst acknowledging the fact that detained persons admitted to an ITT were in principle allowed to request a medical examination by an outside forensic doctor, **the CPT considers that the medical screening of newly-admitted detained persons in ITTs should preferably be performed by health-care staff that is independent of the police.**

¹³ At the Kharkiv SIZO, the delegation was informed that an escorting police officer (in addition to a prison officer) was frequently present during initial medical examinations of persons remanded in custody.

¹⁴ See CPT/Inf (2011), paragraph 23.

28. If the procedure for medical screening of detained persons admitted to ITTs or SIZOs is to genuinely contribute to the prevention of ill-treatment, steps must be taken to ensure that examinations are performed by a feldsher/doctor in a systematic and thorough manner and that all injuries are properly recorded.

In both SIZOs visited, all newly-arrived remand prisoners were subjected to a comprehensive medical examination, including tests for transmissible diseases (see, however, paragraph 30 regarding the poor quality of the recording of injuries).

That said, only little progress seems to have been made since the 2009 visit in the ITTs visited. A number of detained persons met by the delegation claimed that they had not been medically examined at all whilst being held in an ITT, and medical examinations were often carried out in a perfunctory manner or was limited to the posing of a some questions about the state of health and the existence of injuries (without a physical examination).

In this connection, the CPT must express its serious misgivings about the manner in which medical examinations were performed at the Kyiv ITT. As medical members of the delegation could observe for themselves, newly-admitted persons were placed inside a small metal cage and asked to undress while the feldsher standing by the door of the office performed a visual check of the body and asked several general questions about the person's state of health (and that in the presence of two police officers, see in this regard paragraph 26).

During the end-of-visit talks, the delegation called upon the Ukrainian authorities to remove the above-mentioned cage as soon as possible. By letter of 26 January 2012, the Ukrainian authorities confirmed that this had been done. The CPT takes note of this information.

29. In all the ITTs and both SIZOs visited, the recording of injuries left much to be desired (in many cases, only the type of injury such as "bruises" or "haematoma" was recorded, without any further description). Further, statements of the persons concerned were not always recorded, and there were no doctor's conclusions on the consistency of the injuries with any statements that were recorded.

30. The delegation observed that, when injuries had been recorded by a doctor upon admission of a newly-arrived remand prisoner, the following procedural steps were taken in both SIZOs visited:

- (1) A medical attestation ("*RAPORT*") with a description of the observed injuries was drawn up by the duty doctor who had examined the person concerned.
- (2) Another form ("*AKT*") containing the same information as the aforementioned attestation was signed by the duty doctor, the chief doctor and the team leader of the escorting police officers.
- (3) A written statement was taken from the person concerned by an officer of the establishment's internal security department on how the observed injuries had been sustained.

In the event that the person concerned made an allegation of ill-treatment by the police, all the above-mentioned documents were, as a rule, transmitted by the Director of the SIZO to the competent district prosecutor¹⁵. However, it is a matter of concern that, at the Kyiv SIZO, such notifications were on occasion sent instead to the district police department responsible for the police unit which had taken the person concerned into custody.

31. The CPT calls upon the Ukrainian authorities to take the necessary steps (including through the issuance of instructions and the provision of training to relevant staff) to ensure that:

- **the record drawn up by a feldsher/doctor in ITTs or SIZOs after a medical examination of a detained person contains:**
 - (i) **a full account of objective medical findings based on a thorough examination;**
 - (ii) **a full account of statements made by the person concerned which are relevant to the medical examination (including his/her description of his/her state of health and any allegations of ill-treatment), and**
 - (iii) **in the case of an examination performed by a doctor, the doctor's conclusions in the light of (i) and (ii), indicating the degree of consistency between any allegations made and the objective medical findings;**
- **whenever injuries are detected by a feldsher in an ITT and the detained person makes allegations of ill-treatment, he/she is promptly seen by an independent doctor qualified in forensic medicine who should draw conclusions as to the degree of consistency between the allegations made and the objective medical findings;**
- **whenever injuries are recorded by a feldsher/doctor in an ITT or SIZO which are consistent with allegations of ill-treatment made by the detained person (or which, even in the absence of the allegations, are indicative of ill-treatment), the record is systematically brought to the attention of the relevant prosecutor, regardless of the wishes of the person concerned. Further, the results of every examination, including the above-mentioned statements and the doctor's conclusions, should be made available to the detained person and, upon request, to his/her lawyer.**
- **the above-mentioned procedure is also followed in respect of prisoners brought back to a SIZO by the police, after having participated in investigative activities.**

¹⁵ Whenever there were no allegations of police ill-treatment, the documents were sent by the Director to the relevant district police department.

d. questioning of criminal suspects

32. The delegation received several allegations from detained persons that they had been continuously questioned by operational police officers for prolonged periods. One person met by the delegation claimed that he had been interviewed continuously throughout the first 24 hours of custody. Moreover, in the latter case as well as in similar other cases, all the questions and answers were allegedly summarised on just one piece of paper. If true, such practices would be unacceptable and at variance with the legal requirements set out in the CCP¹⁶.

