

EIN briefing for the Committee of Ministers
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**UKRAINIAN HELSINKI HUMAN RIGHTS UNION
SUBMISSION TO THE COUNCIL OF EUROPE COMMITTEE OF MINISTERS
AS TO CREATION OF ADEQUATE CONDITIONS OF DETENTION IN PRE-
TRIAL DETENTION CENTRES AND PENITENTIARY ESTABLISHMENTS AND
ESTABLISHMENT OF EFFECTIVE REMEDIES**

**The execution of the European Court of Human Rights judgments on
Nevmerzhtsky, Yakovenko, Logvinenko, Isayev and Melnik groups v. Ukraine**

Introduction

The cases in these groups concern the structural problem of inadequate conditions of detention in police holding establishments (“ITT”), pre-trial detention centres (“SIZO”) and penitentiary establishments. Some of the cases address particular forms of ill-treatment related to unacceptable conditions of detainees’ transportation, the lack of adequate or timely medical care in detention; force-feeding; shackling during hospitalisation, and placement in a metal cage during court hearings. The European Court of Human Rights also found violations of Article 13 read in conjunction with Article 3 due to the lack of effective remedies.

A large number of violations found by the Court show a deep structural problem in the penitentiary system of Ukraine.

For the last time the Committee of Ministers examined these groups on 6-7 June 2017. As regards general measures, the Committee of Ministers provided 11 recommendations for the authorities in order to overcome the problems defined by the Court in these groups.

This submission concerns mainly two aspects of the violations discovered by the Court in these groups of cases: 1) conditions of detention in pre-trial detention centres and penitentiary establishments; 2) the establishment of effective remedies.

Analysis of the problems

Legislation

At the outset, it is worth to mention that Ukraine has recently started reforming the penitentiary system. On September 2017, the Cabinet of Ministers of Ukraine adopted the Concept of reforming (development) of the penitentiary system of Ukraine¹. This document established the general principles for the following reform, including re-organisation of the prison system, measures taken to reduce cases of overcrowding, and revision of the legislative framework for imprisonment with a view to reinforcing the rights of prisoners. The Concept should be implemented until 2020. However, we believe that for the successful implementation of the provisions of the Concept, a number of legislative acts should be adopted by the Parliament of Ukraine.

At present, several important draft laws aimed at strengthening rights of the detainees are registered in the Ukrainian Parliament. However, adoption of the majority of them is being procrastinated for several years. One of the reasons for such delay is that the issues of protection of the detainees' rights and the creation of additional guarantees for them are not a priority for Ukrainian Parliament, and that is why the draft laws do not find much support from the people's deputies of Ukraine.

We draw the attention to the necessity of urgent adoption and implementation of the following legislation acts:

1) the Draft Law of Ukraine "On Amendments to the Criminal-Executive Code of Ukraine" (regarding improvement of conditions of detention of prisoners)² (registered in April 2015) was drafted with consideration of the CPT recommendations. It foresees important amendments to improve the rights of detainees/convicts - the protection of privacy, correspondence, enlargement of the cells area, significant increase of the number of visits prisoners may have, regulates the procedure of placing persons to isolation cell (following a decision of a disciplinary board) and the procedure of appealing against such a measure.

2) a new Pre-Trial Detention Act³ (registered on July 2016), improves significantly the system of protection of the rights of persons placed to pre-trial detention centres – their

¹ <http://www.kmu.gov.ua/control/uk/cardnpd?docid=250287747>

² http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=54858

³ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=55900

access to medical and legal aid, their right to respect for correspondence and to have visits – and regulates placing a person to an isolation cell.

3) the Draft Law of Ukraine «On preventive and compensatory remedies for the convicts/detainees subjected to torture, inhuman or degrading treatment or punishment, and establishment of the legal institute of penitentiary judges»⁴ (registered in June 2016). regulates the creation of effective preventive and compensatory remedies for the victims of torture/ill treatment as required by Article 13 of the Convention. This Law also envisages the establishment of the legal institute of penitentiary judges responsible for consideration of the complaints lodged by persons kept in closed institutions.

