1,073 petitions to the Commissioner (namely with regard to violation of human rights in penitentiary institutions, pre-trial detention centres, temporary detention facilities and other places of custody

— 70%, petitions from citizens and organisations with regard to implementation of the national preventive mechanism — 30%)

23 legal and normative acts processed and proposals submitted

345 visits to places of custody to perform functions of the national preventive mechanism

21 petitions by the Commissioner

8 entries of information into the URPTI following the inspections initiated by the Commissioner and the measures taken

1,008 letters regarding checks of possible crimes

725 other letters on observance of human and civil rights

141 instructions to representatives of civil society organisations to attend the places of custody within the framework of the NPM based on Ombudsman+ formula

The geography of visits is broad and covers all the regions of Ukraine:

city of Kyiv — 68, Kyiv Oblast — 26, Vinnytsia Oblast — 18, Volyn Oblast — 3, Dnipropetrovsk Oblast — 34, Donetsk Oblast — 6, Zhytomyr Oblast — 8, Zakarpattia Oblast — 24, Zaporizhzhia Oblast — 5, Ivano-Frankivsk Oblast — 11, Kirovohrad Oblast — 14, Luhansk Oblast — 3, Lviv Oblast — 12, Mykolaiv Oblast — 4, Odesa Oblast — 8, Poltava Oblast — 7, Rivne Oblast — 16, Sumy Oblast — 10, Ternopil Oblast — 8, Kharkiv Oblast — 5, Kherson Oblast — 4, Khmelnytskyi Oblast — 19, Cherkasy Oblast — 8, Chernivtsi Oblast — 18, Chernihiv Oblast — 6.

General information on the quantity and types of places of custody in Ukraine

as of 31.12.2022

Subordination	Type of the facility	Number of facilities	Number of persons held
State Migration Service of Ukraine (SMS)	Temporary holding centres for foreigners for foreigners and stateless persons	3	519
	Refugee accommodation centres	3	241

Phoca PDF

State Border Guard Service of Ukraine (SBGS)	Temporary detention places (temporary detention points and special premises of the department of the board guard service)	56	1,498
Ministry of Justice of Ukraine (SCES)	Pre-trial detention centres (penitentiary institutions)	30	16,557
	Special corrective colonies	5	51
	Corrective colonies	92	29,024
	Corrective centres	20	754
	Healthcare institutions of the State Institution “Healthcare Centre” of the SCES Ukraine	105	
State Judicial Administration of Ukraine (SJA)	Premises (rooms) for detention of persons on trial (convicts) in court	1,308	12,335
Ministry of Internal Affairs of Ukraine (National Police of Ukraine, NGU)	Rooms for detainees	639	2,289
	Temporary detention facilities (TDF)	117	9,989
	Reception centres for children	3	16
	Special vehicles used to escort the persons held in custody and/or sentenced to imprisonment (NGU)	189	
	Vehicles to carry detainees, persons held in custody and convicts (National Police of Ukraine)	745	
	Special rooms in healthcare institutions where the persons detained and held in custody are guarded by police officers during treatment	430	
Ministry of Social Policy of Ukraine (MSP)	Centres for social and psychological rehabilitation of children	74	4,574
	Inpatient departments for permanent or temporary residence at territorial	313	9,000

Phoca PDF

	social service centres		
	Psychoneurological care home, geriatric facilities, children's care homes	282	43,000
	Children's shelters	4	623
Ministry of Health of Ukraine (MoH)	Orphanages	17	662
	Boarding schools for orphans and children deprived of parental care	8	457
Ministry of Education and Science of Ukraine (MES)	Special education institutions	310	36,294
	Education and rehabilitation centres	80	8,406
	Special psychiatric care facilities	63	
	Kyiv Municipal Forensic Examination Centre	1	
Ministry of Defence of Ukraine	Rooms for temporarily detained military servants at the Military Law Enforcement Service of the AFU	46	3,931
	Military detention facilities	11	
	Disciplinary battalion	1	
	Special rooms in healthcare institutions of the AFU	9	
Security Service of Ukraine	Pre-Trial Investigation Department of the SSU	1	-
Total		4,965	119,313

Key events, challenges and tendencies

According to Article 19-1 of the Law of Ukraine "On the Ukrainian Parliament Commissioner for Human Rights", the Commissioner shall perform functions of the national preventive mechanism (hereinafter the "NPM") in accordance with the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

In the context of the broad-scale armed aggression against Ukraine, it was difficult to perform the functions of the NPM for a number of reasons, including without limitation:

- aggravation of conditions for detention at places of custody as a result of shelling and seizure hazards, lack of the sufficient quantity of bomb shelters at places of custody, limited reserves of medicines, food and drinking water;
- loss of communication with the staff and detainees in the seized places of custody in the occupied territories;

Phoca PDF

- destruction of the infrastructure of places of custody as a result of hostilities;
- complicated logistic support of the NPM as a result of destruction of the communication lines, transport infrastructure facilities, and fuel supply disruptions;
- relocation of places of custody in connection with evacuation, including outside Ukraine (orphanages, care homes etc.);
- impossibility to ensure safety of the staff of the NPM and representatives of civil society organisations engaged into regular visits, and their refusal to visit due to departure from Ukraine.

The broad-scale armed aggression against Ukraine has materially affected the places of custody in Ukraine. Some of those places were in the territory controlled and temporarily occupied by the Russian Federation during the first days after 24 February 2022. Therefore, some of the facilities and institutions where the Ukrainian citizens were detained could not be evacuated and remained in the occupied territory.

As for aggravation of conditions for detention at places of custody as a result of shelling and seizure hazards, lack of the sufficient quantity of bomb shelters at places of custody, it can be noted that according to the National Social Service there were 245 social care homes in Ukraine as of 1 January 2022, with 37,899 people staying there. As of December 2022, temporary displacement (evacuation) of 4,198 people from 39 care homes was ensured (11.1% of the total number of all the people staying in the care homes as of 01.01.2022): 3,259 persons were relocated to the care homes in the other oblast, and 939 persons moved abroad.