The CPT recommends that operational police officers throughout the country be reminded of their legal obligation to hand over an apprehended person to an investigator within three hours.

Further, the CPT reiterates its recommendation that the Ukrainian authorities draw up a code of conduct for police interviews (by operational officers and investigators). Among other things, this code should stipulate that:

- the precise aim of questioning criminal suspects should be to obtain accurate and reliable information in order to reveal the truth about matters under investigation and not to secure a confession from someone already presumed to be guilty¹⁷;
- save for exceptional circumstances, detained persons shall not be subjected to police questioning for more than two hours without a break;
- all interviews must be recorded in writing contemporaneously.

33. The CPT notes with interest that the Code of Criminal Procedure¹⁸ provides for the possibility of using audio- and video-recording in the context of police questioning.

Whilst acknowledging the efforts being made by the Ukrainian authorities to install CCTV cameras in police establishments (detention areas, corridors and designated interrogation rooms), **the Committee encourages the Ukrainian authorities to take the necessary steps to ensure that interviews of detained persons with operational police officers and investigators are systematically audio- and/or video-recorded.**

¹⁶ See Section 145.

¹⁷ See also paragraph 20.

¹⁸ Sections 85-1 and 85-2.

4. Fundamental safeguards against ill-treatment

34. The CPT has repeatedly stressed that the fundamental safeguards for persons deprived of their liberty by the police, namely the right to inform a close relative or another person of one's custody, the right of access to a lawyer and the right of access to a doctor, should be granted from the very outset of custody. They should apply not only to persons detained by the police on suspicion of having committed a criminal offence, but also to administrative detainees, as well as to persons who are obliged to remain with the police for other reasons.

35. The information gathered during the visit indicates that the situation has scarcely improved since 2009. In fact, almost all the shortcomings observed during the last visit and described in paragraphs 26 to 32 of the report on the latter visit appeared to persist.

From discussions with operational officers and police investigators it became evident that, in practice, the existing legal safeguards were often not granted at the outset of the de facto deprivation of liberty, but only once the persons concerned had been formally detained. It remained the case that, following their deprivation of liberty, persons were often subjected to informal questioning, during which confessions were obtained, without benefiting from the above-mentioned safeguards.

It is of particular concern that, in contrast to previous visits, the delegation received a significant number of consistent and credible accounts from detained persons – backed up by admissions from police officers – that suspects were kept in police stations for periods of 24 hours or even longer, sleeping on chairs in corridors or in offices of operational officers, sometimes handcuffed to radiators, whilst inquiries (including interviews with operational officers) were conducted, prior to formal interviews with investigators. Such a state of affairs is totally unacceptable and also constitutes a flagrant disregard of the relevant legislation.

36. In the light of the above, **the CPT calls upon the Ukrainian authorities to take all necessary steps to ensure that:**

- **the right of notification of custody is rendered fully effective in practice with respect to all persons deprived of their liberty by the police, as from the very outset of their deprivation of liberty;**
- **the right of access to a lawyer is enjoyed by all persons obliged to remain with the police, as from the very outset of their deprivation of liberty;**
- **persons deprived of their liberty by the police have an effective right to be examined by an independent doctor (including a doctor of one's own choice, it being understood that an examination by such a doctor may be carried out at the detained person's own expense) as from the very outset of their deprivation of liberty;**

- all persons detained by the police – for whatever reason – are fully informed of their above-mentioned fundamental rights as from the very outset of their deprivation of liberty (that is, from the moment when they are obliged to remain with the police). This should be ensured by provision of clear verbal information at the very outset, to be supplemented at the earliest opportunity (that is, immediately upon the detained person's first entry into police premises) by provision of a written form setting out his/her rights in a straightforward manner, the form to be available in an appropriate range of languages. Particular care should be taken to ensure that detained persons are actually able to understand their rights; it is incumbent on police officers to ascertain that this is the case;
- juveniles do not make any statements or sign any documents related to the offence of which they are suspected without the benefit of a lawyer and, ideally, a trusted person being present and assisting the juvenile.

37. The CPT welcomes the adoption in 2011 of the Law on Legal Aid, according to which criminal suspects detained by the police as well as administrative detainees have the right to free legal aid¹⁹.