As to the conditions of detention in pre-trial detention centres and penitentiary establishments

According to the Law of Ukraine “On pre-trial detention”, the area in a ward for one person in custody shall be not less than 2,5 m², and 4,5 m² for pregnant women or women with a child with them. These standards contradict the generally accepted international standards, according to which the area per person should be not less than 4 m².

In addition, while the international standards demand the area per one convicted person to be no less than 6 m², the provisions of the Criminal Executive Code of Ukraine stipulate that the area of residence per one convicted person should be 4 m².

During the visit to Ukraine in November 2016, the CPT noticed that the complex rules on separation of different categories of remand prisoners continued to result in localised overcrowding in the pre-trial facilities visited, there had been no change to the regime for remand prisoners based on the concept of “isolation” (with no association between cells and nothing even remotely resembling a programme of meaningful out-of-cell activities) and, last but not least, the restrictive provisions on remand prisoners’ contact with the outside world (with visits and telephone calls requiring authorisation by the competent investigator, prosecutor or court) continued to be applied.

Such problems were also identified by the monitors of the National Preventive Mechanism in their report «Monitoring of places of detention in Ukraine 2016». During the monitors’ visits to pre-trial detention centres and penitentiary establishments in 2016, there were defined the following violations concerning the conditions of the detention:

- insufficient artificial and natural light in the cells;

⁴ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=59613

- the lack of constant free access to water and no hot water;
- unsatisfactory sanitary facilities - toilets and showers lack doors and partitions and thus are in full view of other detainees and video cameras. Use of these facilities degrades dignity;
- missing or improperly functioning of ventilation system, windows are not equipped with vents for ventilation. Lack of access to fresh air leads to the fact that in the summer the temperature in the cells exceeds +30 °C;
- absence of individual sleeping areas.

Overcoming these problems requires sufficient finance necessary to carry out thorough repair of penitentiary facilities. According to the Ministry of Justice of Ukraine, the sum needed in 2016 amounted to 470, 6 million UAH, but the state allocated only 7 % of the needed sum.

As to the establishment of effective remedies

Currently there is no effective mechanism for protecting the rights of prisoners. Even though prisoners have the right to lodge a complaint to the administration of a penitentiary facility, this mechanism is ineffective because these complaints are usually being ignored. Furthermore, the detainees have no confidential access and opportunity to complain.

We believe that detainees should have the right to make complaints about any aspect of their treatment or conditions of their detention to an independent body. Effective complaints procedure would be a fundamental safeguard against ill-treatment in prisons and ensure that detainees' rights are respected.

This remedy should be accessible, confidential, impartial and thorough, and provide a prompt response with the possibility of appeal against it.

Detainees should be able to make complaints individually or in group (for example, where a person makes a complaint on behalf of their family or on behalf of a group of detainees belonging to a certain ethnic/religious group). Detainees should be able to seek legal advice for making complaints and legal representatives should be able to lodge complaints on their behalf.

We consider that the following steps should be taken by Ukrainian authorities:

- Establish the detainees' right to lodge online confidential complaints to the representatives of the National Preventive Mechanism;
- Establish the detainees' right to confidential phone calls to the state authorities;

- Create the mechanism of immediate involvement of experts able to fix inadequate material conditions to secure evidence;
- Create immediate and effective remedies to be used if a person is kept in inadequate conditions, which should include expedient access to the court;
- Establish the legal institute of penitentiary judges to administer justice directly at the pre-trial detention centres or correctional institutions and to consider the detainees' /convicts' complaints as to inadequate material conditions of detention or the administration misconduct.

Taking into account all the above mentioned, the Government of Ukraine should undertake further steps for the purposes of enforcement of the Court's judgments and the examination of the general measures regarding these groups of cases by the Committee of Ministers should continue.

Recommendations

1. Adopt necessary legislative amendments as to the conditions of detention in order to bring Ukrainian realities to correspondence with the international human rights standards in this sphere.
2. Allocate additional funds in the State budget to improve the conditions of detention.
3. Create of both preventive and compensatory remedies for detainees.