Pursuant to the decisions of the heads of the oblast military administrations of Donetsk, Dnipropetrovsk, Kharkiv and Zaporizhzhia Oblasts, the MoJ resolved to evacuate the convicts and detainees from 11 facilities located in the areas near the frontline. Evacuation of the convicts and detainees from 7 corrective colonies, 2 penitentiary institutions and 2 corrective centres was ensured, including the following state institutions: Orihiv corrective colony (No. 88), Vilniansk corrective colony (No. 20), Sofiivska corrective colony (No. 55), Kamianske corrective colony (No. 101), Pokrovske corrective colony (No. 17), Toretsk corrective colony (No. 2), Selydove corrective colony (No. 82), Vilniansk penitentiary institution (No. 11), Bakhmut penitentiary institution (No. 6), Druzheliubivka corrective centre (No. 1), Novyi Buh corrective centre (No. 103).

The total number of evacuated persons was 4,628, namely 648 detainees and 3,980 persons sentenced to deprivation and limitation of liberty, including 48 women, 7 minors and 215 persons sentenced to life imprisonment.

Evacuation as the forced step aimed at saving lives and health of the persons kept in the institution or facility and the staff can also have material negative effects.

As a result of evacuation of the convicts or detainees from the state institution "Vilniansk penitentiary institution No. 11" to the state institution "Kropyvnytskyi pre-trial detention centre", such persons are forced to stay in inhuman or degrading conditions. When the NPM group visited the state institution "Kropyvnytskyi pre-trial detention centre", they detected the violation of the floor area requirements in 35 cells.

The same violations were detected by the NPM groups when they attended the state institutions ""Vinnytsia penitentiary institution (No. 1)", "Uzhhorod penitentiary institution (No. 9)" and "Zamkove

Phoca PDF

corrective colony (No. 58)".

According to the Ministry of Social Policy, starting from 24.02.2022, more than 5.8 thousand persons were evacuated from the care homes of the social care system, children's care home, psychoneurological care homes, care homes for the elderly and persons with disabilities in certain oblasts to safe regions, including around a thousand persons evacuated abroad (to Germany, Poland, Spain, Italy and Latvia).

Despite all the difficulties, the Commissioner has continued to perform his functions of the national preventive mechanism in Ukraine, and his international duties under the Optional Protocol to the Convention against Torture will be fulfilled.

However, in some cases, the occupying power performed open deportation of the Ukrainian citizens who were held in the closed facilities in the territories of Ukraine controlled by the Russian army (for instance, according to the Kherson OMA, on 4 November 2022, the occupying authorities deported more than a hundred persons with disabilities from the communal facility of Kherson Oblast Council "Dnipriansky psychoneurological care home")[1], and the prisoners from at least three colonies and PTDC in Kherson Oblast were carried to the territory of Russia at the beginning of October 2022.

Findings of NPM visits (by agencies)

345 visits to places of custody to perform functions of the national preventive mechanism, including:

144 — system of the Ministry of Social Policy of Ukraine;

69 — system of the Ministry of Internal Affairs of Ukraine;

61 — system of the Ministry of Justice of Ukraine;

26 — system of the Ministry of Education and Science of Ukraine;

21 — judicial system (State Judicial Administration of Ukraine);

17 — system of the Ministry of Health of Ukraine;

7 — system of the Ministry of Defence of Ukraine.

Findings of monitoring of the facilities subordinated to the Ministry of Social Policy of Ukraine

In 2022, 144 facilities of the system of the Ministry of Social Policy of Ukraine were visited during the activities of the NPM, including:

39 psychoneurological care homes;

Phoca PDF

24 children's care homes;

25 inpatient departments for permanent or temporary residence at territorial social service centres;

15 geriatric homes;

14 private geriatric facilities;

10 centres for social and psychological rehabilitation of children;

7 care homes;

6 care homes for war and labour veterans;

2 private rehabilitation centres;

1 shelter for children;

1 care home for persons with disabilities and the elderly.

The most common violations detected during the visits to the social care facilities and healthcare institutions are:

- overcrowded rooms;
- violation of the right of wards to privacy during hygienic and medical procedures;
- lack of functional beds for bedridden patients;
- lack of access to drinking water;
- poor ensuring of the right to healthcare and medical assistance (lack of licences for medical practice, understaffing of doctors and medical workers, lack of medicinal products and failure to conduct preventive medical examinations of wards);
- non-compliance with food standards.

During the visit to the communal facility "Vasylkivskyi psychoneurological care home" of Dnipropetrovsk Oblast Council on 29.07.2022, ward D. with permanent soft tissue involvement on his face was detected. It was found out in the course of examination of medical records that the ward had not passed necessary diagnostic examination and was not provided with necessary pathogenetic treatment. According to the medical opinion, the ward suffered from the oncological disease that was life-threatening and required palliative medical aid. Failure to grant such aid is considered to be torture, cruel or degrading treatment or punishment. Ward D. was subjected to adequate medical examination and prescribed palliative therapy only after the NPM had intervened.

The most common violations of rights of the elderly and the persons cannot take care of themselves in some geriatric facilities include:

- violation of fire safety rules, lack of evacuation plans;
- non-provision of specialised medical assistance;
- no medical records or failure to carry out medical examination by the staff of the facility when

Phoca PDF

due;
- inadequate temperature at the premises;
- inadequate care of bed-ridden persons;
- shortage of personnel to ensure adequate care of wards;
- no diet meals for those who need them;
- failure to respect the right for a walk outdoors;
- no barrier-free environment for persons with reduced mobility: lack of rails, ramps, lifts, no personnel call buttons;
- no stands with information on human rights and contact details of the institutions and organisations to which wards can apply if their rights are violated.