However, as had been the case during the 2009 visit, several detained persons who had been provided with the services of *ex officio* lawyers complained about the manner in which they worked; in particular, the *ex officio* lawyers apparently often met their clients only when the latter were brought before a judge. **The CPT recommends that the Ukrainian authorities take appropriate action – in consultation with the Bar Association – to ensure the effectiveness of the system of legal aid throughout the criminal procedure, including at the initial stage of police custody.**

5. Conditions of detention

38. The delegation gained a generally favourable impression of the material conditions of detention in all the police establishments visited (in terms of the state of repair, access to natural light, ventilation and equipment of the cells). Further, in all the ITTs visited, detained persons were offered at least one hour of outdoor exercise per day.

The CPT also welcomes the fact that, in several smaller establishments, sub-standard custody cells had been withdrawn from service by order of the relevant supervising prosecutors earlier in April/May 2011, pending their refurbishment.

39. During its visit to Vyshgorod Police Division, the delegation was informed that the ITT, which is located on the same premises, had not been in use for about five years, pending its renovation. However, according to staff, there was no projected date for the renovation works to be completed and that detained persons were usually held in the adjacent court cells during the day.

Due to the fact that the nearest detention facilities were located some 45 minutes to one hour away (in Ivankiv and Kyiv respectively), detained persons were on occasion held overnight in the offices of operational officers (as was acknowledged by police officers). Such a state of affairs is not acceptable. **The CPT recommends that immediate steps be taken to put an end to this practice. The Committee would also like to receive updated information on the progress made in renovating the ITT in Vyshgorod.**

¹⁹ See Section 14 of the Law on Legal Aid.

B. Issues related to the SIZOs in Kyiv and Kharkiv

40. Due to the very specific nature of the visit, the delegation was not in a position to examine in detail the situation of remand (and sentenced) prisoners held at the SIZOs in Kyiv and Kharkiv. However, there are some issues which give rise to particular concern and are thus highlighted in this report.

41. The overwhelming majority of remand prisoners interviewed by the delegation in the two SIZOs visited indicated that they were treated correctly by prison officers.

That said, one female remand prisoner claimed that she had been pushed down the stairs, hit with a truncheon and burned with a cigarette by prison officers at the Kyiv SIZO. Upon examination by a medical member of the delegation, the woman concerned displayed injuries which, in the CPT's view, were consistent with the allegations of ill-treatment made.

The CPT trusts that the management of the Kyiv SIZO will remain vigilant and take appropriate steps to prevent instances of ill-treatment of prisoners by staff.

42. Further, at the Kharkiv SIZO, the examination of the establishment's incident book revealed that an allegation of physical ill-treatment of a prisoner by prison officers was the subject of an ongoing criminal investigation. A remand prisoner, who had been temporarily transferred from the SIZO in Lugansk to the Kharkiv SIZO for several days in August 2011, arrived at the Kharkiv SIZO without visible injuries, but displayed various injuries on his return to Lugansk (on both hips and the left shoulder). According to his written statement, the prisoner concerned was hit by prison officers with a rubber hammer, whilst handcuffed, in the presence of a senior member of staff. The case was reported by the prison management to the Regional Prosecutor's Office of Kharkiv.

The CPT would like to be informed of the outcome of the above-mentioned investigation and, if applicable, of the action subsequently taken at the criminal and/or disciplinary levels.

43. The delegation gained a generally positive impression of the material conditions in the units for juveniles at the SIZOs in Kyiv and Kharkiv.

However, conditions of detention were quite simply appalling in many of the other detention units of the two SIZOs. Numerous cells were in a poor state of repair and had only very limited access to natural light. In addition, the CPT is concerned about the severe overcrowding observed in a number of detention units of both establishments. At the time of the visit, the Kyiv SIZO was accommodating 3,761 prisoners (official capacity: 2,850 places) and the Kharkiv SIZO 3,415 prisoners (official capacity: 2,808 places).

The Committee acknowledges the efforts made by the Ukrainian authorities to reduce overcrowding in the two SIZOs visited. However, despite the fact that more than 1,000 prisoners had recently been transferred from the Kharkiv SIZO to other establishments, the situation remains very problematic in both SIZOs (in particular in detention units for male adults).

By way of example, at the Kharkiv SIZO, the delegation found a cell measuring some 45 m² which was accommodating 44 male adult prisoners at the time of the visit (and reportedly had on occasion held even more). There were only 28 beds available which meant that prisoners were obliged to sleep in turns. They also had to store their personal belongings and wash and dry their laundry inside the cell. Some prisoners had been held in such conditions for several years.

