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Ukraine: Prison conditions

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Preface

This note provides country of origin information (COI) and policy guidance to Home Office decision makers on handling particular types of protection and human rights claims. This includes whether claims are likely to justify the granting of asylum, humanitarian protection or discretionary leave and whether – in the event of a claim being refused – it is likely to be certifiable as ‘clearly unfounded’ under s94 of the Nationality, Immigration and Asylum Act 2002.

Decision makers must consider claims on an individual basis, taking into account the case specific facts and all relevant evidence, including: the policy guidance contained within this note; the available COI; any applicable caselaw; and the Home Office casework guidance in relation to relevant policies.

Country Information

COI in this note has been researched in accordance with principles set out in the [Common EU \[European Union\] Guidelines for Processing Country of Origin Information \(COI\)](#) and the [European Asylum Support Office’s research guidelines, Country of Origin Information report methodology](#), namely taking into account its relevance, reliability, accuracy, objectivity, currency, transparency and traceability.

All information is carefully selected from generally reliable, publicly accessible sources or is information that can be made publicly available. Full publication details of supporting documentation are provided in footnotes. Multiple sourcing is normally used to ensure that the information is accurate, balanced and corroborated, and that a comprehensive and up-to-date picture at the time of publication is provided. Information is compared and contrasted, whenever possible, to provide a range of views and opinions. The inclusion of a source is not an endorsement of it or any views expressed.

Feedback

Our goal is to continuously improve our material. Therefore, if you would like to comment on this note, please email [the Country Policy and Information Team](#).

Independent Advisory Group on Country Information

The Independent Advisory Group on Country Information (IAGCI) was set up in March 2009 by the Independent Chief Inspector of Borders and Immigration to make recommendations to him about the content of the Home Office’s COI material. The IAGCI welcomes feedback on the Home Office’s COI material. It is not the function of the IAGCI to endorse any Home Office material, procedures or policy. IAGCI may be contacted at:

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Information about the IAGCI’s work and a list of the COI documents which have been reviewed by the IAGCI can be found on the Independent Chief Inspector’s website at <http://icinspector.independent.gov.uk/country-information-reviews/>

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Policy guidance

Updated: 11 April 2017

1. Introduction

1.1 Basis of claim

- 1.1.1 Fear of being imprisoned on return to Ukraine and that prison conditions are so poor as to amount to torture or inhuman or degrading treatment or punishment.

1.2 Points to note

- 1.1.1 This note is concerned solely with whether prison conditions breach Article 3 of the European Convention on Human Rights (ECHR) and warrant a grant of humanitarian protection. Prison conditions which are systematically inhuman and life-threatening are always contrary to Article 3 ECHR. However, even if those conditions are not severe enough to meet that threshold, Article 3 may be breached if, due to a person's individual specific circumstances, detention would amount to inhuman or degrading treatment.
- 1.1.2 If the prison sentence or the prison regime, irrespective of its severity, is discriminatory or being disproportionately applied for reasons of race, religion, nationality, membership of a particular social group or political opinion, the person may qualify as a refugee.
- 1.1.3 Unless otherwise stated, this note refers to the position with regard to prisons in the government-controlled areas of Ukraine. Decision makers should seek country information and guidance on prison conditions in other areas of Ukraine on a case-by-case basis in the normal way.
- 1.2.1 Where a claim is refused, it must be considered for certification under section 94 of the Nationality, Immigration and Asylum Act 2002 as Ukraine is listed as a designated state.

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2. Consideration of issues

2.1 Credibility

- 2.1.1 For information on assessing credibility, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).
- 2.1.2 Decision makers must also check if there has been a previous application for a UK visa or another form of leave. Asylum applications matched to visas should be investigated prior to the asylum interview (see the [Asylum Instruction on Visa Matches, Asylum Claims from UK Visa Applicants](#)).
- 2.1.3 Decision makers should also consider the need to conduct language analysis testing (see the [Asylum Instruction on Language Analysis](#)).

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2.2 Risk of imprisonment

- 2.2.1 Decision makers must first establish the likelihood that the person will be imprisoned on return including if necessary whether the alleged offence constitutes an offence under Ukrainian law and, if so, is one which is likely to be punishable by a term of imprisonment (see [Criminal Code](#)).
- 2.2.2 If the person is likely to be imprisoned on return, decision makers must also consider whether the law is discriminatory or being disproportionately applied.

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2.3 Risk of death penalty

- 2.3.1 Ukraine abolished the death penalty in February 2000. The last time the death penalty was applied by the Government in Ukraine was in March 1997 (see [Death penalty](#)).
- 2.3.2 A person would not therefore face the death penalty if returned to Ukraine.

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2.4 Exclusion

- 2.4.1 If there are serious reasons for considering that the person has committed a crime that is likely to lead to imprisonment (or the death penalty) on return to Ukraine, consideration must be given as to whether Article 1F – in particular Article 1F(b) – of the Refugee Convention is applicable.
- 2.4.2 For further guidance on the exclusion clauses, discretionary leave and restricted leave, see the Asylum Instructions on [Exclusion: Article 1F of the Refugee Convention](#) and [Restricted Leave: Article 1F](#).

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2.5 Prison conditions

- 2.5.1 In the country guidance case of [VB & Another \(draft evaders and prison conditions : Ukraine\) \(CG\) \[2017\] UKUT 79 \(IAC\) \(6 March 2017\)](#) (heard on 31 October and 1 November 2016), the Upper Tribunal found that there have been some positive changes in Ukraine regarding the prison system since the previous country guidance caselaw was decided. The Upper Tribunal found that

“...The most significant positive development has been changes to the criminal code and criminal procedural code which have led to a very significant reduction in the prison population, with there being around 61,000 persons incarcerated in 2016 compared to 147,000 in 2013. This must have reduced overcrowding, particularly in pre-trial detention facilities given the presumption in favour of bail introduced for those awaiting trial and the removal of criminal penalties for minor matters.” (para 77)

See also country information on [Numbers of Prisons and Prisoners](#), [Physical conditions](#), and [Prison reform](#).