On 15.05.2022, the private care home for the elderly “Turbota uliublenykh” in Dnipropetrovsk Oblast was visited to check observance of rights of the wards. When they examined the residential rooms in the care home, the NPM group detected the ward with no traces of life and bodily injuries. Moreover, the director of the facility failed to furnish any medical records that would specify examination of the bodily injuries of the deceased by the doctor and recording thereof. During their visit, the NPM group called the police and informed that the deceased person had been found. According to the police, criminal proceedings were instituted based on that fact on 30.05.2022.

Moreover, it was established that the facility failed to monitor the health and organise medical aid (including pursuant to the doctors’ prescriptions).

In particular, the NPM conducted an interview and personal examination of ward T. during which they found the tender septic wound on her right foot and torn stitches that had not been taken out; the ward complained of strong pain in the area of the wound. It was found out from the medical records that the facility had failed to follow the doctors’ recommendations given to ward T. Upon request of the NPM group, the ambulance was called to the facility, and the ward was admitted to hospital.

Findings of monitoring of the facilities in the system of the Ministry of Internal Affairs of Ukraine

In 2022, 69 facilities of the system of the MIA were visited in pursuance of the NPM functions, including:

31 police departments;

25 police directorates;

10 temporary detention facilities;

3 police sectors.

The most common violations detected during the visits to the places of custody in the system of the MIA are:

- violation of the terms for keeping detainees in the room;
- failure to adhere to the procedure for providing meals to the persons held in the room for detainees;

Phoca PDF

- lack of Books (logs) to register detainees and record all the actions taken with participation of the detainee, no procedure for explaining the grounds for detention, rights and obligations to the detainee, for recording of bodily injuries of aggravation of health of detainees by the healthcare professional as well as for registration of bodily injuries of detainees etc.;
- procedural actions with detainees taken in investigators' offices, which increases the risk of inadequate treatment;
- violation of terms for drawing up detention reports;
- no entry of information on bodily injuries inflicted upon individual citizens by police officers into the Unified Register of Statements and Notices of Criminal Offences and Other Events, and no immediate response measures taken, which demonstrates violation of rights of these citizens to an efficient remedy;
- officials' failure to ensure immediate notification of free secondary legal aid centres of detention;
- lack of necessary furniture, low level of illumination in detention rooms;
- few employees of the places of custody who have been trained and have a certificate of knowledge and practical skills of pre-medical aid.

Findings of monitoring of the facilities in the system of the Ministry of Justice of Ukraine

In 2022, 61 facilities of the system of the Ministry of Justice of Ukraine were visited in pursuance of the NPM functions, including:

23 pre-trial detention centres;

15 corrective colonies;

11 penitentiary institutions;

10 medical units of the branches of the State Institution "Healthcare Centre of the State Criminal Enforcement Service of Ukraine";

1 corrective centre;

1 corrective colony.

The most common violations detected during the visits to the places of custody in the system of the SCEC are:

- failure to comply with the fire safety rules, violation of the Occupational Safety Rules;
- failure to respect the floor area requirements in a cell per detainee, which is less than 4 m^2 for convicts and 2.5 m^2 for prisoners in certain cells;
- absence of adequate artificial illumination at the premises;
- no adequate equipment in the bathing and washing facility, no partitions between washing spots;
- location of beds right next to each other;
- inadequate conditions for delivering meals to cells (for instance, no sanitary records of those who carry meals around cells, unsuitable utensils, violation of other sanitary standards);
- tents used for protection against precipitation in the walking yards of the pre-trial detention centres fail to cover the insufficient area;

Phoca PDF

- the persons sentenced to arrest as punishment are unable to make telephone calls in some pre-trial detention centres;
- foreigners are not informed of the internal regulations in some institutions of the criminal enforcement service due to lack of copies thereof in English or other foreign languages;
- quality of legal defence offered by free secondary legal aid attorneys in some institutions of the criminal enforcement service fails to meet the Quality Standards for Free Secondary Legal Aid in Criminal Proceedings approved by Order of the MoJ No. 386/5 of 25.02.2014;
- the persons in transit with an active form of tuberculosis are kept in the cells that are not designated for isolation of contagious patients and are located in the regime building in some institutions of the criminal enforcement service, which is in breach of infection control requirements and results in the spread of the tuberculosis infection;
- the institutions mostly fail to create conditions for persons with disabilities (no rails, ramps, stairs lifts etc.), which limits movement of persons with disabilities in such institutions and can be treated as cruel or degrading treatment or punishment in the meaning of Article 3 of the Convention for the Protection of and Fundamental Freedoms.

Thus, during their regular visits, the NPM established numerous cases of inadequate primary and preventive medical examinations in the institutions of the State Criminal Enforcement Service of Ukraine. In particular, examination by a psychiatrist and a dentist was often held just to observe formalities, the convicts do not undergo complete preventive examinations in accordance with the Procedure for Organising Medical Assistance for the Convicts Sentenced to Deprivation of Liberty approved by joint Order of the Ministry of Justice of Ukraine and the Ministry of Health of Ukraine No. 1348//5/572 of 15.08.2014. Some medical units do not have a position of a gynaecologist. Therefore, women do not undergo screening examinations for early detection and treatment of oncological and gynaecological diseases in accordance with the unified clinical protocols and medical standards.

Visits to the places of custody regularly detect violation of human rights to an adequate level of life, namely sufficient nutrition.

When the staff of the Department and civil monitors attended the pre-trial detention and penitentiary facilities, they detected the inadequate practice of artificial limitation of the number of sick prisoners and convicts who could receive diet meals prescribed due to their health condition based on medical opinions.