The CPT must recommend once again that steps be taken at the Kyiv and Kharkiv SIZOs and, where appropriate, in other penitentiary establishments in Ukraine to ensure that:

- **every prisoner is provided with his own bed (and clean bedding);**
- **strenuous efforts are made to decrease the overcrowding and to distribute prisoners more evenly amongst the available accommodation, the objective being to offer a minimum of 4 m² of living space per prisoner;**
- **prisoners have adequate access to natural light and adequate ventilation in their cells.**

44. As regards the Kharkiv SIZO, there are two more specific issues which give rise to concern:

First, in Block 1 of the establishment, the delegation found four holding cubicles which measured a mere 0.80 m² and were completely dark inside, without any artificial lighting. According to staff, prisoners who were violent or had otherwise violated the internal rules were on occasion placed in such cubicles while waiting to be questioned by a member of the internal security department. The CPT must stress that by virtue of their size alone, these cubicles are not suitable for holding a person for any length of time. Secondly, the delegation observed that a number of cell windows were covered with metal shutters, thereby blocking all access to natural light.

These two issues were raised by the delegation on the spot with the Director of the Kharkiv SIZO. He affirmed to the delegation that the holding cubicles would be immediately withdrawn from service and that the metal shutters would be removed as soon as possible.

By letter of 26 January 2012, the Ukrainian authorities confirmed that the above-mentioned holding cubicles had been withdrawn from service. The authorities also indicated that works had begun to remove the metal shutters from windows of the detention blocks at the Kharkiv SIZO; this would be completed by 7 March 2012.

The CPT takes note of this information and **would like to receive confirmation that all the metal shutters have now been removed.**

45. In their above-mentioned letter of 26 January 2012, the Ukrainian authorities also informed the CPT that “during the drafting of the new Instruction “On organization of supervision in pre-trial institutions” it is planned to review the appropriateness of using the temporal boxes (holding cubicles) for holding detainees in regime buildings of pre-trial institutions. This process is to be finished within the first three months of 2012”. **The Committee would like to receive updated information on this matter.**

46. Regrettably, the situation does not seem to have improved since the 2009 visit regarding the activities offered to remand prisoners in the two SIZOs visited. Apart from one hour of outdoor exercise per day, the vast majority of them remained locked up in their cells all day, the only occupation being watching television, reading and playing board games.

The situation was further exacerbated by the fact that, in both SIZOs, the existing outdoor exercise facilities were too small for the numbers involved. For instance, the yard which was allocated to the above-mentioned cell at the Kharkiv SIZO (with 44 prisoners) only measured some 45 m², which makes it virtually impossible for prisoners to exert themselves physically. Not surprisingly, many prisoners had lost all motivation to go outside every day.

The CPT calls upon the Ukrainian authorities to improve, as a matter of priority, the situation regarding outdoor exercise at the Kyiv and Kharkiv SIZOs. As a very first step, arrangements should be made to ensure that all prisoners can spend at least one hour in the open air in more decent conditions (for instance, by introducing a rotation system which allows prisoners to go outside in smaller groups).

Further, **the Committee reiterates its recommendation that the Ukrainian authorities redouble their efforts to develop a programme of purposeful activities for remand prisoners in the establishments visited and, where appropriate, at other SIZOs in Ukraine.** As has been highlighted by the Committee in the previous visit reports, the aim should be to ensure that all prisoners, including those on remand, are able to spend a reasonable part of the day outside their cells engaged in purposeful activities of a varied nature (work, preferably with a vocational value; education; sport; recreation/association).

47. As regards the medical screening of newly-arrived prisoners at the Kyiv and Kharkiv SIZOs, reference is made to the remarks and recommendations made in paragraph 26 and 28 to 31.

48. On the occasion of this visit and in the light of reports recently received by the CPT, the delegation also examined in detail the health care being provided to certain persons who were being held at the Kyiv SIZO and, in particular, Mr Valeriy IVASHENKO, Mr Yuriy LUTSENKO and Ms Yulia TYMOSHENKO.

In this connection, the CPT would like to stress that the role of medical members of a visiting delegation is not that of a treating doctor; their task is to assess the quality of health care and, more specifically, the access to medical treatment of detained persons. The Committee also wishes to recall that the prison authorities are responsible for the health care of all prisoners; all efforts possible must be made to ensure that a precise diagnosis is promptly established and that adequate treatment required by the state of health of the person concerned is provided to all prisoners.