2.5.2 The Upper Tribunal in [VB and Another](#) noted

“Also significant has been the fact that the various inspection reports of the CPT [Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishments] and Ombudsman available to us do, if generalised, indicate a reduction in the reporting of mistreatment severe enough to qualify as torture in pre-trial detention and a pattern of lesser allegations of acts of ill-treatment, not so severe as to qualify as torture, by staff in pre-trial detention.” (para 78).

See also country information on [Mistreatment of prisoners](#) and [Prison reform](#).

2.5.3 However, the Upper Tribunal in [VB and Another](#) went on to conclude that

“there has been no significant or durable change in prison conditions in Ukraine so as to mean that it would not be a breach of Article 3 ECHR to return someone to detention in that country. The combined evidence of lack of space, poor material conditions, and lack of meaningful out of cell activity means that pre-trial detention in Ukraine poses a real risk of being inhuman and degrading treatment on return. The evidence of a real risk of serious ill-treatment in certain penal colonies, combined with the lack of sustained evidence of corrective action to allegations of such treatment, is such that we find return to these institutions also poses a real risk of such treatment too.” (para 85).

2.5.4 Accordingly, the Upper Tribunal issued country guidance that there is a real risk that the conditions of detention and imprisonment in Ukraine would subject a person returned to be detained or imprisoned to a breach of Article 3 ECHR (para 89).

2.5.5 For the factors to be considered and further guidance, see the [Asylum Instruction on Humanitarian Protection](#).

2.5.6 For further guidance on assessing risk, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

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2.6 Certification

2.6.1 If a person is at real risk of being imprisoned on return, the claim is unlikely to be certifiable as ‘clearly unfounded’ under section 94 of the Nationality, Immigration and Asylum Act 2002.

2.6.2 For further information and guidance on certification, see the appeals instruction on [Certification of Protection and Human Rights claims under section 94 of the Nationality, Immigration and Asylum Act 2002 \(clearly unfounded claims\)](#).

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3. Policy summary

- 3.1.1 Caselaw has established that there is a real risk that the conditions of detention and imprisonment in Ukraine would subject a person returned to be detained or imprisoned to a breach of Article 3 ECHR.
- 3.1.2 If a person is at real risk of being imprisoned on return, the claim is unlikely to be certifiable as 'clearly unfounded'.

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Country information

Updated: 6 March 2017

4. Sources

- 4.1.1 The Upper Tribunal in the case of [VB & Another \(draft evaders and prison conditions: Ukraine\) \(CG\) \[2017\] UKUT 79 \(IAC\) \(6 March 2017\)](#) looked at a range of sources which are listed in Appendix A of the determination.

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5. Law

5.1 Criminal Code

- 5.1.1 A copy of the Ukrainian criminal code and other relevant legislation can be accessed on the UNHCR Refworld website at: <http://www.refworld.org/publisher,NATLEGBOD,LEGISLATION,UKR,,,0.html>

- 5.1.2 In September 2013, Law No 435-VII was passed which amended the Criminal Code to improve conditions for those in prisons.¹ According to a report by Interfax-Ukraine: 'Under this law, convicts held in rehabilitation centers are allowed to wear civilian clothes, and use mobile phones and related accessories.

'The law also foresees the possibility of the submission by a criminal executive inspectorate to commute the sentence of a convict sentenced to hard labor, replacing time not served with a fine. It also regulates the procedure for granting long meetings to prisoners, with convicts being granted the right to have an extraordinary long meeting for the registration of a marriage...

'The law also stipulates that prisoners who are held in penal colonies with a minimum level of security and facilitated detention conditions, the social rehabilitation centers of the penal colonies with a minimum level of security and general detention conditions, in penal colonies with a medium level of security and in juvenile correctional facilities, may be granted short-term visits outside the colony within Ukrainian territory for a period of no more than seven days, not including the time required for a round-trip (no more than three days), due to exceptional personal circumstances.'²

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5.2 Death penalty

- 5.2.1 The BBC reported on the abolition of the death penalty in Ukraine on 22 February 2000.³ The Death Penalty Information Centre listed Ukraine as a

¹ Interfax-Ukraine. 'Ukrainian parliament passes law on improving prison conditions,' 5 September 2013. <http://en.interfax.com.ua/news/general/166445.html> Date accessed: 1 March 2017

² Jurist. 'Ukraine president signs law to improve prison conditions,' 28 September 2013. <http://jurist.org/paperchase/2013/09/ukraine-president-signs-law-to-improve-prison-conditions.php> Date accessed: 1 March 2017

³ BBC. 'Ukraine abolishes death penalty,' 22 February 2000. <http://news.bbc.co.uk/1/hi/world/europe/686986.stm> Date accessed: 1 March 2017.

country which is 'abolitionist for all crimes.'⁴ Hands Off Cain noted that the last application of the death penalty in Ukraine was in March 1997.⁵

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6. Numbers of prisons and prisoners

6.1.1 The International Centre for Prison Studies (ICPS) provided the following information about prisons and prisoner numbers in Ukraine as at September 2016:⁶

Prison population total (including pre-trial detainees / remand prisoners)	60 771 at 1.9.2016 (national prison administration - not including prisoners in Crimea and Sebastopol and those areas of Donetsk and Luhansk that are not under the control of the Ukrainian authorities)
Prison population rate (per 100,000 of national population)	167 based on an estimated national population of 36.3 million at beginning of September 2016 (from Ukraine State Statistics Department figures)
Pre-trial detainees / remand prisoners (percentage of prison population)	26.8% (1.9.2016 - prisoners held in pre-trial institutions)
Female prisoners (percentage of prison population)	4.6% (of convicted adults in prison colonies, 1.9.2016)
Juveniles / minors / young prisoners incl. definition (percentage of prison population)	0.7% (1.9.2016 - prisoners in young prisoner colonies)
Foreign prisoners (percentage of prison population)	1.7% (1.9.2011)
Number of	148

⁴ Death Penalty Information Centre. 'Abolitionist and retentionist countries,' 31 December 2015. <http://www.deathpenaltyinfo.org/abolitionist-and-retentionist-countries> Date accessed: 1 March 2017

⁵ Hands Off Cain. Ukraine, undated. <http://www.handsoffcain.info/bancadati/schedastato.php?idcontinente=20&nome=ukraine> Date accessed: 1 March 2017.