It was caused by performance of the second indent of point 2 of the Procedure for Applying Nutrition Standards and Standards for Replacement of Food Products for the Persons Held in Penitentiary Institutions, Pre-Trial Detention Centres of the State Criminal Enforcement Service, Temporary Detention Facilities, Reception Centres of the National Police[2], according to which the persons suffering from gastrointestinal diseases and receiving diet meals could only make 3% of the registered number of the persons held in the institution.

This approach is inconsistent with the Fundamentals of the Healthcare Legislation of Ukraine, limits provision of adequate medical assistance and care to the sick prisoners and convicts during deprivation of liberty, which can be treated as cruel treatment and create grounds for claims against Ukraine to the European Court of Human Rights.

In December 2022, the Commissioner proposed necessary amendments to the governmental resolution to

Phoca PDF

the CMU.

In pursuance of the instruction of the Prime Minister of Ukraine, the Ministry of Justice of Ukraine processed the draft resolution of the CMU as regards improvement of the previous governmental resolution.

Moreover, torture and discrimination of detainees in places of custody are common. For instance, during the scheduled visit to the place of custody, the state institution "Kropyvnytskyi pre-trial detention centre", on 4 and 5 October 2022 by the NPM group, it was established that prisoners and convicts had to raise their hands and keep them up all the time when the employees of the pre-trial detention centre opened doors to their cells, when they were visited by the head and deputy heads of the institution.

Moreover, it was established during the visit around the institution that four prisoners were held in one of the cell with three beds only. Also, the prisoners were held in 35 cells of the PTDC in breach of the floor area requirements.

The Commissioner's Secretariat sent the respective acts of response, following which the data were entered into the URPTI based on the elements of the offences under Article 365(2) and Article 367(1) of the CrCU.

Special attention should be paid to the state institution "Kyiv pre-trial detention centre", which was attended by the NPM group on 19.10.2022. During the visit, a number of persistent violations of fundamental human rights that posed a real threat for life and health of the detainees were detected.

The SI "Kyiv pre-trial detention centre", where around 2,500 prisoners and convicts were held as of the end of 2022, is not equipped with a bomb shelter. The video surveillance system does not ensure safety of the prisoners. There is no adequate fire protection, and prisoners are held in unsatisfactory sanitary conditions. It was established that the minor detainees were unable to exercise their right to education as a result of failure of the administration of the institution and the head of general education school No. 139 to organise online studies during the martial law.

The number of lethal cases among the prisoners and convicts, suicides and self-injuries, bodily injuries and traumas is striking. According to the log of bodily injuries of the detainees and convicts, 88 cases were registered in 2022, and 32 persons died (as of 26.10.2022). However, the cases of bodily injuries inflicted upon the prisoners are investigated just to observe formalities, without any critical approach and specialised studies.

Following the visit, the Commissioner filed a recommendation to the CMU, the MoJ, the executive body of the Kyiv City Council (Kyiv City State Administration) to terminate operations of the pre-trial detention centre due to persistent violations of human rights, to impose disciplinary liability not only on the heads of the pre-trial detention centre, but also the heads of the Ministry of Justice of Ukraine and the Department for Criminal Enforcement. The Verkhovna Rada of Ukraine and the Office of the President of Ukraine were informed of the findings of the visit.

In July 2022, the Commissioner's Secretariat received the information that food products and essential items could not be purchased due to failure to pay wages to the persons serving their sentence in the state institution "Horodok corrective centre (No. 132)".

Phoca PDF

The Commissioner's Secretariat forwarded the information to Rivne District Prosecutor's Office and asked to examine the situation and response thereto.

In pursuance of the request of the Commissioner's Secretariat, Rivne Oblast Prosecutor's Office instructed the head of the state institution "Horodok corrective centre (No. 132)" to inspect the matters of labour remuneration to the convicts in the institution.

As a result of the actions taken, the convicts serving their sentence in the state institution "Horodok corrective centre (No. 132)" were paid their wages, and violation of the labour legislation was remedied.

Finding of monitoring of the institutions and facilities of the Ministry of Education and Science of Ukraine

In 2022, 26 facilities of the system of the Ministry of Education and Science of Ukraine were visited in pursuance of the NPM functions, including:

16 special general education boarding schools for orphans and children deprived of parental care;

5 general education and therapeutic boarding schools;

4 education and rehabilitation centres;

1 orphanage.

The most common violations detected during the visits to the places of custody in the system of the MES are:

- no overhaul of the facilities;
- inadequate conditions for a safe stay (fixed grating on windows, no fire alarm);
- violation of the private right;
- failure to adhere to safe nutrition standards, lack of access to drinking water;
- failure to meet the floor area requirements per person in residence halls.

During the visit, the NPM group detected egregious violations of the children's right to safety in Special Boarding School of Level I No. 25 in Obolonskyi District of Kyiv, Special Boarding School of Levels I and II No. 16 in Sviatoshynskyi District of Kyiv, Special General Education Boarding School No. 18 of Kyiv, where the evacuation exits from the facilities were locked from the outside in breach of the Fire Safety Rules in Ukraine approved by Order of the Ministry of Internal Affairs of Ukraine No. 1417 of 30.12.2014, which would put the pupils' life under threat in case of fire. The violation was remedied, and the door lock was removed upon request of the NPM group.

The privacy right is guaranteed by Article 32 of the Constitution of Ukraine and Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms. However, it was established during the visits that many of the education institutions had video surveillance, but no documents were

Phoca PDF

provided to prove that the parents and children had been informed thereof, no video camera location plans were made, and no signs warning of video surveillance were placed. Violation of the privacy right was detected in Therapeutic Boarding School of Levels I to III No. 22 in Obolonskyi District of Kyiv, Special School No. 5 named after Ya. P. Batiuk in Kyiv, Special Boarding School of Level I No. 25 in Obolonskyi District of Kyiv, Special School No. 8 of Shevchenkivskyi District of Kyiv, Kharkiv Special School No. 7. In pursuance of the recommendations given by the NPM group members, the defects were eliminated, and the signs warning of video surveillance were placed in accordance with the requirements of Article 6(1), Article 12(2) of the Law of Ukraine "On Personal Data Protection".