The CPT must express its concern that in respect of each of the three above-mentioned persons, considerable delays occurred – for various reasons – in arranging specialised medical examinations outside the SIZO. Problems of this kind have repeatedly been observed by the CPT during all previous visits to the Kyiv SIZO as well as to other penitentiary establishments in Ukraine. **The Committee urges the Ukrainian authorities to take all the necessary measures to ensure that in future, all prisoners who are in need of specialist treatment/examinations are transferred to an outside hospital without undue delay.**

49. As regards Mr Ivashenko and Ms Tymoshenko, the delegation noted that symptomatic treatment was being provided to the two prisoners concerned. During the end-of-visit talks with the Ukrainian authorities, the delegation stressed that, if their situation did not improve in the very near future, it would be desirable for additional interventions (such as physiotherapy, infiltration therapy, provision of a corset) to be explored, if necessary, in a specialised hospital setting.

By letter of 1 February 2012, the President of the CPT requested the Ukrainian authorities to provide updated information on all the medical interventions which had been performed in respect of Mr Ivashenko, Mr Lutsenko and Ms Tymoshenko since the CPT's visit.

On 23 February 2012, the Ukrainian authorities transmitted to the CPT a chronological account of various diagnostic and therapeutic interventions, which had been carried out in respect of all three persons until mid-February 2012. Further, the authorities indicated that, on 30 December 2011, Ms Tymoshenko had been transferred from the Kyiv SIZO to Kachaniv Penal Colony No. 54, and that, on 14 and 15 February 2012, she had been examined by an international medical commission. They also stated that Ms Tymoshenko benefited from regular massages by a physiotherapist, but continued to refuse to undergo a blood test.

In order to be in a position to follow developments more closely, **the CPT requests the Ukrainian authorities to provide a further update on all the medical interventions which have been performed in respect of Mr Ivashenko, Mr Lutsenko and Ms Tymoshenko since 15 February 2012. As regards Ms Tymoshenko, the Committee would also like to receive a copy of the report(s) drawn up by the members of the international medical commission who examined her on 14 and 15 February 2012.**

50. Finally, despite the specific recommendations made by the Committee after all previous visits to Ukraine, severe restrictions were still frequently being imposed regarding remand prisoners' contacts with the outside world. Many remand prisoners were not allowed to receive any visits from persons other than their lawyer (or legal representative) nor make telephone calls, for prolonged periods; in a number of cases, this situation had been ongoing for more than a year. Such a state of affairs is not acceptable.

The CPT once again calls upon the Ukrainian authorities to take measures in order to ensure that remand prisoners are, as a matter of principle, entitled to receive visits and send/receive letters. Any refusal to permit visits or send/receive letters should be specifically substantiated by the needs of the investigation, require the approval of a body unconnected with the case in hand and be applied for a specified period of time, with reasons stated. If necessary, the relevant legislation and regulations should be amended.

Further, **the Committee reiterates its recommendation that steps be taken to ensure that remand prisoners are, as a rule, granted regular access to a telephone²⁰. If there is a perceived risk of collusion in an individual case, a particular phone call could always be monitored. Any decision to prohibit or impose restrictions on a given prisoner's access to a telephone should be based on a substantiated risk of collusion, intimidation or another illegal activity and be for a specified period.**

²⁰ See also Rules 24.1 and 99 of the European Prison Rules and the Commentary on these rules.

C. Follow-up visit to the Secure Ward at the Kyiv Municipal Emergency Hospital

51. The Secure Ward at the Kyiv Municipal Emergency Hospital comprises one six-bed room for male and one single room for female patients. At the time of the visit, five men and one woman were being held in the ward.

52. The CPT is very concerned by the fact that the Ukrainian authorities have failed to implement virtually all the specific recommendations repeatedly made by the Committee after previous visits concerning the Secure Ward at Kyiv Municipal Emergency Hospital²¹.

53. First, as already indicated in paragraph 8, patients had continued to be systematically handcuffed to hospital beds since the 2009 visit. Several patients allegedly remained handcuffed to the bed (with one hand) even while taking their meals and one patient while receiving transfusions.

During the end-of-visit talks, the delegation made an immediate observation under Article 8, paragraph 5, of the Convention and called upon the Ukrainian authorities to put an immediate end to this practice.

By letter of 26 January 2012, the Ukrainian authorities provided the following information:

“As a result of inspections conducted by the Service of Minister of Interior in cooperation with specialists of the Public Security Department of the Ministry of Internal Affairs (MIA) a letter was sent to Head of the Main Department of the MIA of Ukraine (MD MIA) in the City of Kyiv regarding the need to take additional measures to prevent cases of arbitrary usage of special measures to detainees in the Secure Ward of the Kyiv Municipality Emergency Hospital. Police officers responsible for guarding detainees in the Secure Ward of the Kyiv Municipality Emergency Hospital were obliged to use handcuffs only in accordance to the Law of Ukraine "On Militia", Instructions for escorting detainees in the institutions of internal affairs of Ukraine and exclude cases of arbitrary usage of special measures, in particular, handcuffing to hospital beds.”