⁶ International Centre for Prison Studies (ICPS). Ukraine, undated. <http://www.prisonstudies.org/country/ukraine> Date accessed: 1 March 2017

establishments / institutions	(2016 - 29 pre-trial institutions, 113 colonies for adults, 6 colonies for juveniles.)
Official capacity of prison system	c. 100 000 (1.6.2016)
Occupancy level (based on official capacity)	c. 63.0% (1.6.2016)

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7. Living conditions for prisoners

7.1 Physical conditions

7.1.1 The US State Department's Country Report on Human Rights Practices covering events in 2016 stated that prison and detention centre conditions remained poor, did not meet international standards, and at times posed a serious threat to the life and health of prisoners. Physical abuse, lack of proper medical care and nutrition, poor sanitation, and lack of adequate light were persistent problems.⁷

7.1.2 According to the same source:

'Conditions in police temporary detention facilities and State Penitentiary Service pretrial detention facilities were harsher than in low- and medium-security prisons. Despite a reduction in the number of inmates, overcrowding remained a problem in pretrial detention facilities. Temporary detention facilities often lacked adequate sanitation and medical facilities.

'Physical abuse by guards was a problem. For example, according to the Ombudsman's Office, the staff of the Kryzhopil Correctional Center Number 113 in Vinnytsia Oblast systematically violated prisoners' rights during the year. Inmates complained to the Ombudsman's Office about illegal actions of the administration, including systematic beatings, forced and unpaid labor, and lack of medical care. The monitoring team found that a convicted person kept in one of the disciplinary cells tried to commit suicide, which he claimed was due to fear of physical violence by the prison administration. The local prosecutor's office launched an investigation into the actions of the correctional facility administration.

'There were reports of prisoner-on-prisoner violence. For example, on June 6 [2016], an inmate of the Shepetivka correctional facility in Khmelnytskyi

⁷ United States Department of State, 2016 Country Reports on Human Rights Practices - Ukraine, 6 March 2017. Prison and Detention Center Conditions <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2016&dliid=265484> Date accessed 6 March 2017

Oblast died of a traumatic brain injury inflicted by his fellow inmates. The penitentiary service conducted an investigation of the incident.’⁸

7.1.3 According to a June 2015 information pack produced by the British Embassy Ukraine:

‘In Ukraine there are correctional facilities with different levels of security and living conditions. The living conditions depend on the crime and the provision of the law under which the individual was sentenced.

‘Many of the remand buildings are very old and not equipped with adequate sanitary facilities, ventilation or exercise yards. The most common complaints received by the local social research institutes about the living conditions are lack of light and inadequate ventilation, inability to take a shower and lack of adequate food. Overcrowding is a problem in Ukrainian prisons....

‘A social and psychological service has been established in prisons in order to promote prisoners’ adaptation to prison life and subsequent social reintegration. All institutions for sentenced prisoners are reported to have “special psychological treatment and emotional relaxation centres”.

‘Prisoners who are serving a sentence in prison conditions because their crime was very serious or their behaviour in a correction facility was considered unacceptable are unlocked for only one hour a day.’⁹

7.1.4 In a letter of 20 September 2016, the Foreign and Commonwealth Office stated that:

‘Each prison has a library where books and newspapers are available. Relatives can also bring or send books and newspapers to prisoners. Most of the cells have radio units, some have small televisions. If the cell does not have a television, it can also be brought in by relatives. Three hot meals are provided per day. Additional food can also be bought from a prison shop. Prisoners cannot possess and use mobile phones, but are allowed to make phone calls from telephones within the prison.

‘Overall, conditions in Ukrainian prisons do not meet European standards. Conditions in certain prisons can be considered to violate human rights. At the same time, they do not post a direct threat to life.’¹⁰

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7.2 Healthcare

7.2.1 On 8 April 2015 the Daily Mail (Online) reported on the prison conditions in Ukraine, stating: ‘Medical supplies have also been in short supply, threatening the lives of nearly 400 prisoners who need treatment. The

⁸ United States Department of State, 2016 Country Reports on Human Rights Practices - Ukraine, 6 March 2017. Prison and Detention Center Conditions <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2016&dliid=265484> Date accessed 6 March 2017

⁹ British Embassy Ukraine. Information Pack for British Prisoners in Ukraine, 1 June 2015. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/433584/Ukraine_-_Prisoner_Pack.pdf Date accessed: 1 March 2017

¹⁰ British Embassy, Kyiv. Letter to the Home Office, 20 September 2016. Available at [Annex A](#).

principal scourge: tuberculosis [TB]. The disease spreads prodigiously in jails and develops into hard-to-treat forms unless properly addressed.

“TB is so common within the penitentiary system that many inmates don't see it as a deadly disease - they see catching TB as a normal part of life in prison,” Doctors Without Borders said in a recent report. “Some even tell us they don't care if they die or not.”¹¹

- 7.2.2 In October 2015, the de facto authorities in Donetsk told Médecins Sans Frontières to immediately stop its activities in Donetsk. MSF noted:

‘Some 150 patients in the penitentiary system who live with drug-resistant tuberculosis (TB) will now no longer have access to the treatment that MSF has been providing since 2011.

“There is a huge risk that the health of these patients will deteriorate soon,” said Janssens [Bart Janssens, MSF Director of Operations]. “Any interruption of treatment of patients with drug-resistant TB is known to reduce dramatically the prospects of cure, even if they restart treatment later. Prisons in Ukraine are known to have very high numbers of drug resistant TB, and if these treatments are interrupted, this will lead to a major risk to public health.”¹²

- 7.2.3 In a letter of 20 September 2016, the Foreign and Commonwealth Office stated that: ‘Each pre-trial detention centre and prison has special medical departments that can provide medical assistance. Any healthcare that is not available in prisons (e.g. complicated surgery) will be provided by regular hospitals under the jurisdiction of the Ukrainian Ministry of Health.’¹³

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7.3 Women and juveniles

- 7.3.1 The US State Department's Human Rights Practices Report covering events in 2016 noted that men, women and juveniles were generally held in separate facilities, although there were reports that in some pretrial detention facilities there was no separation of juveniles and adults.¹⁴

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7.4 Life-sentenced prisoners

- 7.4.1 In September 2013, Law No 435-VII was passed which amended the Criminal Code to improve conditions for those in prisons. Interfax-Ukraine reported: ‘... the law foresees the transfer of those sentenced to life

¹¹ Daily Mail (Online). ‘Misery, tuberculosis in prisons of war-torn east Ukraine,’ 8 April 2015 <http://www.dailymail.co.uk/wires/ap/article-3030393/Misery-tuberculosis-prisons-war-torn-east-Ukraine.html> Date accessed: 1 March 2017.