Findings of monitoring of the facilities in the judicial system (State Judicial Administration of Ukraine)

In 2022, 21 facilities of the judicial system were visited in pursuance of the NPM functions.

The most common violations detected during the visits to the places of custody in the judicial system are:

- the requirements for the minimum area of cells for defendants (convicts) are not met;
- the court premises are not equipped with the sufficient number of cells per each court room for hearing of criminal cases;
- there is no isolated route to escort the accused (defendants), convicts from the service entrance of the court to the court room, so defendants are escorted via corridors and stairs accessible to third parties;
- there are metal grated cells for persons on trial, which is inconsistent with the requirements;
- the premises for defendants (convicts) have no rooms for confidential communication of the defendants (convicts) and their attorneys, which makes it impossible to exercise their right to a confidential meeting.

Findings of monitoring of institutions of the Ministry of Health of Ukraine

In 2022, 17 institutions of the MoH were visited in pursuance of the NPM functions, including:

10 mental hospitals;

6 child care centres;

1 narcological dispensary.

The most common violations detected during the visits to the places of custody in the system of the MoH are:

- violation of the rules for applying physical restraint and (or) isolation in providing psychiatric care to persons suffering from mental disorders, and forms of primary records;
- medical assistance at the inadequate level;
- violation of the rules for keeping official records (for instance, facts of application of physical restraint and (or) isolation in providing psychiatric care to persons suffering from mental disorders, and forms of primary records are not registered in the records prescribed by the order);
- violation of the patients' privacy right during sanitary and hygienic procedures (there are no

Phoca PDF

partitions in toilets and shower facilities);
- no equipment and devices for the needs of persons with disabilities and other reduced-mobility population groups in hospitals;
- failure to meet the floor area requirements for the wards;
- no fire alarm.

It was established during the visit to the communal non-commercial enterprise "Clinical Hospital "Psykhiatriia" of the Executive Body of the Kyiv City Council (Kyiv City State Administration) on 16 February 2022 that, in breach of Order of the Ministry of Health of Ukraine No. 240 of 24.03.2016 "On Approval of the Rules of Application of Physical Restraint and (or) Isolation in Providing Psychiatric Care to Persons Suffering from Mental Disorders, and of the Forms of Primary Records", the log application of physical restraint and (or) isolation in providing psychiatric care to persons suffering from mental disorders did not specify the period for which fixation or isolation had been prescribed and the time of termination thereof. The defect was eliminated by the administration of the institution in pursuance of the Commissioner's recommendations.

During the visit to the communal non-commercial enterprise "Oblast Psychiatric Care Institution of Vilshany" of Zakarpattia Oblast Council, the NPM group found semi-conscious woman B. in the women's department with the temperature of 37.2 C. It was established from the medical records of patient B. that she had had increased body temperature since 21.02.2022. On 23.02.2022, the patient was taken to Khust Raion Hospital, where she was examined by a general practitioner and passed the ultra-sonic and X-ray examination. She was diagnosed with right-sided pneumonia and prescribed treatment. There was no therapeutic progress as of the day of the visit. Upon request of the NPM group, on 21.04.2022 the patient was admitted to Khust Raion Hospital for examination and treatment.

Findings of monitoring of the facilities in the system of the Ministry of Defence of Ukraine

In 2022, 7 facilities of the system of the MoD were visited in pursuance of the NPM functions, including:

3 rooms for temporarily detained military servants;

3 military detention facilities;

1 disciplinary battalion.

The most common violations detected during the visits to the places of custody in the system of the MoD are:

- improper keeping of official records by the officials (for instance, information on medical examination is not entered into the Log of sick military servants held at the military detention facilities and rooms for temporarily detained military servants; the Log of visits to the showering facilities, change of bed linen and provision of soap to military servants held at the military detention facilities had no records for almost a month);
- inability to use Skype online to communicate with relatives, to send electronic petitions;
- medical products that have expired;
- violation of the privacy right of detainees during sanitary and hygiene procedures;
- no personal space, safe location and physical distance between detainees at the sleeping premises;

Phoca PDF

- no information with numbers of the hot lines of the Ukrainian Parliament Commissioner for Human Rights, the Prosecutor General's Office, and the State Bureau of Investigation;
- no medical and psychiatric examinations as well as medical assistance to the military servants held at the military detention facilities with suspected coronavirus COVID-19, including isolation of contagious patients;
- as the Ministry of Defence has not regulated the matter of engagement and labour remuneration for the convicted military servants in accordance with Article 77 of the CECU, they have not been engaged into paid labour since 2019, which results in violation of their rights under Article 43 of the Constitution of Ukraine.

Violation of the right to liberty and security, legal aid and decent conditions for detention of the military servant was detected during the visit to the military detention facility of the security organisation department of the Central Directorate of the Military Law Enforcement Service (in Kyiv and Kyiv Oblast) of the AFU, which was conducted on 18.08.2022. It was found out by the NPM monitors that, according to the report on detention of citizen K. made by the State Bureau of Investigation based on the suspicion of the criminal offence under Article 407(5) of the CrCU, the actual time of detention specified therein was 03.04.2022, 21:30, but the detention report was only made in 20 hours and 34 minutes after the actual detention in breach of requirements of Articles 208 and 209 of the CrPCU. Citizen K. spent that entire period in the investigator's office without meals, free access to drinking water and toilet facilities and night rest.