The CPT takes note of this information and **would like to receive confirmation that an end has been put, once and for all, to the practice of handcuffing patients to hospital beds in the Secure Ward at Kyiv Municipal Emergency Hospital and that handcuffs are henceforth used in the ward only under very exceptional circumstances, on the basis of an individual risk assessment.**

54. Secondly, police officers continued to be systematically present during all medical interventions and nursing procedures in the Secure Ward. One female remand prisoner met by the delegation claimed that a male police officer had even been present during a gynaecological examination. If true, the latter practice would not only contravene medical confidentiality but could certainly constitute in itself degrading treatment.

In this regard, **the recommendation made in paragraph 26 equally applies to the Secure Ward at the Kyiv Municipal Emergency Hospital.**

²¹ See, most recently, CPT/Inf (2011) 29, paragraph 46.

55. Thirdly, as had been the case during previous visits, police officers deployed to the Secure Ward for custodial duties were carrying truncheons and firearms within the ward.

In the CPT's view, carrying firearms in a secure hospital environment is clearly disproportionate and potentially dangerous for all concerned. If there are grounds to believe that a particular prisoner is dangerous or may attempt to escape, other special security measures can and should be taken.

The CPT reiterates its recommendation that firearms always be deposited in a safe place when police officers enter the Secure Ward. Further, truncheons should be hidden from view.

APPENDIX I

LIST OF THE CPT'S RECOMMENDATIONS, COMMENTS AND REQUESTS FOR INFORMATION

Police custody

Preliminary remarks

recommendations

- the Ukrainian authorities to take steps to ensure that the return of prisoners to police detention facilities is sought and authorised only very exceptionally, for specific reasons and for the shortest possible time. Such a return should in each case be subject to the express authorisation of a prosecutor (or judge) (paragraph 13).

requests for information

- updated information on the preparation of a new draft Code of Criminal Procedure (paragraph 11).

Action to combat torture and other forms of ill-treatment

recommendations

- a clear and firm message of “zero tolerance” of ill-treatment to be delivered by the highest political authority, namely the President of Ukraine (paragraph 19);
- the Ukrainian authorities to further improve the professional training of operational police officers and investigators as well as of prosecutors. During the training, particular emphasis should be placed on advanced methods of crime investigation, thereby reducing reliance on information and confessions obtained via questioning (paragraph 20);
- a thorough and independent investigation to be carried out without delay into the methods used by the staff of Shevchenkivskyi District Police Division in Kyiv when detaining and questioning criminal suspects (paragraph 20);
- the Ukrainian authorities to take appropriate steps to ensure that the precepts set out in paragraph 22 are systematically applied in practice by judges and prosecutors (paragraph 22);
- the Ukrainian authorities to take immediate steps to ensure that, in all ITTs and SIZOs in Ukraine, medical examinations of detained persons are always conducted out of the hearing and – unless the health-care staff concerned requests otherwise in a particular case – out of the sight of police/prison officers (paragraph 26);

- the Ukrainian authorities to take the necessary steps (including through the issuance of instructions and the provision of training to relevant staff) to ensure that:
 - the record drawn up by a feldsher/doctor in ITTs or SIZOs after a medical examination of a detained person contains:
 - (i) a full account of objective medical findings based on a thorough examination;
 - (ii) a full account of statements made by the person concerned which are relevant to the medical examination (including his/her description of his/her state of health and any allegations of ill-treatment), and
 - (iii) in the case of an examination performed by a doctor, the doctor's conclusions in the light of (i) and (ii), indicating the degree of consistency between any allegations made and the objective medical findings;
 - whenever injuries are detected by a feldsher in an ITT and the detained person makes allegations of ill-treatment, he/she is promptly seen by an independent doctor qualified in forensic medicine who should draw conclusions as to the degree of consistency between the allegations made and the objective medical findings;
 - whenever injuries are recorded by a feldsher/doctor in an ITT or SIZO which are consistent with allegations of ill-treatment made by the detained person (or which, even in the absence of the allegations, are indicative of ill-treatment), the record is systematically brought to the attention of the relevant prosecutor, regardless of the wishes of the person concerned. Further, the results of every examination, including the above-mentioned statements and the doctor's conclusions, should be made available to the detained person and, upon request, to his/her lawyer;
 - the above-mentioned procedure is also followed in respect of prisoners brought back to a SIZO by the police, after having participated in investigative activities (paragraph 31);
- operational police officers throughout the country to be reminded of their legal obligation to hand over an apprehended person to an investigator within three hours (paragraph 32);
- the Ukrainian authorities to draw up a code of conduct for police interviews (by operational officers and investigators). Among other things, this code should stipulate that:
 - the precise aim of questioning criminal suspects should be to obtain accurate and reliable information in order to reveal the truth about matters under investigation and not to secure a confession from someone already presumed to be guilty;
 - save for exceptional circumstances, detained persons shall not be subjected to police questioning for more than two hours without a break;
 - all interviews must be recorded in writing contemporaneously (paragraph 32).