¹² Médecins Sans Frontières (Doctors Without Borders). ‘MSF Forced to End Activities in Donetsk, Leaving Thousands Without Health Care,’ 23 October 2015. <http://www.doctorswithoutborders.org/article/msf-forced-end-activities-donetsk-leaving-thousands-without-health-care> Date accessed: 1 March 2017

¹³ British Embassy, Kyiv. Letter to the Home Office, 20 September 2016. Available at [AnnexA](#).

¹⁴ United States Department of State, 2016 Country Reports on Human Rights Practices - Ukraine, 6 March 2017. Prison and Detention Center Conditions <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2016&dliid=265484> Date accessed 6 March 2017

imprisonment, who have served 20 years of punishment in prison cells, to common residential buildings in maximum security prisons and keeping them among other prisoners.¹⁵

7.4.2 The Council of Europe's Committee for the Prevention of Torture (CPT) reported as follows on their visit to the Ukraine in September 2014:

'During its visit to Colony No. 100, the delegation also reviewed the regime and security measures applied to prisoners sentenced to life imprisonment. At the time of the visit, a total of 68 such prisoners were being held there in a separate unit (usually in double or four-bed cells).

'The CPT welcomes the fact that, following recent legislative changes, life-sentenced prisoners now benefit from the same visit entitlements as ordinary sentenced prisoners, namely one short-term visit per month and one long-term visit once every three months. It is also noteworthy that life-sentenced prisoners were offered remunerated work (sewing garment bags) in their cells.

'That said, from the information gathered during the visit, it transpired that most of the specific recommendations repeatedly made by the Committee after previous visits to the country regarding the situation of life-sentenced prisoners had not been implemented. In particular, it remained the case that the prisoners concerned were:

- usually locked up in their cells for 23 hours per day;
- not allowed to have contact with life-sentenced prisoners from other cells, let alone with other sentenced prisoners;
- systematically handcuffed during all movement outside their cells;
- kept under constant video surveillance (CCTV) in their cells.¹⁶

7.4.3 In response to the CPT's report, the Ukrainian government stated:

'Conditions of treatment of sentenced to life imprisonment in the Temnivska correctional colony (№ 100) (hereinafter - CC №100) fully comply with the internal regulations.

'In accordance with requirements of paragraph 1 of Section XXXIII of the internal regulations, sentenced to life imprisonment are held in maximum security sector in CC №100 separately from other prisoners and persons detained, in separate cells, by definition of administration of the institution.

'On persons, sentenced to life imprisonment in full extend spreads basic rights and duties of prisoners defined by the Criminal Executive Code of Ukraine, as well as the Internal regulations.

¹⁵ Interfax-Ukraine. 'Ukrainian parliament passes law on improving prison conditions,' 5 September 2013. <http://en.interfax.com.ua/news/general/166445.html> Date accessed: 1 March 2017

¹⁶ Council of Europe. Committee for the Prevention of Torture. '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 9 to 16 September 2014,' published 29 April 2015, CPT/Inf (2015) 21. <http://www.refworld.org/docid/5542096b4.html> Date accessed: 1 March 2017

'Self-regulating organization among convicts to life imprisonment are not created.

'To ensure the security of staff of penitentiary establishments and prisoners, prevent the commission of their side of crimes, sentenced to life imprisonment, who are prone to escape, attacks on administration of penitentiary establishment and hostage-taking, can be transferred to other cells with obligatory consideration of psychological compatibility of prisoners.

'Sentenced to life imprisonment are placed in cells with the requirements of a separate holding provided by the requirements of Art. 92 of the Criminal Executive Code of Ukraine.

'The application of special means to sentenced to life imprisonment fully meets the requirements of paragraphs 1-4 Section XX of the Internal Regulations.

'In the derivation of the cells or escort on the territory of institution sentenced to life imprisonment, who are prone to escape, hostage-taking, attacks on the administration, for them used handcuffs considering disability and their health. In applying handcuffs convicted holding hands behind.

'Escorting of sentenced to life imprisonment on the territory of penitentiary establishment is carried out by one accompanied by at least two representatives of administration of penitentiary establishment and cynologist with service dog.

'According to paragraph 2 Section XXXIII of the Internal Regulations, while escorting sentenced to life imprisonment within the building sector of maximum security level cynologist with service dog not involved.

'According to requirements of paragraph 1 of section XIV of the Internal Regulations and art. 151 of the Criminal Executive Code of Ukraine sentenced to life imprisonment is entitled to receive once a month short-term appointment and every three months long visits with close relatives (spouses, parents, children, adoptive parents, adopted, whole blood brothers and sisters, grandparents, grandchildren). Long appointments may be available for couples that lived as one family, but not married, upon condition that they have common minor children.

'Sentenced to life imprisonment given daily walk of one hour length.

'In addition, in accordance with paragraph 3 of Section XIV of the Internal Regulations for the prisoners, who are held in maximum security sector equipped with appropriate place and secured the right of prisoners to have access to the Internet.