Moreover, in breach of the requirements of Article 213(4) of the CrPCU and point 2 of the Procedure for Notification of Free Secondary Legal Aid Centres approved by Resolution of the CMU No. 1363 of 28.12.2011, the investigator failed to immediately inform the free secondary legal aid centre of detention.

After the visit, the letters were sent to the Ministry of Defence, the Prosecutor General's Office and the Main Directorate of the Military Law Enforcement Service with the request to cease and prevent future violation of rights of the detained.

Commissioner's response to violation of human rights at places of custody

During the year, the Commissioner received 687 petitions with 1,717 statements of violation of human rights in penitentiary institutions, pre-trial detention centres, temporary detention facilities and other places of custody, out of which 1,107 persons reported inadequate detention conditions, 299 — non-provision of medical assistance, and 40 — violation of the right to legal aid.

According to Article 64 of the Constitution of Ukraine, the rights and freedoms without limitation under Articles 59 (Right to professional legal aid) and 63 (Right of the suspect, the accused or the defendant to defence) of the Fundamental Law may not be limited during the martial law or state of emergency.

However, after the martial law had been imposed, the mass media monitoring detected reports on termination of meetings of the persons held in the pre-trial detention centres and penitentiary institutions subordinated to the Ministry of Justice of Ukraine, namely in the State Institution "Kyiv pre-trial detention centre", based on Order of the Department for Criminal Enforcement No. 92 BC of 13.03.2022.

It was stated in the announcement published in the State Institution "Kyiv pre-trial detention centre" that according to Article 19 of the Law of Ukraine "On Pre-Trial Detention", in case the special regime was

Phoca PDF

imposed in the place of pre-trial detention, meetings ceased to be organised for the persons in custody, including without limitation meetings with a defender(s) in criminal proceedings; an attorney(s), a legal representative(s) acting on behalf of the person in cases of administrative offices, administrative, civil and economic cases in court; a lawyer(s), a specialist(s) in the field of law acting on behalf of the person in the ECHR; his/her legal representative(s), representatives of embassies and consular missions.

Violation of the prisoners' rights to confidential meetings with their attorneys (defenders) was confirmed by the reports received by the Commissioner not only from such persons, but also their attorneys (defenders). 40 reports were received.

In March 2022, the Commissioner received the petition from convict Kh. held in the SI "Zamkove corrective colony (No. 58)" regarding limitation of his right to communicate with the attorney during the martial law although two of his cases were heard by the court.

Following the measures taken by the Commissioner, convict Kh. was granted unhindered access to his defender.

The Commissioner submitted the recommendation to the Minister of Justice of Ukraine due to the persistent nature of the violation of the right of the prisoners and convicts to legal aid, in order to ensure elimination and prevention thereof in the future.

Moreover, the inspection conducted by the Prosecutor General's Office established violation of the national and international legislation in the activity of pre-trial detention facilities; the instruction was given to the MoJ with the request to immediately ensure observance of the constitutional rights of prisoners and convicts at the pre-trial detention facilities by enabling them to meet their defenders.

In each annual report, the Commissioner emphasises the inadequate medical assistance in the pre-trial detention centres and penitentiary institutions of the Ministry of Justice of Ukraine. The situation did not get any better in 2022.

In January 2022, the Commissioner received the petition from convict K. regarding violation of the convicts' rights in the SI "Mena corrective colony (No. 91)" to adequate medical assistance, which resulted in lethal outcomes and violation of labour rights of the convicts.

After the Commissioner's letter had been considered, Chernihiv Oblast Prosecutor's Office reviewed the facts specified in the letter and established that 7 convicts had died in the SI "Mena corrective colony (No. 91)" in 2020 and 2021. The data in each fact were recorded in the URPTI based on the elements of the criminal offence under Article 115(1) of the CrCU. The criminal proceedings were registered in all the cases with no exception under Article 140(1) of the CrCU regarding possible non-performance or improper performance of their official duties by the healthcare professionals.

Moreover, the data were entered into the URPTI under Article 172(1) of the CrCU based on the fact of the gross violation of the labour legislation detected during the inspection on 01.02.2022, and the pre-trial investigation within those proceedings is still under way.

Moreover, the mass media monitoring found the information on violation of the convicts' rights to medical assistance in Dnipro Multi-Profile Hospital No. 4 of the Branch of the SI "Healthcare Centre of

Phoca PDF

the State Criminal Enforcement Service of Ukraine" in Dnipropetrovsk and Donetsk Oblasts.

In particular, the article of Kharkiv human rights defence group called "Hospital feeling like a stinky coffin" contained information not only on violation of the convicts' rights to medical support and adequate treatment in Dnipro Multi-Profile Hospital No. 4 of the Branch of the SI "Healthcare Centre of the State Criminal Enforcement Service of Ukraine" in Dnipropetrovsk and Donetsk Oblasts, but also on express neglect of their duties by the staff of the healthcare institution.

After the Commissioner's letter had been considered, the acting Prosecutor General informed that the Prosecutor General's Office had instructed Dnipropetrovsk Oblast Prosecutor's Office to conduct the inspection; the latter engaged the specialists from the State Service of Ukraine on Food Safety and Consumer Protection, the State Service of Ukraine on Medicines and Drugs Control, the Main Directorate of the State Emergency Service in Dnipropetrovsk Oblast and territorial healthcare institutions of the MoH detected violations of the legislative requirements for adequate conditions for convicts in the hospital and medical assistance for them.

Moreover, the criminal proceedings were instituted by the Western District Prosecutor's Office of Dnipro on 29.09.2022 based on the facts of non-provision of adequate medical assistance to the convicts, and based on the elements of the criminal offence under Article 140(1) of the CrCU.

At the same time, most persons from the places of custody who apply to the Commissioner regarding inadequate medical support are provided medical assistance following his intervention.