comments

- the medical screening of newly-admitted detained persons in ITTs should preferably be performed by health-care staff that is independent of the police (paragraph 27);
- the Ukrainian authorities are encouraged to take the necessary steps to ensure that interviews of detained persons with operational police officers and investigators are systematically audio- and/or video-recorded (paragraph 33).

requests for information

- transmission to the CPT, without further delay, of copies of all the documents compiled in the context of the preliminary inquiries which had been opened in respect of the four cases of alleged police ill-treatment referred to in paragraph 24 (including copies of any forensic medical reports drawn up) (paragraph 24);
- the following additional information concerning cases of possible ill-treatment by the police:
 - (a) an update on the number of allegations/notices of possible police ill-treatment, the criminal investigations, trials and court decisions since 1 November 2011;
 - (b) information on the measures taken at disciplinary level in cases where police officers have been convicted of ill-treatment of detained persons under Section 365 of the Criminal Code since 1 January 2010;
 - (c) detailed information on the criminal and disciplinary sanctions imposed on officers convicted under Section 127 of the Criminal Code since 1 January 2010;
 - (d) information as to what extent disciplinary sanctions have been imposed on police officers since 1 January 2010 for having ill-treated detained persons without having been found guilty of a criminal offence (paragraph 25).

Fundamental safeguards against ill-treatment

recommendations

- the Ukrainian authorities to take all necessary steps to ensure that:
 - the right of notification of custody is rendered fully effective in practice with respect to all persons deprived of their liberty by the police, as from the very outset of their deprivation of liberty;
 - the right of access to a lawyer is enjoyed by all persons obliged to remain with the police, as from the very outset of their deprivation of liberty;
 - persons deprived of their liberty by the police have an effective right to be examined by an independent doctor (including a doctor of one's own choice, it being understood that an examination by such a doctor may be carried out at the detained person's own expense) as from the very outset of their deprivation of liberty;

- all persons detained by the police – for whatever reason – are fully informed of their above-mentioned fundamental rights as from the very outset of their deprivation of liberty (that is, from the moment when they are obliged to remain with the police). This should be ensured by provision of clear verbal information at the very outset, to be supplemented at the earliest opportunity (that is, immediately upon the detained person's first entry into police premises) by provision of a written form setting out his/her rights in a straightforward manner, the form to be available in an appropriate range of languages. Particular care should be taken to ensure that detained persons are actually able to understand their rights; it is incumbent on police officers to ascertain that this is the case;
 - juveniles do not make any statements or sign any documents related to the offence of which they are suspected without the benefit of a lawyer and ideally a trusted person being present and assisting the juvenile (paragraph 36);
- the Ukrainian authorities to take appropriate action – in consultation with the Bar Association – to ensure the effectiveness of the system of legal aid throughout the criminal procedure, including at the initial stage of police custody (paragraph 37).

Conditions of detention

recommendations

- immediate steps to be taken to put an end to the practice of detained persons being held overnight in the offices of operational officers at Vyshgorod Police Division (paragraph 39).

requests for information

- updated information on the progress made in renovating the ITT in Vyshgorod (paragraph 39).

Issues related to the SIZOs in Kyiv and Kharkiv

recommendations

- steps to be taken at the Kyiv and Kharkiv SIZOs and, where appropriate, in other penitentiary establishments in Ukraine to ensure that:
- every prisoner is provided with his own bed (and clean bedding);
 - strenuous efforts are made to decrease the overcrowding and to distribute prisoners more evenly amongst the available accommodation, the objective being to offer a minimum of 4 m² of living space per prisoner;
 - prisoners have adequate access to natural light and adequate ventilation in their cells (paragraph 43);

- the Ukrainian authorities to improve, as a matter of priority, the situation regarding outdoor exercise at the Kyiv and Kharkiv SIZOs. As a very first step, arrangements should be made to ensure that all prisoners can spend at least one hour in the open air in more decent conditions (for instance, by introducing a rotation system which allows prisoners to go outside in smaller groups) (paragraph 46);
- the Ukrainian authorities to redouble their efforts to develop a programme of purposeful activities for remand prisoners in the establishments visited and, where appropriate, at other SIZOs in Ukraine (paragraph 46);
- the Ukrainian authorities to take all the necessary measures to ensure that in future, all prisoners who are in need of specialist treatment/examinations are transferred to an outside hospital without undue delay (paragraph 48);
- the Ukrainian authorities to take measures in order to ensure that, as a matter of principle, remand prisoners are entitled to receive visits and send/receive letters. Any refusal to permit visits or send/receive letters should be specifically substantiated by the needs of the investigation, require the approval of a body unconnected with the case in hand and be applied for a specified period of time, with reasons stated. If necessary, the relevant legislation and regulations should be amended (paragraph 50);
- steps to be taken to ensure that remand prisoners are, as a rule, granted regular access to a telephone. Any decision to prohibit or impose restrictions on a given prisoner's access to a telephone to be based on a substantiated risk of collusion, intimidation or another illegal activity and be for a specified period (paragraph 50).