'According to requirements of art. 103 of the Criminal Executive Code of Ukraine administration of the Temnivska correctional colony (№100) have the right to use audio-visual, electronic and other technical means to prevent escapes and other crimes, violations of the statutory order of punishment, obtain the necessary information about the behavior of prisoners.'¹⁷

¹⁷ Council of Europe: Committee for the Prevention of Torture, Response of the Ukrainian Government to the report of the European Committee for the Prevention of Torture and Inhuman or

8. Mistreatment of prisoners

8.1.1 The US Department of State's Country Report covering 2015 further noted:

'On April 29 [2015], the Council of Europe's Committee for the Prevention of Torture (CPT) released a report based on visits to penal colonies 25 and 100 in Kharkiv Oblast in September 2014. The committee found an "atmosphere of fear" in the penal colonies and noted the reluctance of prisoners to talk to the committee. The committee heard allegations that authorities used severe physical mistreatment or torture to maintain internal order, including by senior prison staff members, and that prisoners who cooperated with the committee could expect to be punished.'¹⁸

8.1.2 The report by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), published in April 2015 following a visit to Ukraine in September 2014, described the situation of persons who had been detained in Kyiv and Kharkiv in the context of ongoing 'anti-terrorism' operations, stating:

'...The majority of persons detained in the context of "anti-terrorism" operations who were interviewed by the delegation stated that they had been treated correctly whilst in the hands of law enforcement officials. Further, the delegation received no allegations of ill-treatment by custodial staff at the detention facility of the State Security Service (SBU) in Kyiv and the pre-trial establishments (SIZOs) in Kyiv and Kharkiv.

'That said, some allegations were received of excessive use of force by SBU officers at the time of apprehension and/or of ill-treatment during subsequent questioning by SBU officers. In addition, a few allegations were heard of excessive use of force by soldiers at the time of apprehension. In a few cases, the persons concerned displayed visible injuries which were appeared to be [sic] consistent with the allegations made....

'Further, a number of persons interviewed by the delegation claimed that they were hooded (with a bag) for many hours during transportation from the place of apprehension to Kyiv...

'The CPT recalls that the fundamental safeguards against ill-treatment (namely the right to have one's detention notified to a relative or another person and the rights of access to a lawyer and a doctor) should always be granted as from the very outset of the de facto deprivation of liberty. From the interviews with detained persons it transpired that the implementation in practice of the above-mentioned safeguards did not pose major problems once the persons concerned had been transferred to an SBU establishment.

Degrading Treatment or Punishment (CPT) on its visit to Ukraine from 9 to 16 September 2014 , 28 July 2015, CPT/Inf (2015) 24, available at: <http://www.refworld.org/docid/55cc9ea44.html>
Date accessed: 1 March 2017.

¹⁸ US State Department. 'Country Reports on Human Rights Practices for 2015,' Ukraine. Section 1 Prison and Detention Center Conditions. 13 April 2016. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2015&dliid=252911> Date accessed: 1 March 2017

‘However, it is a matter of serious concern that the delegation received a number of consistent allegations from detained persons that they had been held de facto in incommunicado detention on the premises of a military establishment for several days (and, in a few cases, for more than ten days), prior to their transfer to the SBU detention facility...

‘As far as the delegation could ascertain, all persons detained in the context of “antiterrorism” operations who were met by the delegation had been subjected to medical screening upon admission to either SIZO or the SBU detention facility. According to the medical files, most of the persons concerned had not displayed any visible injuries upon arrival.

‘That said, in those cases where injuries had been recorded, the quality of the medical records left something to be desired. In particular, at the Kharkiv SIZO, the description of injuries was rather superficial. Further, at the SBU Detention Facility, custodial officers had allegedly been present during medical examinations.’¹⁹

- 8.1.3 The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) also reported on their visit to two correctional colonies in the Kharkiv area, namely Colonies Nos.25 and 100, in order to review the treatment of prisoners. During previous visits, in particular to Colony No. 25, the CPT had heard many allegations of physical ill-treatment and/or torture of prisoners by prison officers. The CPT reported as follows:

‘At Colonies Nos. 25 and 100, the delegation once again received a significant number of allegations of severe physical ill-treatment and/or torture of prisoners by prison officers (including senior members of staff). The delegation gained the distinct impression that, in both establishments, physical ill-treatment was used as a tool to maintain internal order. Further, the delegation was struck by the overall climate of fear in both establishments and the reluctance of prisoners to be interviewed. Many allegations were received that prisoners had been warned by staff not to say anything negative to the delegation. At Colony No. 100, allegations were also received that prisoners had been beaten up by prison officers after they had complained to a prosecutor or a representative of the Parliamentary Commissioner of Human Rights. Moreover, the CPT expressed concern about the frequency of allegations received in both colonies regarding corruption and exploitation of prisoners for economic reasons.

‘In its preliminary observations, the delegation called upon the Ukrainian authorities to carry out a prompt, independent, thorough and comprehensive inquiry from the central level into how Colonies Nos. 25 and 100 function (especially as regards the allegations of ill-treatment of prisoners) and to take appropriate measures to ensure that prisoners were not subjected to any retaliation for having spoken with the delegation.’²⁰

¹⁹ Council of Europe. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). Report to the Ukrainian Government on the visit to Ukraine, 29 April 2015 CPT/Inf (2015) <http://www.cpt.coe.int/documents/ukr/2015-21-inf-eng.pdf> Date accessed: 1 March 2017

²⁰ Council of Europe. The European Committee for the Prevention of Torture and Inhuman or

8.1.4 The CPT report detailed the subsequent action taken by the Ukrainian authorities in response to the concerns raised by the CPT:

‘By letters dated 11 and 23 February 2015, the Ukrainian authorities provided detailed information on the measures taken in response to the preliminary observations. In particular, inspections had been carried out of Colonies Nos. 25 and 100 by representatives of the General Prosecutor’s Office (with the involvement of the Parliamentary Commissioner of Human Rights and various NGOs) as well as by a joint commission of the Ministry of Justice and the State Penitentiary Service (also with the involvement of several NGOs). The Directors of both colonies had been dismissed and criminal investigations had been initiated regarding two complaints of ill-treatment of prisoners by staff at Colony No. 100. Following a meeting with representatives of the CPT, the Minister of Justice issued a detailed set of instructions to the Directors of all prisons in the country regarding the measures to be taken to prevent ill-treatment and intimidation of prisoners and to improve the procedures for the investigation of allegations of ill-treatment. In addition, the Minister of Justice instructed the State Penitentiary Service to monitor the treatment of prisoners in Colonies Nos. 25 and 100 on a monthly basis (with the involvement of civil society organisations).