In December 2022, the Commissioner received the petition from convict K. held in the SI "Lviv penitentiary institution (No. 19)" regarding non-provision of medical assistance and the need of surgery.

Following the measures taken by the Commissioner, convict K. was taken to the communal healthcare institution, where he was consulted by the specialists and left for planned surgery.

Also, in December 2022, the Commissioner received the petition from convict H. detained in the SI "Zamkove corrective colony (No. 58)" regarding absence of adequate treatment for deterioration of his chronic hepatitis C.

Following the Commissioner's intervention, the convict was escorted to Shepetivka Multi-Profile Hospital No. 98 of the SI "Healthcare centre of the State Criminal Enforcement Service of Ukraine" in Khmelnytskyi Oblast, where his virus hepatitis C was treated with the products of direct anti-virus effect at the expense of the state programme (3-month course).

It should be noted that not all the convicts who have filed a motion to be discharged from punishment due to their disease under Article 84 of the CrCU are released from penitentiary facilities even if such motions are granted.

It was found out in September 2022 that convict R. who suffered from the oncological disease of stage IV had died in Stryzhavka Multi-Profile Hospital No. 81 of the SI "Healthcare Centre of the State Criminal Enforcement Service of Ukraine" in Vinnytsia Oblast.

Based on the Commissioner's letter, the Prosecutor General's Office reviewed the provision of medical

Phoca PDF

assistance to convict R.

After the death of convict R., the criminal proceedings were instituted by police department No. 3 of Vinnytsia District Directorate of the MD NP on 05.09.2022 based on the elements of the criminal offence under Article 140(1) of the CrCU and the fact of improper performance of their professional duties by the healthcare professionals.

During the review, it was also established that the staff of medical unit No. 71 of the SI "Healthcare Centre of the State Criminal Enforcement Service of Ukraine" in Zhytomyr Oblast had violated the legislative requirements for referring convict R. to compulsory treatment and examination to the in-patient department of the territorial healthcare institution, which was supposed to be performed before medical examination by the medical and counselling commission and referral of the materials on discharge from serving the sentence due to the disease to court.

Therefore, on 05.07.2022, Korosten City and District Court dismissed the convict's motion to discharge him from serving the sentence due to the disease, in particular, as there were no necessary medical records, including the duly executed opinion of the medical and counselling commission.

The convict filed a motion to the court for the second time to be released from serving the sentence due to the disease under Article 84 of the CrCU, and he was discharged from serving the sentence due to the disease by the ruling of Vinnytsia District Court of 29.08.2022. However, the convict had died before the ruling entered into force.

The issue of additional regulation of the time limits and procedure for appeal against a court ruling on discharge of convicted persons from punishment due to the disease in accordance with Article 84(2) of the CrCU has been in focus of the Commissioner's attention for several years.

With account of the death of convict R. in September 2022 in Stryzhavka Multi-Profile Hospital No. 81 of the SI "Healthcare Centre of the State Criminal Enforcement Service of Ukraine" in Vinnytsia Oblast, who did not live up to being discharged from serving the sentence for health reasons, the Commissioner repeatedly applied to the Committee of the Verkhovna Rada of Ukraine on Law Enforcement regarding the need of additional regulation of the time limits and the procedure for appeal against a court ruling on discharge of convicted persons from punishment due to the disease in accordance with Article 84(2) of the CrCU.

After the letter had been considered, the Committee of the Verkhovna Rada of Ukraine on Law Enforcement informed that the proposals had been brought to the attention of MPs who were members of that Committee and could consider them in their legislative drafting work as holders of the right of legislative initiative.

Moreover, the Commissioner also submitted that proposal to the Minister of Justice of Ukraine, who informed that expediency of the legislative amendments would be studied within the procedure for monitoring of implementation and analysis of performance of the legislative and other legal and normative acts, in particular, through the prism of findings of the annual online survey of stakeholders in the field of criminal justice, in order to find out the stakeholders' opinion on possible ways to resolve the problems described in the letter. The issue still has not been resolved.

Phoca PDF

Right of the persons sentenced to life imprisonment to parole and pardon

One of the most important events for the persons who had been sentenced to life imprisonment was adoption of the Laws of Ukraine No. 2689-IX of 18.10.2022 "On Amending Certain Legislative Acts as to Enforcement of Judgements of the European Court of Human Rights" and No. 2690-IX of 18.10.2022 "On Amending the Code of Ukraine on Administrative Offences, the Criminal Code of Ukraine and the Criminal Procedure Code of Ukraine as to Enforcement of Judgements of the European Court of Human Rights", which entered into force on 06.11.2022. Therefore, Ukraine has finally resolved the matter or irreducibility of punishment in the form of life imprisonment and enforced the ECHR judgement in the case of Petukhov v. Ukraine (No. 2) (application No. 41216/13).

The laws have introduced the mechanism for granting parole and replacing the unserved part of the punishment with more lenient one for the persons who have been sentenced to life imprisonment by court. However, the problem is that Law No. 2689-IX does not contain clauses in bringing the other legal and normative acts in line with its rules. In order to adhere to the principle of legal certainty of the legislation, the Commissioner applied to the Head of the Office of the President of Ukraine and proposed to make corresponding amendments to the Regulation on the Procedure for Granting Parole approved by Decree of the President of Ukraine No. 223/2015 of 21.04.2015 (as amended).

In January 2023, the Head of the Office of the President of Ukraine informed the Commissioner that his proposals were being processed in the Office of the President of Ukraine and would be considered in the amendments to the Regulation on the Procedure for Granting Parole approved by Decree of the President of Ukraine No. 223/2015 of 21.04.2015 "On the Regulation on the Procedure for Granting Parole".

The matter of bringing the Regulation on the Procedure for Granting Parole in line with the Law still has not been resolved.