comments

- the CPT trusts that the management of the Kyiv SIZO will remain vigilant and take appropriate steps to prevent instances of ill-treatment of prisoners by staff (paragraph 41).

requests for information

- outcome of the investigation into the alleged ill-treatment of a remand prisoner at the Kharkiv SIZO referred to in paragraph 42 and, if applicable, information on the action subsequently taken at the criminal and/or disciplinary levels (paragraph 42);
- confirmation that all the metal shutters have been removed from windows of the detention blocks at the Kharkiv SIZO (paragraph 44);
- updated information on the results of the review of the appropriateness of using temporarily holding cubicles referred to in paragraph 45 (paragraph 45);
- information on all the medical interventions which have been performed in respect of Mr Valeriy Ivashenko, Mr Yuriy Lutsenko and Ms Yulia Tymoshenko since 15 February 2012. As regards Ms Tymoshenko, a copy of the report(s) drawn up by the members of the international medical commission who examined her on 14 and 15 February 2012 (paragraph 49).

Follow-up visit to the Secure Ward at the Kyiv Municipal Emergency Hospital

recommendations

- the Ukrainian authorities to take immediate steps to ensure that, in the Secure Ward at the Kyiv Municipal Emergency Hospital, medical examinations of detained persons are always conducted out of the hearing and – unless the health-care staff concerned requests otherwise in a particular case – out of the sight of police officers (paragraph 54);
- firearms to always be deposited in a safe place when police officers enter the Secure Ward and truncheons to be hidden from view (paragraph 55).

requests for information

- confirmation that a definitive end has been put to the practice of handcuffing patients to hospital beds in the Secure Ward at Kyiv Municipal Emergency Hospital and that handcuffs are henceforth used in the ward only under very exceptional circumstances, on the basis of an individual risk assessment (paragraph 53).

APPENDIX II

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

A. National authorities

Ministry of Justice

Mr Oleksandr LAVRYNOVYCH	Minister of Justice
Ms Valeria LUTKOVSKA	Government Agent, CPT liaison officer
Ms Svitlana KOLYSHKO	Head of the Division on Co-operation with International Organisations
Mr Vladyslav GURTENKO	Assistant to the Minister of Justice
Ms Liya ILCHENKO	Assistant to the Minister of Justice

State Penitentiary Service

Mr Oleksandr LISITSKOV	Head of the State Penitentiary Service
Mr Serguiy SYDORENKO	First Deputy Head of the State Penitentiary Service
Mr Pavlo GOLUBOVSKIY	Head of the Division on SIZO activities of the Department on Supervision and Security, Conditions and Control of the Execution of Judicial Decisions
Mr Vlad KLYSHA	Head of the International and Public Relations Division

Ministry of Internal Affairs

Lieutenant-General Serhii CHERNYKH	First Deputy Minister of Internal Affairs
Major-General Anatolii LAZAREV	Head of Principal Headquarters
Major-General Victor RATUSHNIAK	Head of the Department on Public Order Protection
Major-General Olexander TULAIEV	Head of the Department on Internal Security
Mr Oleksii MAZHAN	Head of the Private Office of the Minister
Colonel Serhii KALIUK	Head of the International Relations Department
Mr Makar BARYLO	Head of the Sub-division on Monitoring of Human Rights Protection in Activities of the Militia

Prosecutor General's Office

Mr Viktor PSHONKA	Prosecutor General
Mr Renat KUZMIN	First Deputy Prosecutor General
Mr Anatolii PRYSHKO	Deputy Prosecutor General
Mr Yevhen BLAZHIVSKYI	Deputy Prosecutor General
Mr Viktor VOITSYSHEN	Deputy Prosecutor General
Mr Mykhailo SHORIN	Head of the Main Department of Prosecution in Courts
Mr Serhii KRAVCHUK	Head of the International Law Department

Ombudsperson

Ms Nina KARPACHOVA	Parliamentary Commissioner for Human Rights
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B. Non-governmental organisations

Donetsk Memorial
Ukrainian Helsinki Human Rights Union