‘In the visit report, the CPT welcomes the measures taken thus far by the relevant Ukrainian authorities regarding the allegations of ill-treatment and/or intimidation of prisoners in Colonies Nos. 25 and 100. On the basis of all the information at its disposal, the CPT has reached the conclusion that a page is being turned and that decisive action is now being taken by the relevant authorities to combat the phenomena of ill-treatment and intimidation of prisoners in colonies.’²¹

8.1.5 The CPT report of April 2015 set out the detailed set of instructions which the Ukrainian authorities had issued to Directors of all prisons:

‘Further, by letter of 23 February 2015, the Ukrainian authorities informed the CPT that, on 12 February 2015, the Minister of Justice had issued Order No. 178/5 which contains a detailed set of instructions to the Directors of all prisons in the country regarding the measures to be taken to prevent ill-treatment and intimidation of prisoners and to improve the procedures for the investigation of allegations of ill-treatment. The Order inter alia stipulates that:

- it is necessary to take urgent steps to ensure that prisoners could quickly report on cases of ill-treatment, not being afraid of official or unofficial punishment through sanctions or misuse of powers. Persons who

Degrading Treatment or Punishment (CPT). Report to the Ukrainian Government on the visit to Ukraine, 29 April 2015 CPT/Inf (2015) <http://www.cpt.coe.int/documents/ukr/2015-21-inf-eng.pdf> Date accessed: 1 March 2017

²¹ Council of Europe. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). Report to the Ukrainian Government on the visit to Ukraine, 29 April 2015 CPT/Inf (2015) <http://www.cpt.coe.int/documents/ukr/2015-21-inf-eng.pdf> Date accessed: 1 March 2017

- complain about ill-treatment or other signs of improper treatment should not be subjected to intimidation or abuse for what they have done;
- the principle that prisoners should be able to file complaints of ill-treatment without fear of retribution could mean that if necessary, in special cases, such prisoners shall have the right to request a transfer to another institution;
- intimidation or the imposition of penalties for communication with the monitoring agencies should be classified as a separate disciplinary violation;
- tools for correspondence should be available to prisoners and envelopes for complaints that allow communication with the relevant authorities without censorship (in particular, with the Prosecution service and the Ombudsman) should be available in several locations in the prison, and their presence should not depend on a specific request;
- meetings between prisoners and members of the monitoring services must take place in conditions that ensure the confidentiality of discussions. Prison staff should not make any attempt to find out the contents of interviews with prisoners;
- prison staff should be obliged to report cases of ill-treatment even if the prisoner has not filed a complaint;
- the professional independence of doctors must be enhanced and the trust of prisoners in doctors must be restored;
- any attempt by prison staff to infringe medical confidentiality shall result in disciplinary punishment.²²

8.1.6 In a letter of 20 September 2016, the Foreign and Commonwealth Office stated that:

‘Fewer cases of torture and mistreatment have been recorded by human rights organisations since 2012. In addition, the Supreme Rada of Ukraine transferred the functions of the key monitor of the ‘National Prevention Mechanism’ to the office of the Ukrainian Ombudsman. Since 2012, within the framework of this mechanism, Valeriya Lutskova, Ukrainian Ombudswoman, and her representatives have conducted inspections of more than 300 prisons and correctional facilities across Ukraine. Information can be found on the official website of the Ombudsman:
<http://www.ombudsman.gov.ua/en/page/npm/>.²³

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9. Prisoners’ complaints and independent monitoring

9.1.1 The US State Department’s Human Rights Practices Report covering events in 2016 stated:

‘In government-controlled areas, prisoners could file complaints with the Office of the Parliamentary Ombudsman for Human Rights. As of October 1

²² Council of Europe. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). Report to the Ukrainian Government on the visit to Ukraine, 29 April 2015 CPT/Inf (2015). Para 43, page 21-22. <http://www.cpt.coe.int/documents/ukr/2015-21-inf-eng.pdf> Date accessed: 1 March 2017

²³ British Embassy, Kyiv. Letter to the Home Office, 20 September 2016. Available at [AnnexA](#).

[2016], the ombudsman's office received 1,114 complaints from prisoners and their relatives throughout the country. The most common complaints were regarding a lack of appropriate living and sanitary conditions; cruel, inhuman, and degrading treatment; public humiliation; limited communication with family members and relatives; unjustified punishment; denial of the right to legal consultation; and denial of the right to submit a complaint about actions of the administration. Prisoners also complained about inadequate medical treatment and precautions. For example, authorities did not isolate prisoners with contagious tuberculosis from other patients.

'Although prisoners and detainees may file complaints about conditions in custody with the human rights ombudsman, human rights organizations noted prison officials continued to censor or discourage complaints and penalized and abused inmates who filed them. Rights groups reported that legal norms did not always provide for confidentiality of complaints.

'Officials generally allowed prisoners to receive visitors, with the exception of those in disciplinary cells. Prisoner rights groups noted some families had to pay bribes to obtain permission for prison visits to which they are entitled by law.

'Independent Monitoring: The government generally permitted independent monitoring of prisons and detention centers by international and local human rights groups. On May 25, the UN Subcommittee on the Prevention of Torture (SPT) suspended its visit to the country after being denied access to places in several parts of the country where it suspected the SBU was illegally depriving individuals of their liberty. On September 5 [2016], the SPT resumed its visit and was granted access to the facilities. During the year the Ombudsperson's Office together with representatives of civil society conducted monitoring visits to penitentiary facilities in 15 oblasts.²⁴

9.1.2 In a letter of 20 September 2016, the Foreign and Commonwealth Office stated that:

'The most common complaints received from those detained or imprisoned are:

- Lack of proper access to medical care
- Being held in a cell with someone who has TB
- Lack of light, showers and adequate food
- Lack of open air activities
- Lack of access to drinking water
- Lack of tables, chairs, and other basic furniture in cells

²⁴ United States Department of State, 2016 Country Reports on Human Rights Practices - Ukraine, 6 March 2017. Prison and Detention Center Conditions <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2016&dliid=265484> Date accessed 6 March 2017

- Cells not being equipped with emergency buttons, which poses a threat of untimely or inadequate reaction to possible incidents among those held in the cells.’²⁵

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10. Prison reform

10.1.1 In a letter of 20 September 2016, the Foreign and Commonwealth Office stated that:

‘In 2014, Ukraine launched further reforms of the penitentiary service in Ukraine. The EU and the Council of Europe provided more than €10,000 to Ukraine to assist with these reforms, in particular to bring procedures and practices in prisons in line with European standards and to support the improvement of prison inspection and handling of prison complaints.