Recommendations

The Office of the President of Ukraine should bring the Regulation on the Procedure for Granting Parole approved by Decree of the President of Ukraine No. 223/2015 of 21.04.2015 (as amended) in line with the Law of Ukraine No. 2689-IX of 18.10.2022 "On Amending Certain Legislative Acts as to Enforcement of Judgements of the European Court of Human Rights".

The Ministry of Health of Ukraine should:

- develop and approve an order to regulate the procedure for physical examination during hospitalisation and stay in psychiatric care facilities, for interviews about injuries and documentation of injuries, as well as notifying the respective law enforcement agencies thereof;

- develop and approve the procedure for applying physical restraint and (or) isolation in providing psychiatric care to persons suffering from mental disorders, and forms of primary records in psychoneurological care homes;

- develop and issue on order to approve the form and ensure keeping of the Log of the bodily injuries detected upon arrival and during stay of such detainees in the places of custody of the MoH system, forms of the survey about bodily injuries and registration thereof as well as notification of corresponding law-

Phoca PDF

enforcement authorities thereof;

- take organisational actions to ensure control over the provision of necessary somatic treatment of patients who have been receiving treatment in psychiatric care and social protection facilities for a long time;

- ensure the placement, in social protection institutions and psychiatric care institutions, of information in an accessible form about the rights of persons with disabilities, hotline numbers, phone numbers of officials, including the Commissioner, and free legal aid centres to which a person with mental disorders can turn.

The Ministry of Social Policy of Ukraine should:

- develop and issue on order to approve the form and ensure keeping of the Log of the bodily injuries detected upon arrival and during stay of such detainees in the places of custody of the MSP system, forms of the survey about bodily injuries and registration thereof as well as notification of corresponding law-enforcement authorities thereof;

- ensure that the social protection facilities obtain a medical practice licence;

- develop and approve the procedure for applying physical restraint and (or) isolation in providing psychiatric care to persons suffering from mental disorders, and forms of primary records in psychoneurological care homes;

- take organisational actions to ensure control over the provision of necessary somatic treatment of patients who have been receiving treatment in psychiatric care and social protection facilities for a long time;

- ensure the placement, in social protection institutions and psychiatric care institutions, of information in an accessible form about the rights of persons with disabilities, hotline numbers, phone numbers of officials, including the Commissioner, and free legal aid centres to which a person with mental disorders can turn.

The Ministry of Justice of Ukraine should:

- develop and approve departmental legal and normative acts on the implementation of the provisions of the United Nations Guidelines on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) to ensure proper documentation of cases of torture and other cruel degrading treatment and punishment;

- develop and duly submit to the Cabinet of Ministers of Ukraine for consideration the draft law on amending the CrPCU regarding additional regulation of time limits and procedure for appeal against a court ruling on discharge of convicted persons from punishment due to the disease in accordance with Article 84(2) of the Criminal Code of Ukraine;

- take comprehensive measures to arrange barrier-free environment in places of custody in accordance with the provisions of DBN of Ukraine B.2.2-40:2018 — Inclusiveness of Buildings and Structures;

Phoca PDF

- ensure the filling of vacancies at the medical units of State Institution “Healthcare Centre of the State Criminal Enforcement Service of Ukraine”;

- take organisational measures to ensure control with a view to preventing the spread of contagious diseases among prisoners and convicts.

The Ministry of Internal Affairs of Ukraine should:

- take comprehensive measures to arrange barrier-free environment in places of custody in accordance with the provisions of DBN of Ukraine B.2.2-40:2018 — Inclusiveness of Buildings and Structures;

- develop and approve the implementation of standards for the provision of persons at TDF with bed clothing, tableware, soap and synthetic detergents, as well as medical equipment and other consumables.

The oblast military administrations, Kyiv City (Military State Administration), and Kyiv City Council:

- take organisational measures to ensure control in subordinated psychiatric care facilities over the use of fixation straps during physical restraint of patients/wards;

- take comprehensive measures to arrange barrier-free environment in places of custody in accordance with the provisions of DBN of Ukraine B.2.2-40:2018 — Inclusiveness of Buildings and Structures;

- ensure the placement, in social protection institutions and psychiatric care institutions, of information in an accessible form about the rights of persons with disabilities, hotline numbers, phone numbers of officials, including the Commissioner, and free legal aid centres to which a person with mental disorders can turn.

The Ministry of Education and Science of Ukraine should:

- develop and issue on order to approve the form and ensure keeping of the Log of the bodily injuries detected upon arrival and during stay of such detainees in the places of custody of the MES system, forms of the survey about bodily injuries and registration thereof as well as notification of corresponding law-enforcement authorities thereof;

- take comprehensive measures to arrange barrier-free environment in places of custody in accordance with the provisions of DBN of Ukraine B.2.2-40:2018 — Inclusiveness of Buildings and Structures.

The Ministry of Defence of Ukraine, the Security Service of Ukraine, the State Bureau of Investigation, and the State Judicial Administration should take comprehensive measures to arrange barrier-free environment in places of custody in accordance with the provisions of DBN of Ukraine B.2.2-40:2018 — Inclusiveness of Buildings and Structures.

The State Institution “Healthcare Centre of the State Criminal Enforcement Service of Ukraine” should:

- ensure the filling of vacancies at the medical units of State Institution “Healthcare Centre of the State

Phoca PDF

Criminal Enforcement Service of Ukraine";

- take organisational measures to ensure control with a view to preventing the spread of contagious diseases among prisoners and convicts.

The Coordination Centre for Legal Aid Provision should take organisational measures to ensure control over proper provision of free primary and secondary legal aid to detainees and persons held in places of custody.

1 Telegram channel of Kherson OMA. Available at: https://t.me/khersonskaODA/1538

2 Approved by Resolution of the Cabinet of Ministers of Ukraine No. 336 of 16 June 1992

Phoca PDF