‘With support from the Ukrainian government, and with recommendations from the Council of Europe, the Ministry of Justice of Ukraine along with the State Penitentiary Service have improved the conditions in some prisons and have succeeded in reducing the number of prisoners who serve their sentence within state institutions. Many individuals are now placed under house arrest rather than in pre-trial detention centres. A new mechanism for probation was also introduced in 2015. In addition to this, the Ministry of Justice of Ukraine plans to reduce the number of prisons and detention centres in Ukraine by half and to update and improve aging remand buildings.’²⁶

10.1.2 The same source continued:

‘Following reforms of the penitentiary system in Ukraine in 2014, conditions in some prisons and correctional facilities have already been improved and Ukraine plans to implement further reforms to bring conditions more in line with European standards.

‘There have been several changes and improvements in prison conditions in Ukraine since 2006. For example, in 2009, social and psychological services were established in prisons in order to assist with prisoners’ adaptation to prison life and subsequent re-integration. Religious services and visits by priests to prisons have become very popular.’²⁷

10.1.3 On 3 July 2015 a new joint Ukraine, Council of Europe and the European Union project on further support of prison reform in Ukraine for 2015-2017 was launched. According to the Council of Europe website:

‘The general aim of the 3-year project is to improve the observation of human rights in the treatment of prisoners in Ukraine. In particular, it focuses on assisting the national authorities in two main areas: creating prison environments that offer more humane conditions of detention and a wider range of rehabilitative services for inmates and strengthening oversight of

²⁵ British Embassy, Kyiv. Letter to the Home Office, 20 September 2016. Available at [Annex A](#).

²⁶ British Embassy, Kyiv. Letter to the Home Office, 20 September 2016. Available at [Annex A](#).

²⁷ British Embassy, Kyiv. Letter to the Home Office, 20 September 2016. Available at [Annex A](#).

prisons and an informed penitentiary policy-making through systematic prison inspection and improved practices for handling prisoners' complaints.

'The Project follows a bottom-up and top-down approach, as it directly works with six pilot prisons as well as at the legislative and policy-making level.

'The Project is implemented in partnership with the Ministry of Justice and the State Penitentiary Service of Ukraine. It includes a wider group of stakeholders to contribute to the overall improvement of the treatment of prisoners in Ukraine, such as the Parliament, the Ombudsman/National Preventive Mechanism, human rights defenders and other representatives of civil society, academic institutions and international organisations.

'The project runs until 31 December 2017, with an overall budget of EUR 1,000,000, funded by the European Union, co-funded by the Council of Europe, under the auspices of the EU/CoE Programmatic Co-operation Framework in the Eastern Partnership countries.'²⁸

- 10.1.4 The FINANCIAL, a Georgian news website, reporting on the work of the project in October 2015 stated that:

'A new framework for internal prison inspections was presented to senior officials of the State Penitentiary Service of Ukraine and the Heads and Deputies of pilot prisons in Kyiv, as part of a joint EU-Council of Europe prison reform project in Ukraine.

'A feasible European model was proposed. Initial examples on inspection standards offered and their development tested in a group. The next steps were agreed, including the establishment of a Working Group on internal prison inspections and prisoners' complainants involving the Heads of pilot prisons, senior managers on inspection issues and external partners.

'The same project also recently held a workshop on general prison management issues and the importance of rehabilitative approach, aiming to emphasise the importance of prison leadership styles, managing transition and concepts of prison as a tool for rehabilitation, according to EU Neighbourhood Info.

'These activities are undertaken in the framework of the joint EU-CoE project for "Further Support for Penitentiary Reform in Ukraine".'²⁹

- 10.1.5 In May 2016 it was reported that the Ukrainian government announced a number of reforms to the prison system. The reforms aim at a total reduction of the central apparatus of the State Penitentiary Service of Ukraine (the SPS), creation of five inter-regional administrations of the prison service instead of traditional regional administrations, building of new pre-trial prisons instead of old establishments, fundamental changes in the prison industry. The most important aspect of the penitentiary reform was taking

²⁸ Council of Europe. Criminal Law Co-operation. Further Support for the Penitentiary Reform in Ukraine. Undated. <http://www.coe.int/en/web/criminal-law-coop/pcf-ukraine> Date accessed: 1 March 2017.

²⁹ The FINANCIAL. 'Ukraine: Prison reform in focus of joint EU-CoE project,' 6 October 2015. <http://finchannel.com/world/ukraine/50367-ukraine-prison-reform-in-focus-of-joint-eu-coe-project> Date accessed: 1 March 2017.

over by the Ministry of Justice of full responsibility for national prison and probation policy in Ukraine.^{30, 31}

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³⁰ UNIAN. Ukraine liquidates its State Penitentiary Service amid reform. 18 May 2016. <https://www.unian.info/politics/1348711-ukraine-liquidates-its-state-penitentiary-service-amid-reform.html> Date accessed: 1 March 2017.

³¹ Dmytro Yagunov. Prison reform in Ukraine: some analytical notes and recommendations. Undated. <http://www.yagunov.in.ua/?p=444> date accessed 1 March 2017.

Annex A



Foreign & Commonwealth Office

20 September 2016

RE: Ukraine – Draft Evasion

Information has been gathered from the Ukrainian Ombudsman's Office, Amnesty International and the Ministry of Justice and Ministry of Defence regarding prison conditions in Ukraine and punishment for draft evaders.

The Legal Department of the Ukrainian Ministry of Defence (MoD) have informed us that the punishment for avoidance of conscription for active military service shall be punishable by 'restraint of liberty for a term of up to three years'. Avoidance of mobilisation shall be punishable by 'imprisonment for a term of two to five years'. Avoidance of military training, verification of skills, or special assemblies by a person eligible for military service shall be punishable by a fine of 'up to 70 tax-free minimum incomes, or arrest for a term of up to six months'. The Ukrainian MoD have no information about persons previously convicted under Article 336 of the Criminal Code of Ukraine (Avoidance of Mobilisation) being mobilised during any of the mobilisation campaigns of 2014-16.³²

³² Information was obtained from the Ukrainian Ministry of Defence. Further details can be found at www.mil.gov.ua.

According to various media sources (including www.segodnya.ua and www.lb.ua), there are currently hundreds of cases opened in Ukraine for draft evasion. In practice (according to the Registry of Court Decisions), 77 guilty verdicts were issued by courts as of February 2016. The majority of these were immediately released on probation. At the end of 2015 there was a case of one person in Zakarpattia region who was given 2 years in prison for draft evasion. However, this verdict was postponed and has not come into force yet due to the health conditions of this man.³³

With regards to current prison conditions in Ukraine, I can confirm that information found in the Country Information Guidance on www.gov.uk is up to date and corresponds to the current state of affairs concerning prison conditions in Ukraine. However, the following points should be noted.

There are no separate military prisons in Ukraine. Sentenced draft evaders will be placed in general or civic prisons. All the prisons and correctional facilities in Ukraine have different levels of security and living conditions. Such living conditions usually depend upon the crime for which the individual was sentenced. Many of the prison and pre-trial detention centres are based in old buildings which sometimes do not have adequate sanitary facilities or ventilation. Overcrowding is a problem in Ukrainian prisons.

The most common complaints received from those detained or imprisoned are:

- Lack of proper access to medical care
- Being held in a cell with someone who has TB
- Lack of light, showers and adequate food
- Lack of open air activities
- Lack of access to drinking water
- Lack of tables, chairs, and other basic furniture in cells
- Cells not being equipped with emergency buttons, which poses a threat of untimely or inadequate reaction to possible incidents among those held in the cells.³⁴

³³ Further information on the information sourced from the Registry of Court Decisions can be found at www.reyestr.court.gov.ua or from the website of the Zakarpattia Regional State Administration.

³⁴ Information from the above two paragraphs can be found on the websites of the State Penitentiary Service of Ukraine, the Ministry of Justice of Ukraine and the Office of the Ukrainian Ombudsman.

Each pre-trial detention centre and prison has special medical departments that can provide medical assistance. Any healthcare that is not available in prisons (e.g. complicated surgery) will be provided by regular hospitals under the jurisdiction of the Ukrainian Ministry of Health. Each prison has a library where books and newspapers are available. Relatives can also bring or send books and newspapers to prisoners. Most of the cells have radio units, some have small televisions. If the cell does not have a television, it can also be brought in by relatives. Three hot meals are provided per day. Additional food can also be bought from a prison shop. Prisoners cannot possess and use mobile phones, but are allowed to make phone calls from telephones within the prison.³⁵

Overall, conditions in Ukrainian prisons do not meet European standards. Conditions in certain prisons can be considered to violate human rights. At the same time, they do not pose a direct threat to life. Following reforms of the penitentiary system in Ukraine in 2014, conditions in some prisons and correctional facilities have already been improved and Ukraine plans to implement further reforms to bring conditions more in line with European standards.³⁶

There have been several changes and improvements in prison conditions in Ukraine since 2006. For example, in 2009, social and psychological services were established in prisons in order to assist with prisoners' adaptation to prison life and subsequent re-integration. Religious services and visits by priests to prisons have become very popular.³⁷

Fewer cases of torture and mistreatment have been recorded by human rights organisations since 2012.³⁸ In addition, the Supreme Rada of Ukraine transferred the functions of the key monitor of the 'National Prevention Mechanism' to the office

³⁵ This information can be found on the British Embassy's website, which contains an information pack for British Prisoners in Ukraine (<https://www.gov.uk/government/publications/ukraine-prisoner-pack>).

³⁶ The source of this information was the reports produced by the office of the Ombudsman. Details of the website can be found in the main body of the letter.

³⁷ This information can be found on the British Embassy's website which contains generic information for British nationals in detention/prison about the legal and prison system in Ukraine.

³⁸ This information was received from Amnesty and the Information Centre for Human Rights

of the Ukrainian Ombudsman. Since 2012, within the framework of this mechanism, Valeriya Lutsкова, Ukrainian Ombudswoman, and her representatives have conducted inspections of more than 300 prisons and correctional facilities across Ukraine. Information can be found on the official website of the Ombudsman:

<http://www.ombudsman.gov.ua/en/page/npm/>.

In 2014, Ukraine launched further reforms of the penitentiary service in Ukraine. The EU and the Council of Europe provided more than €10,000 to Ukraine to assist with these reforms, in particular to bring procedures and practices in prisons in line with European standards and to support the improvement of prison inspection and handling of prison complaints.

With support from the Ukrainian government, and with recommendations from the Council of Europe, the Ministry of Justice of Ukraine along with the State Penitentiary Service have improved the conditions in some prisons and have succeeded in reducing the number of prisoners who serve their sentence within state institutions. Many individuals are now placed under house arrest rather than in pre-trial detention centres. A new mechanism for probation was also introduced in 2015. In addition to this, the Ministry of Justice of Ukraine plans to reduce the number of prisons and detention centres in Ukraine by half and to update and improve aging remand buildings.³⁹

This letter has been compiled by staff of the British Embassy in Kyiv entirely from information obtained from the sources indicated. The letter does not reflect the opinions of the author(s) nor any policy of the Foreign and Commonwealth. The author(s) have compiled this letter in response to a request from the Home Office and any further enquiries regarding its contents should be directed to the Home Office.

³⁹ This information was sourced from the websites of the Council of Europe and the Ministry of Justice of Ukraine.

Version control and contacts

Contacts

If you have any questions about this note and your line manager, senior caseworker or technical specialist cannot help you, or you think that this note has factual errors then [email the Country Policy and Information Team](#).

If you notice any formatting errors in this note (broken links, spelling mistakes and so on) or have any comments about the layout or navigability, you can [email the Guidance, Rules and Forms Team](#).

Clearance

Below is information on when this note was cleared:

- version **2.0**
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Changes from last version of this note

- Guidance updated to reflect country guidance case of [VB & Another \(draft evaders and prison conditions : Ukraine\) \(CG\) \[2017\] UKUT 79 \(IAC\) \(6 March 2017\)](#)
- General update of country information section.

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